

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

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.

**MOTION TO APPROVE PROPOSED SETTLEMENT
WITH ERNST & YOUNG LLP, TO APPROVE THE PROPOSED
NOTICE OF SETTLEMENT AND BAR ORDER PROCEEDINGS,
AND TO ENTER THE FINAL SETTLEMENT APPROVAL & BAR ORDER**

Receiver Daniel S. Newman, not individually, but solely in his capacity as the Court-appointed receiver (“Receiver”) for Founding Partners Capital Management Company (“FPCM”); Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd. (“Global Fund”); and Founding Partners Hybrid-Value Fund, L.P. (collectively, the “Receivership Entities” and, excluding FPCM, the “Founding Partners Funds” or “Founding Partners”), respectfully submits this Motion to Approve Proposed Settlement Agreement with Ernst & Young LLP, to Approve the Proposed Notice of Settlement and Bar Order Proceedings, and to Enter the Final Settlement Approval and Bar Order (“the Motion”), which

seeks preliminary approval of the settlement entered into between the Receiver and Ernst & Young LLP (“EY”) on July 24, 2023 (the “Settlement”) by means of entry of a Preliminary Approval of Settlement & Scheduling Order substantially in the form of Exhibit D to the Settlement Agreement (as defined below);¹ approval of the notice of settlement and bar order proceedings; and entry of a Final Settlement Approval & Bar Order, a partial form of which is attached as Exhibit B to the Settlement Agreement.

The process proposed in this Motion is not new to this case or to the Court. As more fully set forth below, the Court followed a similar process of preliminary approval, notice, and final approval and entry of a Bar Order in connection with the Receiver’s settlement with Mayer Brown LLP (“Mayer Brown”) in 2020. *See, e.g.*, D.E. 511, 514, 527.²

The United States Securities and Exchange Commission (“SEC”) does not object to the relief sought herein.

¹ The form of order attached as Exhibit D to the Settlement Agreement (i) preliminarily approves the Settlement between the Receiver and EY; (ii) approves the content and plan for publication and dissemination of the Notice (Exhibit C to the Settlement Agreement); (iii) sets the date by which any objection to the Settlement or the Settlement Agreement may be filed; and (iv) schedules a hearing, should this Court determine that a hearing is necessary, to consider final approval of the Settlement, entry of the Final Settlement Approval & Bar Order (Exhibit B to the Settlement Agreement), and any further relief that the Court may deem just and proper. Capitalized terms used but not defined in this Motion have the same meaning as set out in the Settlement Agreement.

² The Receiver and Mayer Brown executed a settlement agreement on October 21, 2020. (D.E. 508-1.) The Receiver filed a Motion for Preliminary Approval of the Mayer Brown settlement on November 3, 2020, and the Court preliminarily approved that settlement on November 25, 2020. (D.E. 508, 511.) Following an appropriate notice period, the Court entered a final order approving the Mayer Brown settlement and entering the requested Bar Order on February 5, 2021. (D.E. 527.)

I. INTRODUCTION

On December 30, 2010, the Receiver, represented by Court-approved special counsel, filed suit against Mayer Brown (former counsel for the Receivership Entities) and Ernst & Young LLP (“EY”) (former auditor for certain Receivership Entities). The lawsuit was filed in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (“Broward Court”), with the case captioned *Newman v. Ernst & Young, LLP*, Case No. 10-49061 (“Broward Litigation” and, together with the Arbitrations (as defined below), the “Litigation”). The Receiver amended his Complaint in the Broward Litigation on four occasions, and, in the course of such amendments, added claims of thirty-eight Assignors (the “Assigned Claims”).

EY moved in the Broward Court to compel arbitration of all the Receiver’s claims, based on arbitration clauses in engagement letters with three of the four Founding Partners Funds. The Broward Court granted EY’s motion to compel arbitration of all claims against it. The Florida Fourth District Court of Appeal initially affirmed the trial court’s order in full but, in an October 11, 2017 order following a motion for rehearing, affirmed the trial court’s order in part (finding that the Receiver’s claims standing in the shoes of the audited funds were arbitrable) and reversed in part (finding that the Assigned Claims were not subject to arbitration).

In a 2018 Complaint for Damages and Demand for Arbitration, the Receiver brought all the arbitral claims against EY in a proceeding before the American Arbitration Association (“AAA”), with the case captioned *Newman v. Ernst & Young LLP*, AAA Case No. 01-18-0003-2029 (the “AAA Arbitration”). On March 27, 2020, the AAA panel granted EY’s motion to dismiss those claims related to engagement letters that specified the International Institute for Conflict Prevention & Resolution (“CPR”) as the arbitral forum, based on the AAA Panel’s finding that such claims were not arbitral in AAA. On March 10, 2021, in a Complaint for Damages and

Demand for Arbitration, the Receiver brought those claims dismissed in the AAA Arbitration in a proceeding before CPR, with the case captioned *Newman v. Ernst & Young LLP*, CPR Case No. G-21-63-S (the “CPR Arbitration” and, together with the AAA Arbitration, the “Arbitrations”).

To avoid the expense and uncertainty of litigating the claims brought in the Litigation, the Receiver and EY have agreed to resolve those claims by means of the Settlement, as set forth in the terms of a proposed settlement agreement, dated July 24, 2023 (the “Settlement Agreement”), attached as **Exhibit 1** to this Motion. The Receiver’s authority to both file and settle the Litigation is derived from the Receivership Order, entered by the Court in this action, Case No. 09-cv-229 (“SEC Action”). (D.E. 73, ¶2(f).)

The Receiver and his litigation counsel invited Approved Claimants (defined below) to a Zoom meeting on July 5, 2023, to present the proposed Settlement and the terms of the Settlement Agreement. The Approved Claimants who participated have expressed their support for the proposed Settlement. The Receiver has asked each Approved Claimant to express support for the proposed Settlement by written Consent in the form of Exhibit J to the Settlement Agreement. The Receiver will advise the Court of the results of those efforts to obtain such Consents before the date the Court sets for any hearing it may hold on this Motion.

II. THE RECEIVERSHIP ORDER

On April 20, 2009, the SEC filed its complaint against FPCM and William L. Gunlicks (“Gunlicks”), alleging that FPCM and Gunlicks had engaged, and were engaging, in a scheme to defraud investors and violate the federal securities laws. (D.E. 1.) The same day, the Court entered an order appointing a receiver over the Receivership Entities (“Initial Receiver”). (D.E. 9.) The Initial Receiver was subsequently removed by Court Order on May 13, 2009. (D.E. 70.) Thereafter,

Daniel S. Newman, Esq. was appointed as Receiver in the Receivership Order on May 20, 2009 (D.E. 73). The Receivership Order provides that the Receiver shall, among other things:

(f) Defend, compromise or settle legal actions, including the instant proceeding, in which Founding Partners, any of the Founding Partners Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court . . .

(D.E. 73, ¶ 72(f).)

III. THE RECEIVER'S CLAIMS AGAINST EY

In the Litigation, as set forth variously in the Receiver's Fourth Amended Complaint in the Broward Litigation, the complaint in the AAA Arbitration, and the complaint in the CPR Arbitration, the Receiver, in his capacity as Receiver on behalf of the Receivership Entities and as assignee of the Assigned Claims, alleges causes of action against EY for professional malpractice, aiding and abetting breach of fiduciary duty, aiding and abetting fraud, aiding and abetting breaches of statutory duties, fraud, breach of fiduciary duty, and negligent misrepresentation, and seeks damages based on those allegations. The Receiver's claims were asserted on behalf of the Founding Partners Funds, and also included the Assigned Claims. EY denies these claims and has been vigorously defending against liability and damages.

The course of the Litigation between the Receiver and EY has been lengthy (spanning more than a dozen years), hard-fought, and active. The Litigation has included an appeal to and rehearing by the Florida Fourth District Court of Appeal concerning the arbitrability of the claims against EY; extensive discovery across the Litigation; motion practice in the Broward Court and AAA; and pre-hearing briefing, hearing preparation, and the exchange of exhibit and witness lists in AAA. Discovery has included the exchange of millions of pages of documents produced by parties and non-parties; the preparation and submission of eleven opening expert reports and seven

rebuttal expert reports; and more than twenty depositions, including a multi-day deposition of Gunlicks as well as the depositions of many non-party witnesses and experts.

In March 2023, the Receiver and EY engaged in formal mediation in an effort to resolve the Litigation. The mediation occurred in Miami, Florida before Greg Danilow, Esq.—a highly experienced neutral who has mediated many large and complex disputes. The mediation advanced the settlement negotiations and resulted in a settlement in principle on March 16, 2023, weeks before the commencement of the final hearing before the AAA.

