

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29CM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

**AMENDED PRELIMINARY APPROVAL OF SETTLEMENT AND SCHEDULING
ORDER¹**

Before the Court is the Motion to Approve Proposed Settlement with Mayer Brown LLP, to Approve the Proposed Notice of Settlement with Mayer Brown LLP, and to Enter the Final Settlement Approval & Bar Order (the “Motion”), filed by Daniel S. Newman (the “Receiver”) in his capacities as (a) the receiver appointed by this Court for the Founding Partners Entities², and

¹ The Preliminary Approval of Settlement and Scheduling Order (Doc. #511) is amended to shorten the deadlines for the filing of objections and responses. (Doc. #513.)

² The “Founding Partners Entities” are Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (f/k/a Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P. (f/k/a Founding Partners Equity Fund, L.P.).

(b) the assignee of claims of certain investors in one or more Founding Partners Entities, which investors are referred to herein as “Assignors.”

The Motion concerns a proposed settlement (the “Settlement”) among and between the Receiver and Mayer Brown LLP (“Mayer Brown”), one of the defendants in the case filed by the Receiver in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), that is captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Litigation”). The Settlement Agreement at issue is attached as Exhibit 1 to the Motion [ECF No. 508-1]. All capitalized terms not defined herein shall have the same meaning as set forth in the Settlement Agreement.

In the Motion, the Receiver seeks the Court’s approval of the terms of the Settlement, including entry of a bar order in this proceeding (the “Final Settlement Approval & Bar Order”). The Court enters this Order to: (i) set forth preliminary findings concerning the proposed Settlement; (ii) establish the procedure for providing notice of the terms of the Settlement, including the proposed Final Settlement Approval & Bar Order; (iii) set the deadline for filing objections to the Settlement or the proposed Final Settlement Approval & Bar Order; (iv) set the deadline for responding to any objection so filed; and (v) set the date of the final approval hearing regarding the Settlement and the Final Settlement Approval & Bar Order (the “Final Approval Hearing”).

I. Preliminary Findings on Potential Approval of the Settlement.

1. Based upon the Court’s review of the terms of the Settlement Agreement, the arguments presented in the Motion, and the Motion’s accompanying exhibits, the Court preliminarily finds that the Settlement is fair, reasonable, and equitable; has no obvious deficiencies; and appears to be the product of serious, informed, good-faith, and arm’s-length negotiations between the Receiver and Mayer Brown. The Court, however, reserves a final ruling

with respect to the terms of the Settlement until after the Final Approval Hearing referenced below in Paragraph 2.

II. Final Approval Hearing.

2. The Final Approval Hearing will be held before the Honorable John E. Steele of the United States District Court for the Middle District of Florida, United States Courthouse, 2110 First Street, Fort Myers, Florida 33901, in Courtroom 6A, at a date and time to be set under separate Notice within **thirty (30) days** after the expiration of the deadline to file objections. The purposes of the Final Approval Hearing will be to: (i) determine whether the Court should approve the terms of the Settlement; (ii) determine whether the Court should enter the Final Settlement Approval & Bar Order, which is to encompass the terms and relief set forth in Exhibit D to the Settlement Agreement; (iii) rule upon any objections to the Settlement or Final Settlement Approval & Bar Order; and (iv) rule upon such other matters as the Court may deem appropriate.

III. Notice.

3. The Court approves the form of Notice, attached as Exhibit F to the Settlement Agreement and to this Order, and finds that the methodology, distribution, and dissemination of Notice described in the Motion: (i) constitute the best practicable notice under the circumstances; (ii) are reasonably calculated, under the circumstances, to apprise all Bar Order Parties of the Settlement, the releases therein, and the injunctions provided for in the Final Settlement Approval & Bar Order; (iii) are reasonably calculated, under the circumstances, to apprise all Bar Order Parties of the right to object to the Settlement or the Final Settlement Approval & Bar Order and to appear at the Final Approval Hearing; (iv) constitute due, adequate, and sufficient notice; (v) meet the requirements of applicable law, including the Federal Rules of Civil Procedure, the United States Constitution (including due process), and the Rules of the Court; and (vi) will provide to all relevant Persons a full and fair opportunity to be heard on these matters. Therefore:

a. The Receiver is hereby directed, no later than **five (5) calendar days** after entry of this Amended Order, to cause the Notice in substantially the same form attached as Exhibit F to the Settlement Agreement to be sent via electronic mail, first-class mail or international delivery service to all Bar Order Parties using the contact information in the Receiver's files, and sent via electronic service to all counsel of record for any Person who is, at the time of Notice, a party in the SEC Action or the Litigation.

b. The Receiver is hereby directed, **no later than five (5) calendar days** after entry of this Amended Order, to cause the Settlement Agreement, the Motion, this Order, the Notice, and all exhibits and appendices attached to these documents, to be posted on the Receiver's website (<http://www.foundingpartners-receivership.com>). Upon request of any Bar Order Party receiving Notice under Paragraph 3(a) of this Order, the Receiver may provide such Bar Order Party with a copy of the settlement materials posted to his website by email or in hard copy.

c. No later than **ten (10) calendar days** before the Final Approval Hearing, the Receiver shall cause to be filed with the Clerk of this Court a notice of his compliance with subparts (a) and (b) of this Paragraph.

