

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-JES-CM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP,
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,
FOUNDING PARTNERS GLOBAL FUND, LTD., and
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

**RECEIVER'S MOTION FOR COURT APPROVAL TO
RECOGNIZE TRANSFERS OF CLAIMS IN RECEIVERSHIP BOOKS AND RECORDS**

Daniel S. Newman, as Court-appointed Receiver (“Receiver”) for Founding Partners Capital Management Co. (“FPCM”), Founding Partners Stable-Value Fund, LP (“Stable Value”), Founding Partners Stable-Value Fund II, LP (“Stable Value II”), Founding Partners Global Fund, Ltd. (“Global Fund”) and Founding Partners Hybrid-Value Fund, LP (“Hybrid Value”) (collectively, the “Receivership Entities”) respectfully submits this Motion for Court Approval to Recognize Transfers of Claims in Receivership Books and Records (“Motion”).

1. The Receiver was appointed by Court Order on May 20, 2009 (the “Receivership Order”). [D.E. 73].

2. On July 3, 2014, the Court entered its Order approving the Receiver's Recommendations and Fairness of Distribution of FP Designee Interests Pursuant to Section 3(a)(10) of the Securities Laws (the "Claims Order"). [D.E. 430].

3. In its Claims Order, the Court-approved certain claims made by investors in the claims process ("Approved Claimants"), as reflected on Revised Schedule A at D.E. 417-5. [See D.E. 430 at 31].

4. Various Approved Claimants or their representatives have recently contacted the Receiver requesting that the Receiver update the Receivership's books and records to reflect the transfer (or in one case, re-naming) of their approved claims, subject to the approval of the Court. The Receiver through this Motion asks the Court for approval to allow him to recognize the transfers specified in this Motion for purposes of Court authorized distributions made by the Receiver.

5. Before applying to the Court for approval to recognize the transfer of these approved claims, the Receiver required that the Approved Claimants and all other parties to the transfer (collectively, "Transfer Parties") execute a sworn letter agreement ("Sworn Agreement"). The Receiver has received executed Sworn Agreements for each of the transfers the Receiver seeks approval to recognize in the Receivership's books and records. By executing the Sworn Agreements, the Transfer Parties acknowledged, agreed, and swore to:

- a. The amount of the approved claims, as approved by the Court in D.E. 430;
- b. The timing of the facts relevant to the transfer;
- c. The authority of the Transfer Parties' representatives to speak on behalf of, and transact business on behalf of, the Transfer Parties;

- d. The lack of any other assignment or interest in the approved claims;
- e. The transfer was not done to avoid probate, creditors, or any other legal process, and is not being requested for any improper purpose.
- f. The fact that neither the Receiver nor his professionals had advised or counseled the Transfer Parties or instructed them in any way;
- g. The fact that the Transfer Parties are relying solely on their own independent counsel or advisors in connection with the requested transfer;
- h. The Transfer Parties' release of the Receiver and his professionals from any liability for any adverse consequences, legal or otherwise, with respect to the requested transfer; and
- i. The Transfer Parties' indemnification and holding harmless of the Receiver, the Receivership Entities, and all of their representatives, successors, and assigns, for any effect of Sworn Agreement or the requested transfer.

6. The Receiver also obtained supporting documentation related to the requested transfers.

7. The Receiver will make available the Sworn Agreements and any other documents the Court requests, should the Court desire to review such documents.

8. The Court already permitted the Receiver to reflect similar transfers in this matter in the Receivership's books and records. [D.E. 430; D.E. 477; D.E. 492].

9. The Receiver has conferred with counsel for the U.S. Securities and Exchange Commission (“SEC”) who has indicated the SEC does not oppose the relief requested in this Motion.

A. Claimants No. 39, 41, and 63

10. Claimant No. 39, Claimant No. 41, and Claimant No. 63 are Approved Claimants with approved claims totaling \$500,000, \$500,000, and \$250,000, respectively (collectively, “Claimants 39, 41, and 63”). [D.E. 417-5 at 1].

11. The Receiver was contacted by representatives of Claimants 39, 41, and 63, who requested that the Receiver update his books and records to reflect the transfer of their approved claims to a new trustee, subject to Court approval.

12. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership’s books and records.

B. Claimant No. 45

13. Claimant No. 45 is an Approved Claimant with an approved claim totaling \$500,000 (“Claimant 45”). [D.E. 417-5 at 1].

14. The Receiver was contacted by the Claimant 45, who requested that the Receiver’s books and records reflect that his approved claim has been transferred to a trust, subject to the approval of the Court.

15. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership’s books and records.

C. Claimant No. 92

16. Claimant No. 92 is an Approved Claimant with an approved claim totaling \$1,000,000 (“Claimant 92”). [D.E. 417-5 at 2].

17. The Receiver was contacted by a representative of Claimant 92, who requested that the Receivership update its books and records to reflect that its approved claim is no longer managed by a third party. Accordingly, the Receiver must update his books and records to remove the dissolved manager from the Approved Claimant’s name.

18. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize it in the Receivership’s books and records.

D. Claimant No. 115

19. Claimant No. 115 is an Approved Claimant with an approved claim totaling \$7,000,000 (“Claimant 115”). [D.E. 417-5 at 2].

20. The Receiver was contacted by representatives of Claimant 115, who requested that the Receivership update its books and records to reflect that the approved claim has been transferred to a foundation, subject to the approval of the Court.

21. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership’s books and records.

E. Claimant No. 130

22. Claimant No. 130 is an Approved Claimant with an approved claim totaling \$1,000,000 (“Claimant 130”). [D.E. 417-5 at 2].

23. The Receiver was contacted by representatives of Claimant 130, who requested that the Receivership update its books and records to reflect that the approved claim has been transferred to one of Claimant 130's representatives, in his individual capacity, subject to the approval of the Court.

24. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership's books and records.

F. Claimant No. 137

25. Claimant No. 137 is an Approved Claimant with an approved claim totaling \$1,500,000 ("Claimant 137"). [D.E. 417-5 at 3].

26. The Receiver was contacted by representatives of Claimant 137 the Receivership update its books and records to reflect that the approved claim has been transferred to a foundation, subject to the approval of the Court.

27. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership's books and records.

G. Claimant No. 192

28. Claimant No. 192 is an Approved Claimant with an approved claim totaling \$1,455,074 ("Claimant 192"). [D.E. 417-5 at 4].

29. The Receiver was contacted by representatives of the Claimant, who requested that the Receivership update its books and records to reflect that the approved claim has been transferred to a new entity, subject to the approval of the Court.

30. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership's books and records.

H. Claimant No. 203

31. Claimant No. 203 is an Approved Claimant with an approved claim totaling \$442,400 ("Claimant 203"). [D.E. 417-5 at 4].

32. The Receiver was contacted by Claimant 203, who requested that the Receivership update its books and records to reflect that the approved claim has been transferred to an IRA, subject to the approval of the Court.

33. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership's books and records.

I. Claimant No. 207

34. Claimant No. 207 is an Approved Claimant with an approved claim totaling \$1,168,655 ("Claimant 207"). [D.E. 417-5 at 4].

35. The Receiver has been informed that Claimant 207 has passed away.

36. The Receiver was contacted by Claimant 207's surviving wife, who requested that the Receivership update its books and records to reflect that the approved claim has been transferred to her, subject to the approval of the Court.

37. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership's books and records.

J. Claimants No. 215 and 216

38. Claimant No. 215 and Claimant No. 216 are Approved Claimants with approved claims totaling \$24,276 and \$28,290, respectively (collectively, “Claimants 215 and 216”). [D.E. 417-5 at 4].

39. The Receiver was contacted by representatives of Claimants 215 and 216, who requested that the Receivership update its books and records to reflect that the approved claims have been transferred to an IRA, subject to the approval of the Court.

40. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update and now seeks Court approval to recognize this transfer in the Receivership’s books and records.

CONCLUSION

Based on the foregoing, the Receiver respectfully requests that the Court authorize the Receiver to recognize foregoing transfers and update the Receivership’s books and records accordingly.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

Dated: May 10, 2021.

Respectfully submitted,
BROAD AND CASSEL LLP

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