IV. THE PROPOSED SETTLEMENT AGREEMENT

In resolution of the Receiver’s claims against EY, the proposed Settlement Agreement provides in pertinent part:

- EY will pay the Receiver \$200,000,000 U.S. dollars (the “Settlement Amount”).³
- The Receiver and EY agree to mutual releases of the Settled Claims (as defined in Paragraph 20 of the Settlement Agreement), and the Receiver’s claims against EY in the Broward Litigation, the AAA Arbitration, and the CPR Arbitration will be dismissed with prejudice.
- By entering into the Settlement Agreement, EY does not admit any liability, fault, or wrongdoing in relation to the Litigation or the Settled Claims.
- An essential term of the Settlement Agreement is that this Court enter a bar order (the “Bar Order”) prohibiting certain parties (as defined in Paragraph 4 of the Settlement Agreement, including, among others, the Assignors and the Approved Claimants), from bringing certain claims against EY or the EY Released Parties (as

³ The action against EY was litigated primarily by Court-approved special counsel Beus Gilbert McGroder PLLC (“Beus Gilbert McGroder”), with the assistance of special outside counsel Grossman Roth Yaffa Cohen (“Grossman Roth”), on a contingency basis. The Court-approved fee agreement provides that 33.3% of the settlement funds, or approximately \$66.67 million, will go to special counsel Beus Gilbert McGroder and Grossman Roth, plus any costs or expenses that are due to them. The remainder of the funds will go to the Receivership Estate and, after other expenses and reserves, will be available in a Court-approved distribution process. *See* Part X, below.

defined in Paragraph 7 of the Settlement Agreement), so that EY can achieve “total peace” in return for paying the Settlement Amount, as discussed below.

See Settlement Agreement ¶¶ 20, 22, 23, 27–30, 39, 43–48, 58–63, 68–70.

Accordingly, if the Court approves the Settlement, the claims against EY will be completely resolved.

V. THE REQUESTED BAR ORDER

A. Parties and Claims to be Barred

An essential condition of the Settlement Agreement is the entry by this Court of a Bar Order, substantially in the form set forth in Exhibit B to the Settlement Agreement, preventing the Receiver and the Receivership Entities, as well as certain other persons or entities (the “Bar Order Parties,” as defined in Paragraph 4 of the Settlement Agreement), from asserting claims against EY or any EY Released Parties (as defined in Paragraph 7 of the Settlement Agreement) that arise from or relate to EY’s alleged conduct or prior dealings with the Receivership Entities, including all Settled Claims, as set forth more fully in the Settlement Agreement and Exhibit B (the proposed Final Settlement Approval & Bar Order).⁴ Such claims include all claims against the EY Released Parties concerning, relating to, arising out of, or connected with:

- (i) any of the conduct complained of in the SEC Action or the Litigation;
- (ii) any of the Founding Partners Entities;

⁴ Exhibit B to the Settlement Agreement is a partial proposed Final Settlement Approval & Bar Order that contains the specific relief sought and certain factual findings but omits the additional factual and legal findings that will ultimately be necessary for this Court to approve the proposed Settlement and enter the Bar Order, after notice of the proposed Settlement has been provided, and the period for filing and addressing objections to the Proposed Settlement, if any, has passed. To assist the Court, the Receiver and EY have agreed to work together to prepare a complete proposed Final Settlement Approval & Bar Order for this Court at an appropriate later date, such as at a time closer to any hearing the Court may hold on this Motion.

- (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities;
- (iv) EY's relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to Gunlicks);
- (v) EY's provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to Gunlicks);
- (vi) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks;
- (vii) any conduct or omission by Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Success Healthcare, Inc., or any of their respective related or affiliated entities, subsidiary entities, principals, or employees;
- (viii) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against EY, EY's counsel, or any other Person; or
- (ix) the subject matter of the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending or was commenced in any Forum on or after March 25, 2009.

The entities or persons to be barred from asserting such claims against EY are identified as the Bar Order Parties in Paragraph 4 of the Settlement Agreement, and include:

- A. The Receiver (as defined in the Settlement Agreement);
- B. The Receivership Estate (as defined in the Settlement Agreement);
- C. The Founding Partners Entities (as defined in the Settlement Agreement);⁵
- D. FP Offshore, Ltd.;
- E. The Assignors (as defined in the Settlement Agreement);
- F. The Approved Claimants (as defined in the Settlement Agreement);
- G. The Unapproved Claimants (as defined in the Settlement Agreement);
- H. Mayer Brown;
- I. The following persons associated with FPCM or Founding Partners Entities:
 - i. William L. Gunlicks
 - ii. Judy Aller
 - iii. William V. Gunlicks
 - iv. Philip Fues
 - v. Chris Bowers
 - vi. Robb Baldwin
 - vii. William Hart
 - viii. Barry Preston
 - ix. David Teets
 - x. Kermit Claytor
 - xi. Stephen Dickson;
- J. The following individuals and trusts associated with Gunlicks:

⁵ The “Founding Partners Entities” as defined in the Settlement Agreement include all of the Receivership Entities, as defined above in this Motion.

- i. James B. Gunlicks⁶
- ii. Nissa Cox
- iii. The William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox
- iv. Annalee Good and The William L. Gunlicks Irrevocable Trust f/b/o Annalee Good
- v. The William L. Gunlicks Irrevocable Trust f/b/o William V. Gunlicks.

K. Any investor in any of the Founding Partners Entities;

The proposed Final Settlement Approval & Bar Order expressly provides that, “[n]otwithstanding anything herein or in the [Settlement] Agreement to the contrary, this Final Settlement Approval & Bar Order shall not apply to any federal, state, or local governmental agency, including but not limited to the Securities and Exchange Commission.”

A substantially similar bar order was entered in connection with the Receiver’s settlement with Mayer Brown. (D.E. 527.)

The Settlement Agreement states that EY “is not willing to agree to the Settlement or th[e] [Settlement] Agreement (including its requirement for the payment of the very substantial Settlement Amount) without the assurance of ‘total peace’ in relation to the Settled Claims,” and that the proposed Bar Order is “necessary to provide EY and the EY Released Parties such ‘total peace.’” *See* Settlement Agreement ¶ 39. Both parties represent in the Settlement Agreement that the Bar Order is “a necessary Condition of their Settlement.” *Id.* As a result, the entry of the Bar Order is one of the express Conditions of the Settlement Agreement that must be achieved before the “Settlement Effective Date” arises. *Id.* ¶ 23(b), (c).

⁶ James Gunlicks is William L. Gunlicks’ brother, and was named in Founding Partners’ materials.

Therefore, entry of the Final Settlement Approval & Bar Order and the Final Settlement Approval & Bar Order having become Final (as that term is defined in Paragraph 8 of the Settlement Agreement) are an essential condition of the Settlement Agreement and EY's obligation to pay the Settlement Amount. If the requested Bar Order is entered, the Bar Order Parties will be prohibited from asserting against EY or any of the EY Released Parties any Settled Claims, as defined in the proposed Bar Order set forth in Exhibit B to the Settlement Agreement. If the requested Bar Order is not entered, the termination provisions in the Settlement Agreement will apply. *See* Settlement Agreement ¶¶ 51–54.

Therefore, the Receiver requests that the Court enter the Bar Order in the form set forth in Exhibit B.

B. The Claims to be Barred Are So Closely Related to the Receiver's Claims, and Are Likely Barred By Statute, That It Is Fair and Equitable to Bar Further Litigation Against EY and the EY Released Parties

The Bar Order is both necessary to the proposed Settlement and fair and equitable under the circumstances. First, as discussed below, the Bar Order addresses claims that are so closely related to the Receiver's claims that barring such claims is consistent with the appropriate and efficient administration of the Receivership Estate. For example, the proposed Bar Order will bar claims from Approved Claimants who will recover once EY pays the Settlement Amount.

Second, given the passage of approximately sixteen years since the issuance of EY's last audit report and approximately fourteen years since services under the relevant engagements ceased, the claims precluded by the Bar Order are nearly certain to be time-barred or subject to other defenses. Nonetheless, it remains appropriate to enter the Bar Order to give EY the requested assurance that it will not be subject to further litigation involving the Settled Claims or required to

defend stale or otherwise deficient claims, in consideration of the Settlement Amount that EY has agreed to pay pursuant to the Settlement Agreement.

The SEC brought this action in 2009. The existence of the fraud alleged in the SEC's Complaint has been the subject of significant litigation and publicity since that time. For example:

- Beginning in 2009, shortly after his appointment, the Receiver began litigating with the Sun Capital entities. This ultimately led to a Court-approved settlement in 2012, with notice to investors in the Founding Partners Funds in 2012. While the Sun Capital settlement was pending Court approval, there was substantial motion practice and a hearing to determine the fairness of the settlement agreement and its contemplated transactions, which did not close until 2014. Investors and other third parties were on notice of and participated in these proceedings.
- The Receiver filed suit against Mayer Brown and EY in the Broward Litigation in 2010, and the allegations in the Receiver's pleadings and other information about the conduct of the Broward Litigation have been shared with investors, creditors, and other interested parties on the Receiver's website (<http://www.foundingpartners-receivership.com/>) since shortly after the Broward Litigation was commenced.
- Beginning August 28, 2012 (D.E. 349, Order Approving Receiver's Motion for Approval of Claims Process) and continuing through July 3, 2014 (D.E. 430, Opinion and Order Approving Receiver's Recommendations and Fairness of Distribution of FP Designee Interests Pursuant to Section 3(a)(10) of the Securities Laws), the Receiver operated a Court-approved claims process, which involved Court-approved notice to all of the investors in the Founding Partners Funds of the SEC's action and the underlying allegations. There was substantial motion practice during the claims process.