IV. Objections and Appearances at the Final Approval Hearing.

4. Any Person who wishes to object to the terms of the Settlement or the Final Settlement Approval & Bar Order and/or to appear at the Final Approval Hearing must first file an objection, in writing, with the Court, either by ECF or by mailing the objection to the Clerk of the United States District Court for the Middle District of Florida, 2110 First Street, Fort Myers, Florida 33901, with such objections due no later than **December 31, 2020** . All objections filed with the Court must:

- a. contain the name, address, telephone number, and (if applicable) email address of the Person filing the objection;
- b. contain the name, address, telephone number, and email address of any attorney representing the Person filing the objection;
- c. be signed by the Person filing the objection, or his or her attorney;
- d. state, in detail, the basis for any objection;
- e. attach any document the Person believes the Court should consider in ruling on the Settlement or the Bar Order; and
- f. make a request to appear at the Final Approval Hearing, if the Person filing the objection wishes to so appear.

The Court will determine the manner of conducting the Final Approval Hearing and will limit the ability of any Bar Order Party (other than the Receiver) to appear at such Final Approval Hearing if such Bar Order Party has not first filed a timely written objection and request to appear, as set forth in subparts (a) through (f) of this Paragraph. Copies of any objections filed must be served by ECF, or by email or first class mail, upon each of the following:

Counsel for the Receiver:

Leo R. Beus
Scot C. Stirling
BEUS GILBERT MCGRODER PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Facsimile: (480) 429-3100
Email: lbeus@beusgilbert.com
sstirling@beusgilbert.com

Jonathan Etra
Christopher Cavallo
NELSON MULLINS RILEY &
SCARBOROUGH LLP
One Biscayne Tower — 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 373-9400
Facsimile: (305) 373-9443
Email: jonathan.etra@nelsonmullins.com
chris.cavallo@nelsonmullins.com

Stuart Z. Grossman
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Blvd., Ste. 1150
Coral Gables, FL 33134
Telephone: (305) 442-8666
Facsimile: (305) 285-1668
Email: szg@grossmanroth.com

Counsel for Mayer Brown:

David J. Bradford
April A. Otterberg
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654-3456
Telephone: (312) 222-9350
Facsimile: (312) 527-0484
E-mail: dbradford@jenner.com
aotterberg@jenner.com

Eugene K. Pettis
Debra P. Klauber
HALICZER, PETTIS & SCHWAMM
One Financial Plaza
100 S.E. 3rd Avenue, 7th Floor
Fort Lauderdale, FL 33394
Telephone: (954) 523-9922
Facsimile: (954) 522-2512
Email: epettis@hpslegal.com
dklauber@hpslegal.com

5. Any Person filing an objection shall be deemed to have submitted to the jurisdiction of this Court for purposes of that objection, the Settlement, and the Final Settlement Approval & Bar Order. Potential objectors who do not present opposition by the time and in the manner set forth above shall be deemed to have waived the right to object (including any right to appeal) and to appear at the Final Approval Hearing, and shall be forever barred from raising such objections in this action or any other action or proceeding. Persons do not need to appear at the Final Approval Hearing or take any other action to indicate their approval of the Settlement and/or the proposed Final Settlement Approval & Bar Order.

6. Mayer Brown shall be permitted to appear at the Final Approval Hearing, if it chooses, without formally intervening in this proceeding.

V. Responses to Objections.

7. Either Party to the Settlement, or the SEC, may respond to an objection filed pursuant to Paragraph 4 by filing a response in this proceeding no later than **January 14, 2021**.

Mayer Brown shall be permitted to file such a response, if it chooses, without formally intervening in this proceeding. To the extent any Person who has filed an objection cannot be served with the response to such objection by action of the Court's CM/ECF system, the response must be served to the email and/or mailing address provided by that Person.

VI. Adjustments Concerning Hearing and Deadlines.

8. The date, time, and place for the Final Approval Hearing, and the deadlines and date requirements in this Order, shall be subject to adjournment or change by this Court without further notice other than that which may be posted by means of ECF in this proceeding, which the Receiver shall also post on his website (<http://www.foundingpartners-receivership.com>), except the Receiver shall deliver notice of any adjournment or change in the Final Approval Hearing date to anyone who has filed an objection pursuant to Paragraph 4 herein, using the email or mailing address provided in such objection.

VII. Entry of Injunction.

9. If the Settlement is approved by the Court, the Court will enter the Final Settlement Approval & Bar Order in this proceeding. If entered, the Final Settlement Approval & Bar Order will permanently enjoin all Bar Order Parties, including Approved and Unapproved Claimants, from bringing, encouraging, assisting, continuing, or prosecuting, against Mayer Brown or any of the Mayer Brown Released Parties, the Litigation, or any other action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including, without limitation, contribution or indemnity claims, arising from or relating to a Settled Claim.

VIII. Use of Order.

10. The Court understands that the Parties to the Settlement Agreement do not intend anything in the Settlement Agreement and its exhibits, the Motion, or this Order to be construed, deemed, or used as an admission, concession, or declaration by or against Mayer Brown of any

fault, wrongdoing, breach or liability, or by or against the Receiver that his claims in the Litigation lack merit or that the relief he has sought in that Litigation is inappropriate, improper, or unavailable. Nothing in this Order is intended as a finding, admission, concession, or declaration that any party to the Litigation has waived any defenses or claims he or it may have. This Order and the Settlement Agreement (along with its exhibits) are intended to be filed, offered, received in evidence, or otherwise used in this or any other action or proceeding (including any arbitration), only for the following purposes and for no other purposes: (i) to give effect to or enforce the Settlement or the terms of this Order (or the Final Settlement Approval & Bar Order, if entered by this Court), or (ii) in connection with the approval of the Settlement in the Litigation, entry of judgment in the Litigation, or any proceedings to effectuate a stay of the Litigation in light of the Settlement.

DONE AND ORDERED in Fort Myers, Florida, on this 27th day of November, 2020.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished:
All counsel of record