Since the commencement of the Receivership in 2009, none of the Bar Order Parties, with one exception,⁷ has filed any claim against EY.

⁷ In 2010, Gunlicks and his children (Nissa Cox, William V. Gunlicks, and Annalee Good) initiated a lawsuit against EY and Mayer Brown, captioned *Nissa Cox, et al. v. Mayer Brown LLP, et al.*, No. 2010 L 10503 (the "Gunlicks Action"). The Receiver partially joined with Mayer Brown in moving to dismiss that litigation because the plaintiffs were asserting claims that properly belonged to the Receiver and the Receivership Estate. The Gunlicks Action was dismissed with prejudice against Mayer Brown. The Court determined that the claims against EY were subject to compulsory arbitration. No such arbitration, however, was ever filed.

If any of the Bar Order Parties (including Mr. Gunlicks and his children) has or had any valid claim against EY that a Bar Order would preclude, such claim would almost certainly be time-barred given the applicable limitations periods. Nonetheless, the Receiver understands that EY's need for assurance that it will be free of the possibility of any such claims, even if the claims could be dismissed—after still more expense and litigation—because the claims are time-barred or for other reasons. The substantial Settlement Amount reflects the parties' expectation and agreement, as an essential condition of the proposed Settlement, that EY should not be subject to the expense and risk of any further litigation relating to the Founding Partners Funds and the Settled Claims. Moreover, any such claim would necessarily arise out of the same facts as the Receiver's claims. Any claims that the Bar Order would preclude are, therefore, related to the claims of the Receiver, and it is appropriate that such claims should be barred, for the reasons explained in the following paragraphs and in Part C below.

1. The Receiver, Receivership Estate, and Receivership Entities

The Receiver, the Receivership Estate, and the Receivership Entities are appropriately barred from asserting claims against the EY Released Parties because the Receiver brought all such claims belonging to the Receivership Estate or the Receivership Entities in the Litigation. These claims are resolved and released pursuant to the proposed Settlement Agreement.

2. The Assignors

The Assignors are all investors who hold (or held) approved claims in the Receivership Estate (also encompassed within Approved Claimants, as defined below). The Assignors assigned their claims against EY (and Mayer Brown) to the Receiver so that the Receiver could assert them in the Broward Litigation for the benefit of the Receivership Estate. Accordingly, the Assignors' assigned claims are resolved and released pursuant to the proposed Settlement Agreement. If

approved by the Court, the benefits of the proposed Settlement will accrue to all Approved Claimants, including the Assignors or their successors-in-interest. It is therefore appropriate that the Assignors be barred from pursuing any additional claims against the EY Released Parties relating to the allegations in the Broward Litigation.

3. Approved Claimants and Unapproved Claimants

In the Receivership, and with this Court's approval, the Receiver advised Founding Partners' investors that if they wished to assert any claim against the Receivership Estate, they were required to submit such claim to the Receiver in the claims process. (D.E. 338, 339.) "Approved Claimants" are (a) all persons or entities who submitted claims to the Receiver in the claims process, which the Receiver determined, and the Court agreed, should be approved, except if their interest were transferred in transfers approved by Court Orders, and (b) the transferees of such interests recognized by Court Orders. (D.E. 430; *see also* Settlement Agreement ¶ 2 (definition of "Approved Claimant")). Approved Claimants are the principal beneficiaries of the proposed Settlement Agreement, and it is appropriate that those who benefit from that agreement should also be barred from pursuing claims against the EY Released Parties outside of the litigation initiated by the Receiver. This includes FP Offshore, Ltd., an Approved Claimant that invested funds in the Founding Partners Funds. FP Offshore, Ltd. is also appropriately barred, and has given a Consent, reflecting its approval to the proposed Settlement Agreement.

The effective management of the Receivership Estate by the Court and the Receiver and the Receiver's ability to settle claims belonging to the Receivership Estate depend upon the ability to provide full and effective releases in consideration for settlement payments. It is well-established that it is appropriate to use bar orders to facilitate such settlements. *See SEC v. Quiros*, 966 F.3d 1195, 1200 (11th Cir. 2020) (citing numerous Eleventh Circuit cases approving and

entering bar orders where the bar orders were essential to the proposed settlements); *Newby v. Enron Corp.*, 302 F.3d 295, 300 (5th Cir. 2002) (affirming order enjoining “any new Enron-related actions” without first obtaining permission from the district court); *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980) (barring state court proceedings in a securities fraud case and affirming district court’s “inherent equitable authority” to issue “ancillary relief” measures, including injunctions to stay proceedings by non-parties).

Those who submitted claims in the claims process, but whose claims were rejected by the Receiver and the Court (the “Unapproved Claimants”), as well as any other investor who never submitted a claim at all (covered by subsection (k) of the definition of Bar Order Parties), should also be barred from pursuing litigation against the EY Released Parties outside of the litigation initiated by the Receiver. Any such untimely claims relating to EY’s engagements related to the Founding Partners Funds would necessarily interfere with the Receiver’s ability to settle the claims belonging to the Receivership Estate and undermine the authority of the Receiver and of this Court to administer the Receivership Estate pursuant to the orderly process, approved by the Court in 2012, for allowing and disallowing claims.

As noted, the Broward Litigation was commenced in 2010, and this Court rejected the Unapproved Claimants’ claims in the Receivership in 2014. Since that time, except for Gunlicks and his family, none of the Unapproved Claimants has commenced any litigation against EY relating to the Receivership Entities or the allegations in the Broward Litigation. Thus, the requested Bar Order would not preclude any claim that is not already time-barred.

Finally, to the extent that any Approved or Unapproved Claimants might have had any valid claims against EY or the EY Released Parties that the Bar Order would preclude, such claims would of necessity arise out of the same facts as the Receiver’s claims. Any claims that the Bar

Order would preclude are, therefore, wholly interrelated with the Receiver's claims and thus are appropriately barred.

4. Mayer Brown

Mayer Brown was the only other defendant in the Broward Litigation. The Receiver's Fourth Amended Complaint alleged causes of action against Mayer Brown for professional malpractice, aiding and abetting breach of fiduciary duty, aiding and abetting fraud, aiding and abetting breaches of statutory duties, fraud, and negligent misrepresentation.

Mayer Brown has never asserted a crossclaim against EY in the Broward Litigation, nor has it commenced any other action against EY relating to the claims made by the Receiver against EY in the Broward Litigation or relating to EY's relationship with any Receivership Entities. Mayer Brown settled with the Receiver on October 21, 2020, and, pursuant to that settlement agreement and as a necessary condition thereto, EY was one of the many parties subject to the bar order entered by this Court on February 5, 2021.

5. Persons Associated with Founding Partners Entities

Gunlicks should be barred from pursuing any other claims against EY for several reasons. Gunlicks was the President of FPCM. At one time, both Gunlicks and his son, William V. Gunlicks (who is also a Bar Order Party), were parties to the Gunlicks Action, noted above. As noted above, the Illinois court granted EY's motion to dismiss the Gunlicks Action and compel the claims to arbitration. Neither Gunlicks nor William V. Gunlicks ever filed arbitration against EY, thereby abandoning their claims. Further, Gunlicks has been actively involved in the Broward Litigation and the AAA Arbitration, having sat for depositions in both matters. He is well aware of the facts underlying the Broward Litigation and any claim he sought to bring against EY now plainly would be time-barred.

In addition to Gunlicks and his son, other persons associated with FPCM and the Founding Partners Entities are included in the requested Bar Order because they were employed by, performed services for, or provided advice to FPCM or Global Ltd.⁸ The requested Bar Order does not make any finding, nor does it imply, that these Bar Order Parties were in any way at fault or responsible for any of the misconduct alleged by the SEC or the Receiver. Nevertheless, these Bar Order Parties are appropriately barred from pursuing other claims against the EY Released Parties relating to the allegations in the Broward Litigation. First, any claims related to their employment by or advice or consulting for FPCM belongs to the Receivership Estate and will be resolved by the proposed Settlement Agreement. Further, none of these individuals has commenced any action to assert claims against EY in the fourteen years since the Receiver was appointed; it is therefore difficult to imagine how any such claim would not be time-barred. Finally, any valid claim these individuals may possess that would be precluded by the Bar Order would (of necessity) arise out of the same facts as the Receiver's claims and, the Receivership Estate's claims. Therefore, such claims would be wholly "interrelated" with the claims of the Receiver and appropriately barred in order to protect the Receiver's and this Court's ability to manage the assets and claims belonging to the Receivership Estate. *See In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996).

6. The Gunlicks Children and Their Trusts

On September 9, 2010, each of Gunlicks' adult children—Nissa Cox, individually, and as a minority shareholder of FPCM, and suing under Trust Number 61-6357311; Annalee Good, individually, and as a minority shareholder of FPCM, and suing under Trust Number 6-6357312;

⁸ William V. Gunlicks, Judy Aller, Philip Fues, and Chris Bowers were employees of or consultants for FPCM. Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson are individuals who were identified in the Litigation as having some role in advising Gunlicks or FPCM.

and William V. Gunlicks, individually, and as minority shareholder of FPCM, and suing under Trust Number 61-6357313, (collectively, the “Children and Trusts”), with Gunlicks later joining as a plaintiff, filed suit against EY and Mayer Brown in the Gunlicks Action, discussed above. The Children and Trusts alleged, among other things, that Gunlicks and the Children and Trusts relied upon EY. As noted above, the Illinois court granted EY’s motion to dismiss the Gunlicks Action and compel the claims to arbitration, and neither the Children and Trusts nor Gunlicks ever filed any arbitration.

The filing of the Gunlicks Action confirms that not only Gunlicks but also the Children and Trusts were aware by no later than 2010 of the facts alleged underlying the Broward Litigation and the alleged bases for their claims in the Gunlicks Action. Approximately thirteen years later, any such claims are now certainly time-barred. If any of the Children and Trusts had a claim against EY that the Bar Order would preclude that is somehow not time-barred, any such claim would of necessity arise out of EY’s work for FPCM (one of the Receivership Entities) and from the same facts forming the basis of the Receiver’s claims. Any such claims are unequivocally and wholly “interrelated” with the Receiver’s claims and therefore are appropriately barred.

C. Entry of the Bar Order is Necessary and Appropriate

A district court has “broad powers and wide discretion to determine relief in an equity receivership.” *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). This includes the power to enter a bar order. *See Quiros*, 966 F.3d at 1199 (acknowledging same and citing several Eleventh Circuit cases where bar orders were entered).

A bar order is a form of relief, often sought by a party to a settlement, that “extinguishes extraneous claims against the settling party, tying up the settling party’s loose ends and encouraging resolution in complex cases that could otherwise span years.” *Quiros*, 966 F.3d at

1199. This Circuit uses a two-part inquiry to determine whether entry of a bar order is appropriate: (1) the court must conclude that the bar order is essential to the settlement; and (2) the court must decide that the bar order is fair and equitable, with an eye toward its effect on the barred parties. *Quiros*, 966 F.3d at 1199 (citing *In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996)). A bar order is “essential” if it is integral to the proposed settlement agreement. *See Quiros*, at 1199–200 (holding that a bar order is essential when it is integral to settlement and the settling defendant would not have entered into the settlement in the absence of such bar order). Stated differently, “[i]f the parties would have still resolved their dispute without entry of the bar order, the order is not essential and the court should not enter it.” *Quiros*, 966 F.3d at 1200; *see also In re Jiangbo Pharm., Inc.*, 520 B.R. 316, 323 (Bankr. S.D. Fla. 2014) (“The evidence before the Court shows that the Bar Order is an integral part of the Amended Settlement without which it would not be consummated.”), *aff’d sub nom. Brophy v. Salkin*, 550 B.R. 595 (S.D. Fla. 2015); *In re Rothstein Rosenfeldt Adler, P.A.*, No. 09-34791-BKC, 2010 WL 3743885, at *6 (Bankr. S.D. Fla. Sept. 22, 2010) (finding that a bar order was essential because the trustee “testified that without a bar order, the Settling Parties would not have had entered into the Settlement”).⁹

Here, there is no question the Bar Order is essential to the proposed Settlement Agreement, as the Settlement Agreement itself states that it is so. *See* Settlement Agreement ¶ 39. EY’s agreement to the Settlement is expressly conditioned on entry of the Bar Order (and such order having become Final) and—as the parties have agreed—the Settlement Agreement is not effective without it. *See id.* ¶¶ 23, 30, 39.

⁹ Given the similarity between bankruptcy and receivership proceedings, the Eleventh Circuit will “often apply bankruptcy principles to receivership cases because [they] have limited receivership precedent.” *Quiros*, 966 F.3d at 1200 (citing *Elliott*, 953 F.2d at 1566).

The proposed Bar Order is also a fair and equitable term of and condition to the proposed Settlement Agreement. As explained above, any potential claims affected by the Bar Order are already barred by the statute of limitations and are wholly interrelated with the Receiver's claims. In all events, the parties have reasonably agreed, after extensive litigation and good-faith settlement negotiations, to include the Bar Order as an essential Condition to the Settlement Agreement, as consideration for EY's willingness to pay the very substantial Settlement Amount. Moreover, the Settlement Agreement itself, of which the Bar Order is a necessary component, is a fair and equitable resolution of this matter that is in the best interests of the Receivership Estate, as discussed below. In *SEC v. Nadel*, the court found that a bar order was appropriate:

Inasmuch as the Receiver has established that the settlement, and its resulting avoidance of protracted and expensive litigation, is in the best interest of the Receivership estate and the investors and will not result in any prejudice. The Receiver additionally demonstrates that entry of the bar order facilitates a higher settlement value and, therefore, a larger recovery for claimants that would otherwise be available without the bar order.

2012 WL 12910648, at *1 (M.D. Fla. Feb. 10, 2012).

Here, much like in *Nadel*, the Bar Order is fair and equitable because it promotes settlement before arbitration hearings and trial; it does not prejudice any of the parties to be barred; and it is necessary to a settlement that is in the best interests of the Receivership Estate and investors.¹⁰

VI. FINAL JUDGMENT PURSUANT TO RULE 54(B)

¹⁰ For these same reasons, the proposed Bar Order meets the standard set forth in *In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996). The so-called "*Munford* Factors" are: (1) the non-debtor third-party claims which will be barred are "interrelated" with the estate's claims; (2) the likelihood of non-settling defendants to prevail on barred claims; (3) the estate's litigation against the beneficiary of the bar order is complex; and (4) the continued litigation by the estate and other parties against the beneficiary of the bar order will deplete resources. *See Munford*, 97 F.3d at 455.

The Receiver requests that the Court's order entering the Final Settlement Approval & Bar Order also include Rule 54(b) final judgment findings. *See* Settlement Agreement ¶ 8 (definition of "Final" includes Rule 54(b) findings); Exhibit B to the Settlement Agreement, Section III.D (setting out proposed Rule 54(b) findings). Rule 54(b) provides that a district court may enter final judgment on a single claim in an action with multiple claims "if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). The requested order easily satisfies this requirement. Among other things, without Rule 54(b) findings that will allow the requested Final Settlement Approval & Bar Order to become Final, the Settlement will not take effect, if at all, until some unknown future date, and EY would not be obligated to release the Settlement Amount from the Escrow Account to the Receivership Estate's account until such time as the Settlement Approval and Bar Order became Final. Thus, a lack of Rule 54(b) findings will delay the distribution of the Settlement Amount to the Approved Claimants.

A "claim" under Rule 54(b) is "the aggregate of operative facts which give rise to a right enforceable in the courts even if the party has raised different theories of relief." *Planned Parenthood Sw. Ohio Region v. DeWine*, 696 F.3d 490, 500 (6th Cir. 2012); *accord Hudson River Sloop Clearwater, Inc. v. Dep't of Navy*, 891 F.2d 414, 418 (2d Cir. 1989) (applying same test and noting, "[w]hen the certified claims are based upon factual and legal questions that are distinct from those questions remaining before the trial court[,] the certified claims may be considered separate claims under Rule 54(b)"). "Claim" does not necessarily mean a "cause of action." *See SEC v. Cap. Consultants, LLC*, 453 F.3d 1166 (9th Cir. 2006) (orders governing distribution plans in receivership were appealable upon district court's Rule 54(b) certification); *Liberte Cap. Grp. LLC v. Capwill*, 148 F. App'x 426, 432 (6th Cir. 2005) (unpublished) (Rule 54(b) certification proper for order in receivership providing for manner of distribution of receivership assets).

On April 4, 2019, the United States District Court for the Southern District of Florida entered an order approving a settlement agreement in *SEC v. Quiros*, No. 16-cv-21301-GAYLES, 2019 U.S. Dist. LEXIS 232402 (S.D. Fla., April 4, 2019).¹¹ There, the receiver was settling an insurance coverage action in which he had been allowed to intervene, as well as all claims by the receivership entities for coverage under the relevant insurance policies. The district court included Rule 54(b) findings even though the causes of action the receiver was settling were pending in a different court, as is the case here with the Broward Litigation. *See also SEC v. DeYoung*, 850 F.3d 1172, 1179 (10th Cir. 2017) (affirming entry of settlement approval and bar order, with Rule 54(b) findings, where there was no action pending in any court).

Moreover, on November 25, 2020, this Court approved a remarkably similar settlement of the Receiver's claims against EY's co-Defendant, Mayer Brown. (D.E. 511.) The Court amended its order on November 27, 2020 to approve a virtually identical procedure as requested here. (D.E. 514.) On February 5, 2021, this Court granted final approval to the Mayer Brown settlement agreement and entered a virtually identical bar order. (D.E. 527). The Court entered partial final judgment on February 12, 2021. (D.E. 528.) In approving the Mayer Brown settlement agreement, the Court “[found] that the terms of the Agreement [were] adequate, fair, reasonable, and equitable,” and further “[found] that entry of the bar order sought in the Motion—and now

¹¹ The *Quiros* order refers to a bar order that the district court also entered separately. The district court's bar order was appealed and overturned because the Eleventh Circuit found it was not essential to the settlement agreement. *See Quiros*, 966 F. 3d at 1202. However, the order approving the settlement agreement, which contains the Rule 54(b) findings, was not overturned on appeal. And, unlike in *Quiros*, the Settlement Agreement here expressly states the parties' agreement that the Bar Order “is a necessary condition of their Settlement” and that, in particular, EY would not be willing to agree to the proposed Settlement or to pay the very substantial Settlement Amount without the assurance of “total peace” that the Bar Order can provide. *See Settlement Agreement* ¶ 39; *see also id.* ¶ 23 (Bar Order is a Condition), ¶ 39 (each Condition is necessary).

provided herein—is both essential to the Settlement between the Receiver and Mayer Brown ... and fair and equitable under the circumstances.” (D.E. 527, p. 2.)

Here, as with the settled claims against Mayer Brown, the Receiver is asserting against EY claims that belong to parties to the Receivership proceeding (the Founding Partners Funds) and the claims are an asset of the Receivership Estate. If the Court enters the Final Settlement Approval & Bar Order, this approval will fix and fully resolve the value of that asset to the Receivership Estate, and there will be nothing left for the Court to do with respect to the claims against EY besides approve the distribution of the proceeds of the Settlement Amount to Approved Claimants. *See Commodity Futures Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1111-12 (9th Cir. 1999) (court order requiring turnover of assets to receiver was final decision appealable with Rule 54(b) certification because it resolved the parties’ rights to the assets in question); *Wachovia Bank, Nat’l Assoc.*, No. 04-20834, 2009 WL 10669111, at *5 (S.D. Fla. May 14, 2009) (court entered Rule 54(b) findings for judgment concerning ownership of funds that were part of interpleader action in receivership proceeding).

In addition, the Court’s order approving the Settlement Agreement and Bar Order would completely resolve the Receiver’s claims against EY in the Litigation because such order would authorize the Receiver, in accordance with the Settlement Agreement, to proceed to obtain dismissal with prejudice of each of the Broward Litigation, the AAA Arbitration, and the CPR Arbitration, thereby fully and finally resolving all claims against EY. Finally, the entry of the Final Settlement Approval & Bar Order is entirely separable from any other aspects of the Receivership that will remain pending, including obligations under the Receivership Order.

VII. BEST INTERESTS OF THE RECEIVERSHIP ESTATE

The Receiver respectfully submits that the Court should approve the proposed Settlement Agreement because the Settlement is in the best interests of the Receivership Estate. The Receiver and EY have actively litigated the Litigation for over twelve years, across the Broward Court, AAA, and CPR. During that time, there has been an appeal to and rehearing by the Florida Fourth District Court of Appeal concerning the arbitrability of the claims against EY; extensive discovery across the Litigation; motion practice in the Broward Court and AAA; and pre-hearing briefing, hearing preparation, and the exchange of exhibit and witness lists in AAA. Discovery has included the exchange of millions of pages of documents by parties and non-parties; the preparation and submission of eleven opening expert reports and seven rebuttal expert reports; and more than twenty depositions, including a multi-day deposition of Gunlicks as well as the depositions of many non-party witnesses and experts.

The Receiver believes that continued litigation, in each of the three forums described above, with no guarantee of success, is not in the best interest of the Receivership Estate. The Settlement Amount to be paid by EY is substantial—\$200 million—and would allow a substantial distribution to Approved Claimants. By contrast, the Receivership Estate would incur significant cost in continued litigation: millions of dollars of costs for expert witnesses, 40–80 additional depositions, travel, and other litigation-related costs. While the Receiver’s contingency counsel receives the same percentage of the recovery whether the matter is settled or goes to trial, there can be no guarantee of any result or recovery through a trial and therefore, although such recovery could be more, it could also be significantly less, or even nothing at all. Moreover, contingency counsel’s percentage increases from 33.33% to 40% if there is an appeal post-trial, and there is a strong possibility of a post-trial appeal in the Broward Litigation, no matter which party prevails.

Given all these factors, the proposed Settlement Agreement is the best outcome for the Receivership Estate, including investors, and the Receiver can state that the process of reaching the proposed Settlement Agreement was fair, well-informed and well-advised by the Receiver's retained professionals.

The ultimate inquiry in assessing a proposed receivership settlement is whether “the proposed settlement is fair.” *Sterling v. Stewart*, 158 F. 3d 1199, 1203 (11th Cir. 1998); see *In re Consol. Pinnacle West Sec. Litig./Resolution Trust Corp.-Merabank Litig.*, 51 F. 3d 194, 196–97 (9th Cir. 1995) (“We see no reason to upset the court’s conclusion that the settlement process and result were fair.”). “Determining the fairness of [a] settlement is left to the sound discretion of the trial court.” *Sterling*, 158 F. 3d at 1202 (11th Cir. 1998). Although this Court is not the trial court, it is familiar with the issues, the history of the Receivership, and the Court’s previous approval of the Mayer Brown settlement. In making its own determination of fairness, the Receiver respectfully submits that this Court can appropriately examine the following broad array of factors: (1) the likelihood of success on the merits; (2) the range of possible discovery; (3) the point on or below the range of discovery at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Id.* at 1204; see also *SEC v. Princeton Economic Int’l*, 2002 WL 206990, at *2 (S.D.N.Y. Feb. 8, 2002) (receivership court should consider “various factors including, inter alia: (1) the probable validity of the claim; (2) the apparent difficulties attending its enforcement through the courts; (3) the collectability of the judgment thereafter; (4) the delay and expenses of the litigation to be incurred; and (5) the amount involved in the compromise”).

For example, the court in *Gordon v. Dadante* “analyze[d] the settlement as a whole, under the totality of the circumstances.” 2008 U.S. Dist. LEXIS 32281, *39, 48 (N.D. Ohio Apr. 18, 2008). The Sixth Circuit affirmed, finding that the district court had fulfilled its responsibilities by engaging in an “independent analysis of the settlement,” as “the district court had extensive knowledge of the claims involved in the case, the valuation of those claims, and the nature of the settlement,” and thus “had more than sufficient information to assess the fairness of the settlement proposed.” *Gordon v. Dadante*, 2009 U.S. App. LEXIS 15517 at **16, 23. As the district court noted in a later approval proceeding, “the courts must recognize that plans relating to settlement of a receivership are inherently imperfect,” “because no proposal can be [perfect],” and the “task at hand, however, is to do justice to the extent possible.” *Gordon v. Dadante*, 2010 U.S. Dist. LEXIS 1979, *13–14 (N.D. Ohio Jan. 11, 2010).

Applying this multi-factor analysis set forth in *Gordon*, the Court approved the similar settlement agreement between the Receiver and Mayer Brown (D.E. 527.), on which the structure of the Settlement Agreement here was modeled. Here, as in the Mayer Brown settlement, the Receiver respectfully submits that the Settlement Agreement is a fair, adequate, and reasonable resolution of the Receiver’s causes of action.

First, while the Receiver believes he would prevail in the arbitration proceedings and at trial, the Litigation has been hard fought, and no outcome is guaranteed. Second, while time-consuming and expensive discovery remains to be taken, the parties have conducted enough discovery to make well-informed decisions at this stage. Third, the Settlement Agreement provides for payment of a substantial amount of funds. Fourth, the Receiver expects little to no opposition to the proposed Settlement Agreement, as discussed below.

Based on the Receiver's due diligence, the terms of the proposed Settlement Agreement are fair and reasonable, representing a means of assuring a beneficial outcome for the Receivership Estate and for all Approved Claimants.

VIII. CLAIMANT CONSENTS

As noted above, the Settlement Agreement has been the subject of a Zoom meeting with Approved Claimants. The Approved Claimants who participated in the Zoom meeting have expressed their support for the proposed Settlement, and the Receiver does not anticipate objections to the proposed Settlement from any of them. The Receiver expects that the great majority of all Approved Claimants will support the proposed Settlement. The Receiver has asked the Approved Claimants to express support for the proposed Settlement by executing a Consent in the form of Exhibit J to the Settlement Agreement and will advise the Court of the results of those efforts before the time set for the Court's hearing on this Motion.

IX. OBJECTION PROCEDURE

As noted above, the determination of the fairness of a settlement is left to the sound discretion of the court. *See Sterling*, 158 F. 3d at 1202. While the Receiver does not anticipate any objections, the Receiver respectfully requests that the Court, in exercising its broad discretion, approve the Settlement Agreement after allowing for the process for the submission and consideration of any objections set forth in the proposed Preliminary Approval of Settlement & Scheduling Order (included as Exhibit D to the Settlement Agreement).

The Receiver proposes: (1) posting this Motion and the Settlement Agreement on the Receiver's website; (2) within five (5) days of an order approving this objection procedure, transmitting a copy of this Motion, the Settlement Agreement, and a Notice (in the form set forth in Exhibit C to the Settlement Agreement) to certain Bar Order Parties (including all Approved

Claimants)¹² and all counsel of record for any person who is, at the time of Notice, a party in the present action or the Broward Litigation; and (3) allowing thirty (30) days from that date for any potential objections to be filed with the Court. *See* Settlement Agreement, Exhibit D. As set forth in the Preliminary Approval of Settlement & Scheduling Order, the Receiver also proposes that, within ten (10) calendar days before any Final Approval Hearing (as defined in the Settlement Agreement), the Receiver shall cause to be filed with the Clerk of this Court a notice of his compliance with the foregoing.

X. INTENT TO MAKE DISTRIBUTION

Upon this Court's entry of the proposed Final Settlement Approval & Bar Order and that order becoming Final (*i.e.*, no longer subject to challenge on appeal), the Receiver and EY will jointly dismiss the Broward Litigation, the AAA Arbitration, and the CPR Arbitration (the forms of which are attached as Exhibits A, E, and F to the Settlement Agreement). Thereafter, it is the Receiver's intent to expeditiously move for approval to make a distribution from the Receivership Estate, which will have received the Settlement Amount, to Approved Claimants.

XI. JURISDICTION

The Receiver and EY have agreed and request that this Court retain jurisdiction with respect to the subject matter and obligations under the Settlement Agreement, which provides for the filing of this Motion and for the parties' efforts to seek entry of the Preliminary Approval of

¹² Pursuant to Paragraph 40 of the Settlement Agreement, the Receiver is not responsible for transmitting notice to himself, the Receivership Entities, or "any investor in any of the Founding Partners Entities" not otherwise named or identified as a Bar Order Party. Moreover, pursuant to Paragraph 40 of the Settlement Agreement, the Receiver will transmit notice to only the required Bar Order Parties for whom the Receiver currently has contact information in his files (or for whom contact information can be obtained after working in good faith with EY).

Settlement & Scheduling Order and the Final Settlement Approval & Bar Order. *See* Settlement Agreement ¶ 72.

XII. CONCLUSION

For the foregoing reasons, Daniel S. Newman, as Receiver, respectfully requests that this Court enter an Order substantially in the form of Exhibit D to the Settlement Agreement that (i) preliminarily approves the Settlement between the Receiver and EY; (ii) approves the content and plan for publication and dissemination of the Notice (Exhibit C to the Settlement Agreement); (iii) sets the date by which any objection to the Settlement or the Settlement Agreement may be filed; (iv) schedules a hearing, should this Court determine that a hearing is necessary to consider entry of the Final Settlement Approval & Bar Order (Exhibit B to the Settlement Agreement); and grants any further relief the Court deems just and proper. At the conclusion of the process set out in the Preliminary Approval of Settlement & Scheduling Order, the Receiver also respectfully requests that the Court enter the Final Settlement Approval & Bar Order in the form set forth in Exhibit B to the Settlement Agreement.

Dated: August 1, 2023.

Respectfully submitted,

NELSON MULLINS BROAD AND CASSEL
Attorneys for Receiver
One Biscayne Tower, 21st Floor
2 South Biscayne Boulevard
Miami, FL 33131
Tel: (813) 225-3011
Fax: (813) 204-2137

By: /s/ Christopher Cavallo
Christopher Cavallo, Esq.
Florida Bar No. 0092305
Jonathan Etra, Esq.
Florida Bar No. 0686905

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2023, 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 Notices of Electronic Filing.

By: /s/ Christopher Cavallo
Christopher Cavallo, Esq.

SERVICE LIST

<p>Teresa Verges, Esq. Securities and Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 vergest@sec.gov <i>Counsel for U.S. Securities and Exchange Commission</i> <u>Service via CM/ECF</u></p>	<p>Gabrielle D'Alemberte, Esq. The D'Alemberte Trial Firm, P.A. 1749 N.E. Miami Ct. Suite 301 Miami, FL 33132 gabrielle@dalemberte.com <i>Counsel for William & Pamela Gunlicks</i> <u>Service via CM/ECF</u></p>
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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between (i) Daniel S. Newman, solely in his capacities as (a) the court-appointed receiver for the Founding Partners Entities (defined below), and (b) the assignee of claims of certain investors in one or more Founding Partners Entities, which investors are referred to herein as “Assignors,” defined below (Daniel S. Newman is referred to herein as the “Receiver”); and (ii) Ernst & Young LLP (“EY”) (the Receiver, on the one hand, and EY, on the other hand, are referred to in this Agreement individually as a “Party” and together as the “Parties”);

WHEREAS, on April 20, 2009, the U.S. Securities and Exchange Commission (the “SEC”) filed *SEC v. Founding Partners Capital Management Co. and William L. Gunlicks*, Civil Action No. 2:09-cv-00229-JES-SPC (M.D. Fla.) (the “SEC Action”), alleging that Founding Partners Capital Management Company and William L. Gunlicks (“Gunlicks”) had engaged in fraudulent conduct affecting investors in one or more of the Founding Partners Funds (defined below);

WHEREAS, in an order dated April 20, 2009, in the SEC Action (ECF No. 9), the United States District Court for the Middle District of Florida (the “Federal Court”) granted the SEC’s Emergency Motion for the Appointment of a Receiver over the Founding Partners Entities, with the powers, duties, and authority, among other things, to take possession of, and administer and manage the business affairs of, the assets, rights of action, properties, estates, books and records, and other tangible and intangible monies and property of the Founding Partners Entities (the “Receivership Estate”), all as set forth further in that order;

WHEREAS, in that same order (ECF No. 9), a receiver was appointed for the Receivership Estate, with all the powers described and enumerated in that order, as amended by an order in that same matter, dated May 20, 2009 (ECF No. 73) in the SEC Action;

WHEREAS, in that May 20, 2009 order (ECF No. 73), Daniel S. Newman was appointed as Receiver, replacing the prior receiver for the Founding Partners Entities;

WHEREAS, Mr. Newman has served as Receiver continuously since his appointment on May 20, 2009 and continues to so serve;

WHEREAS, on December 30, 2010, the Receiver filed a Complaint in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), with the case captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Broward County Litigation” and together with the Arbitrations (as defined below), the “Litigation”), asserting claims of the Founding Partners Funds and naming Mayer Brown, LLP (“Mayer Brown”) and EY as defendants;

WHEREAS, the Receiver amended his Complaint in the Broward County Litigation on four occasions (April 7, 2011, April 25, 2011, August 3, 2015, and February 1, 2018) and, in the course of such amendments, added claims of 38 Assignors (the “Assigned Claims”);

WHEREAS, the Fourth Amended Complaint in the Broward County Litigation dated February 1, 2018 asserts claims against EY for professional malpractice, aiding and abetting breaches of fiduciary duties, breach of fiduciary duty, aiding and abetting fraud, fraud, aiding and abetting breaches of statutory duties, and negligent misrepresentation;

WHEREAS, in the Broward Court, EY moved to compel arbitration of all the Receiver’s claims, based on arbitration clauses in engagement letters with three of the four Founding Partners Funds;

WHEREAS, the Broward Court granted EY’s motion to compel arbitration of all claims against it;

WHEREAS, on October 11, 2017, on a motion for rehearing filed by the Receiver, the Florida Fourth District Court of Appeal (the “Appellate Court”) affirmed the trial court’s order in part and reversed it in part, and found that Founding Partners Global Fund Ltd.’s “claims are derivative of those of the other Founding Partners” and were therefore arbitrable.

WHEREAS, the Appellate Court also found that the Assigned Claims were not subject to arbitration;

WHEREAS, in a Complaint for Damages and Demand for Arbitration, the Receiver brought the arbitrable claims in a proceeding before the American Arbitration Association (“AAA”) against EY in 2018, with the case captioned *Newman v. Ernst & Young LLP*, AAA Case No. 01-18-0003-2029 (the “AAA Arbitration”);

WHEREAS, the AAA panel heard oral arguments on EY’s motion to dismiss certain of the arbitrable claims on January 18, 2020;

WHEREAS, on March 27, 2020, the AAA panel granted in part EY’s motion to dismiss, stating that certain claims were dismissed without prejudice because they were not arbitral in AAA (the “CPR Claims”).

WHEREAS, on March 10, 2021, in a Complaint for Damages and Demand for Arbitration, the Receiver brought the CPR Claims in a proceeding before the International Institute for Conflict Prevention & Resolution (“CPR”) against EY, with the case captioned *Newman v. Ernst & Young LLP*, CPR Case No. G-21-63-S (the “CPR Arbitration” and together with the AAA Arbitration, the “Arbitrations”).

WHEREAS, EY expressly denies any and all allegations of wrongdoing, fault, liability, or damages whatsoever and is entering into this Agreement solely to avoid the burden, very substantial expense, and risks of litigation;

WHEREAS, the Receiver has conducted an investigation into the facts and the law relating to the Litigation, including but not limited to substantial discovery in the Litigation, and, after considering the results of that investigation and discovery and the benefits of this Settlement, as well as the burden, expense, and risks of litigation, (i) has concluded that a settlement with EY under the terms set forth below is fair, reasonable, adequate, and in the best interests of the Receivership Estate and the Founding Partners Entities, and (ii) has agreed to enter into the Settlement and this Agreement and to use his best efforts to effectuate the Settlement and this Agreement;

WHEREAS, EY has also agreed to enter into the Settlement and this Agreement and to use its best efforts to effectuate the Settlement and this Agreement;

WHEREAS, the Parties desire to fully, finally, and forever compromise and effect a global settlement and discharge of all claims, disputes, and issues between them;

WHEREAS, the Parties have engaged in extensive, good-faith, and arm's-length negotiations, which have included the Parties' participation in a mediation (on March 16, 2023 with Greg Danilow in Miami, Florida) that led to the Settlement and this Agreement; and

WHEREAS, absent approval of this Settlement, the Litigation will likely take many more years and cost the Parties millions of dollars to litigate to final judgment and through appeals, and the outcome of all such litigation would have been uncertain;

NOW, THEREFORE, in consideration of the agreements, covenants, and releases set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Agreement Date.

1. This Agreement shall take effect on the “Agreement Date,” which shall be the date on which the last of each of the following has occurred: (a) both Parties have signed this Agreement; (b) the Receiver has delivered to EY a completed and executed Wire Instruction Form (defined below); and (c) FP Offshore, Ltd. (“FP Offshore”) has signed the consent to this Agreement and release of Settled Claims that is attached hereto as **Exhibit G**. The Agreement Date is a separate date from the Settlement Effective Date, as defined below, and is intended to bind the Parties to the terms of this Agreement as of the Agreement Date, although certain provisions shall not become effective until the Settlement Effective Date, as set forth herein.

II. Terms Used in this Agreement.

The following terms used in this Agreement have the following meanings:

2. “Approved Claimant” means any Person who owns an approved right to receive funds from the Receivership Estate, which right has been determined as a result of the approval of a Proof of Claim in whole or in part by the Federal Court pursuant to the Federal Court’s Opinion and Order, dated July 3, 2014, Approving Receiver’s Recommendations and Fairness of Distribution of FP Designee Interests Pursuant to Section 3(a)(10) of the Securities Laws, reflected as an “Allowed Amount” on Revised Schedule A (SEC Action, ECF No. 417-5). “Approved Claimant” also includes any Person (including, but not limited to, FP Offshore and CVP SPV LLC) who did not file or serve a Proof of Claim on his, her, or its own behalf, but who has received the benefit or ownership of such Proof of Claim through a transfer that has been acknowledged in writing by the Receiver and in an order entered by the Federal Court.

3. “Assignors” means any and all investors in one or more of the Founding Partners Entities who have assigned to the Receiver all rights associated with certain causes of action, regardless of whether the Receiver has chosen to litigate or file such causes of action. For the

avoidance of doubt, the term “Assignors” includes the 38 individuals or entities identified in Paragraph 1 of the Fourth Amended Complaint filed in the Broward County Litigation: (1) Harrison Family Investments LP; (2) Clanton Harrison IRA; (3) Leslie T. Merrick Investment Trust; (4) Chris Dance; (5) Kenny Allan Troutt Descendants Trust; (6) Double S Partners; (7) John Miller; (8) Vassar Point LLC; (9) Telesis IIR, L.P.; (10) Glen Gibson; (11) Ron Mann, IRA; (12) Walter E. Johnson; (13) TJNJH Investment Partnership; (14) Kathleen A. Olberts Living Trust; (15) Annandale Partners, LP; (16) Annandale Partners II, LP; (17) J. Christopher Dance IRA; (18) R. Michael Bales; (19) Clear Fir Partners, LP; (20) John E. Cunningham IV; (21) Carolyn A. Cunningham; (22) Snyder Ranch, LP; (23) Cunningham Children’s Trust; (24) Gary Sledge; (25) Stiles A. Kellett, Jr.; (26) Kellett Family Partners, LP; (27) Chariot Stable Asset Fund, LP; (28) MJA Innovative Income Fund, LP; (29) Maxwell Halstead Partners LLC; (30) Haines All Seasons Select Fund, LLC; (31) Haines All Seasons Select Fund II, LLC; (32) Dakota Partners LLP; (33) PP Partnership LP; (34) Rodger Sanders; (35) Stuart Frankenthal; (36) J. Mark Lozier Revocable Trust; (37) Four J Partnership LP; and (38) Paul Loeb. Also, for the avoidance of doubt, for the purposes of this Agreement, the term “Assignors” includes Barry Wallach IRA Rollover; Cooper Investments I, LLC; Phillip Cooper; Three Sprouts LLC; FP Mallard Drive Partners; Elayne and Herbert Laufman; Walter J. Kreiseder; Leavitt Capital Management; Barry P. Meister; Robert Scot Building Venture; Ronald Berman; the San Ysidro Investors; Bruce Stein; Allan Colman; Bruce R. Passen; Cathy Passen; Howard Friend; Judy Sommers Trust; and Steven A. Sandler, all of whom have executed assignment agreements with the Receiver but who are not listed in Paragraph 1 of the Fourth Amended Complaint.

4. “Bar Order Parties” means (a) the Receiver; (b) the Receivership Estate; (c) the Founding Partners Entities; (d) FP Offshore; (e) the Assignors; (f) each Approved Claimant; (g) each Unapproved Claimant; (h) Mayer Brown; (i) the following Founding Partners Capital

Management Company (“FPCM”) employees or personnel associated with FPCM and/or the Founding Partners Entities: Gunlicks, Judy Aller, William V. Gunlicks, Philip Fues, Chris Bowers, Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson; and (j) the following individuals and trusts associated with Gunlicks: James B. Gunlicks; Nissa Cox; Annalee Good; the William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox; the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; and the William L. Gunlicks Irrevocable Trust f/b/o of William V. Gunlicks; and (k) any investor in any of the Founding Partners Entities. The inclusion of any particular Person within the definition of “Bar Order Parties” for the purposes of this Agreement does not necessarily mean that such Person has an interest in the Receivership Estate. The inclusion of a Person within the definition of “Bar Order Parties” encompasses all manners in which such Person invested in one or more of the Founding Partners Entities, including but not limited to investments made or held through an Individual Retirement Account (“IRA”), a trust, or any similar vehicle.

5. “Distribution Plan” means any plan or plans hereafter approved or ordered by the Federal Court for the distribution of any proceeds recovered by the Receivership Estate from the Settlement Amount (other than for attorneys’ fees or costs, if any, that are awarded by the Federal Court from the Settlement Amount) that ultimately may be distributed to Approved Claimants.

6. “Escrow Account” means the escrow account set up by the Receiver for the purpose of holding in escrow EY’s payment of the Settlement Amount pending the occurrence of the Settlement Effective Date, governed by the executed Escrow Agreement (substantially in the form attached hereto as **Exhibit H**), and identified by the Receiver in the completed and executed Wire Instruction Form (substantially in the form attached hereto as **Exhibit I**).

7. “EY Released Parties” means EY, Ernst & Young U.S. LLP, Ernst & Young Global Services, Ernst & Young Global Limited, and each and all of the current and former member firms

of Ernst & Young Global Limited (including, without limitation, EY Bermuda Ltd. and EY Cayman Ltd.), as well as all of the foregoing's respective present and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. "EY Released Parties" shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

8. "Final" means after the conclusion of, or the expiration of, any right of any Person to pursue any and all possible forms and levels of appeal, reconsideration, or review, including by a court of last resort, wherever located, whether automatic or discretionary, whether by appeal or otherwise. The Final Settlement Approval & Bar Order (defined in Paragraph 9) shall include findings, in substantially the form set out in Section III.D of **Exhibit B** hereto, to support entry of such order as a permanent injunction appealable under 28 U.S.C. § 1292(a)(1) and an immediately appealable partial final judgment pursuant to Federal Rule of Civil Procedure 54(b). The Parties shall not argue that the continuing pendency of the SEC Action should be construed as preventing the finality of the Final Settlement Approval & Bar Order.

9. "Final Settlement Approval & Bar Order" shall mean an order, entered by the Federal Court in the SEC Action, that (i) overrules all objections, if any, to the Settlement, this Agreement, or the releases, bars, injunctions, and restraints requested in the Approval Motion (defined below) and contemplated by this Agreement; (ii) approves the Settlement and its terms as set out in this Agreement, and includes findings of fact and conclusions of law to support such approval; (iii) approves entry of the releases, bars, injunctions, and restraints requested in the

Approval Motion and contemplated by this Agreement, and includes findings of fact and conclusions of law to support such approval; and (iv) provides substantially the same terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) as those set out in the proposed Final Settlement Approval & Bar Order that is attached hereto as **Exhibit B**. The Final Settlement Approval & Bar Order shall also include the definition of “Final,” meaning after the conclusion of, or the expiration of, any right of any Person to pursue any and all possible forms and levels of appeal, reconsideration, or review, including by a court of last resort, wherever located, whether automatic or discretionary, whether by appeal or otherwise.

10. “Forum” means any court, adjudicative body, tribunal, or jurisdiction, whether its nature is federal, foreign, state, administrative, regulatory, arbitral, local, or otherwise.

11. “Founding Partners Entities” means Founding Partners Capital Management Company and the Founding Partners Funds (defined below).

12. “Founding Partners Funds” means Founding Partners Stable-Value Fund, L.P. (formerly known as 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. (formerly known as Founding Partners Equity Fund, L.P.).

13. “Hearing” means a formal proceeding before the United States District Judge having jurisdiction over the SEC Action.

14. “Notice” means a communication, in substantially the form attached hereto as **Exhibit C** (or as otherwise agreed in writing by the Parties, or as directed by the Federal Court), describing (a) the material terms of the Settlement and this Agreement; (b) the rights and obligations of the Bar Order Parties with regard to the Settlement and this Agreement; (c) the deadline for the filing of objections to the Settlement, this Agreement, and the proposed Final Settlement Approval & Bar Order; and (d) the date, time, and location of the Hearing (if the

Federal Court determines that a Hearing is required) to consider final approval of the Settlement and this Agreement and entry of the Final Settlement Approval & Bar Order.

15. “Payment Account” means the account identified by the Receiver in the completed and executed Wire Instruction Form (substantially in the form attached hereto as **Exhibit I**) for the Receiver’s receipt of the Settlement Amount;

16. “Person” means any individual, entity, governmental authority, agency or quasi-governmental person or entity, worldwide and of any type, including, without limitation, any individual, partnership, corporation, limited liability company, estate, trust, committee, fiduciary, association, proprietorship, organization, or business, regardless of location, residence, or nationality.

17. “Proof of Claim” means a claim submitted to the Receiver pursuant to the claims process approved by the Federal Court in the SEC Action, as set forth in the Federal Court’s Order Approving Receiver’s Motion for Approval of Claims Process, dated August 28, 2012 (ECF No. 349).

18. “Receiver Released Parties” means the Receiver, the Founding Partners Entities, and the Assignors. “Receiver Released Parties” also includes each of the foregoing persons’ respective present and former partners, limited partners, general partners, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Receiver Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

19. “Releasor” means any Person granting a release of any Settled Claim.

20. “Settled Claim(s)” means any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that a Releasor ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) any of the conduct complained of in the SEC Action or the Litigation; (ii) any of the Founding Partners Entities; (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities; (iv) EY’s relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to Gunlicks); (v) EY’s provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to Gunlicks); (vi) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (vii) any conduct or omission by Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Success Healthcare, Inc., or any of their respective related or affiliated entities, subsidiary entities, principals, or employees; (viii) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against EY, EY’s counsel, or any other Person; or (ix) the subject matter

of the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending or was commenced in any Forum on or after March 25, 2009. “Settled Claims” specifically includes, without limitation, all claims (or facts relating thereto) that each Releasor does not know or suspect to exist in his, her, or its favor at the time of release, which, if known by that Person, might have affected his, her, or its decisions with respect to this Agreement and the Settlement (“Unknown Claims”). With respect to the Settled Claims (which include the Unknown Claims), each Releasor expressly waives, releases, and relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute. California Code § 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Each Releasor acknowledges that such Releasor may hereafter discover facts different from, or in addition to, those which such Releasor now knows or believes to be true with respect to the Settled Claims, but nonetheless agrees that this Agreement, including the releases granted herein, will remain binding and effective in all respects notwithstanding such discovery. Unknown Claims include contingent and non-contingent claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts. These provisions concerning unknown and unsuspected claims and the inclusion of Unknown Claims in the definition of Settled Claims were separately bargained for and are an essential element of this Agreement and the Settlement. Each Releasor understands and acknowledges the significance and

the consequences of this waiver and confirms that he, she, or it either has discussed or has been given an opportunity to discuss such matters with counsel of his, her, or its choice.

21. “Settlement” means the agreed resolution of the Settled Claims in the manner set forth in this Agreement.

22. “Settlement Amount” means Two Hundred Million United States Dollars (\$200,000,000.00).

23. “Settlement Effective Date” means the date on which the last of all of the following have occurred:

- a. Payment of the Settlement Amount into the Escrow Account;
- b. Entry in the SEC Action of the Final Settlement Approval & Bar Order;
- c. The Final Settlement Approval & Bar Order has become Final;
- d. Entry in the Broward County Litigation of a joint dismissal with prejudice substantially in the form of **Exhibit A** attached hereto;
- e. Entry in the AAA Arbitration of a joint dismissal with prejudice substantially in the form of **Exhibit E** attached hereto; and
- f. Entry in the CPR Arbitration of a joint dismissal with prejudice substantially in the form of **Exhibit F** hereto.

Items (b) through (f) of this Paragraph 23, along with the execution and delivery of the consent and release by FP Offshore that is attached hereto as **Exhibit G**, shall be referred to herein as the “Conditions.”

24. “Taxes” means any and all taxes, whether federal, state, local, or other taxes related to the Settlement or the Settlement Amount that are or will be assessed against the Receiver or the Founding Partner Entities.

25. “Unapproved Claimant” means any Person who asserted the right to receive funds from the Receivership Estate by filing or serving a Proof of Claim, but the Proof of Claim was rejected, denied, or disallowed by the Federal Court pursuant to the Federal Court’s Opinion and Order dated July 3, 2014 (SEC Action, ECF No. 417-5).

III. Resolution of the Litigation.

26. Dismissal of Litigation: The Litigation shall be fully and finally resolved and concluded and considered dismissed as to EY by the (a) entry in the Broward County Litigation of a joint dismissal with prejudice in substantially the form of **Exhibit A** attached hereto; (b) entry in the AAA Arbitration a joint dismissal with prejudice in substantially the form of **Exhibit E** attached hereto; and (c) entry in the CPR Arbitration of a joint dismissal with prejudice in substantially the form of **Exhibit F** hereto.

IV. Delivery of Settlement Amount.

27. Payment Instructions: The Receiver shall deliver to EY, together with its delivery of the executed copy of this Settlement Agreement, (a) a completed and executed Wire Instruction Form (substantially in the form attached hereto as **Exhibit I** hereto); and (b) an executed Escrow Agreement (substantially in the form attached hereto as **Exhibit H** hereto). The Wire Instruction Form shall identify for EY the Escrow Account and the Payment Account, and shall provide to EY wire transfer instructions for each of those accounts.

28. Wiring of Settlement Amount into the Escrow Account: Within thirty (30) days after the Agreement Date, EY shall wire the Settlement Amount to the Escrow Account in accordance with the instructions provided in the Wire Instruction Form. Prior to such transfer of the Settlement Amount into the Escrow Account, counsel of record for the Receiver shall confirm telephonically to counsel of record for EY the information for the Escrow Account in the Wire Instruction Form. In the event of any disbursement of all or part of the Settlement Amount from

the Escrow Account not caused by EY, whether through mistake, wrongful conduct of any Person, or by any other cause or reason, EY shall have no further liability to the Receiver for payment of such amount of the Settlement Amount that was disbursed without EY's instruction.

29. Transfer of the Settlement Amount from the Escrow Account to the Payment Account: Within three (3) business days of the Settlement Effective Date, EY shall instruct the disbursement of the Settlement Amount plus any earned interest from the Escrow Account to the Payment Account. Prior to such transfer of the Settlement Amount plus any earned interest from the Escrow Account into the Payment Account, counsel of record for the Receiver shall confirm telephonically to counsel of record for EY the information for the Payment Account in the Wire Instruction Form.

30. No Obligation Unless Conditions Satisfied: EY has no obligation to direct the transfer of funds from the Escrow Account to the Payment Account unless the Conditions occur.

V. Attorneys' Fees and Costs.

31. Fees and Costs: Counsel for the Receiver intends to seek court approval for payment of attorneys' fees, costs, and/or expenses from one or more receivership accounts in accordance with a fee agreement. In no event will the Receiver seek from EY or any of the EY Released Parties, nor shall EY or any of the EY Released Parties have any obligation or liability to pay, any attorneys' fees, costs, or expenses that may be sought by, owed to, or approved for payment to the Receiver's counsel.

32. Settlement Not Dependent on Fee Award: The pendency of a request to the Federal Court or the Broward Court to approve a fee, cost, or expense award to the Receiver's counsel shall not prevent the Final Settlement Approval & Bar Order from becoming Final. Any failure, in whole or in part, by the Federal Court or the Broward Court, as applicable, to approve a fee, cost, or expense award request made by the Receiver's counsel shall not prevent the Settlement or

this Agreement from becoming effective pursuant to Paragraph 23 and shall not be grounds for rescission or termination of the Settlement or this Agreement.

33. No Effect on Engagement Agreements: Nothing in this Agreement is intended to affect any contingency fee or engagement contract or agreement between the Receiver and his counsel, or the rights thereunder.

VI. Use and Management of Settlement Amount.

34. Management and Distribution of Settlement Amount: The Receiver shall be responsible for (a) any Taxes that may be due with respect to the Receiver's receipt of the Settlement Amount or any interest earned on the Settlement Amount while in the Escrow Account, unless the Settlement Amount and earned interest are returned to EY, in which case EY shall be responsible for taxes resulting from interest earned on the Settlement Amount during the time it was held in the Escrow Account; and (b) the management, use, administration, or distribution of the Settlement Amount and any interest earned thereon.

35. No Liability: Upon payment of the Settlement Amount into the Payment Account, EY and the EY Released Parties shall have no liability, obligation, or responsibility whatsoever with respect to the investment, management, use, administration, or distribution of the Settlement Amount or any portion then paid, including, but not limited to, the costs and expenses of such investment, management, use, administration, or distribution of the Settlement Amount, and any Taxes arising therefrom or relating thereto. Nothing in this Paragraph 35 shall alter EY's obligations to deliver the Settlement Amount to the Receiver pursuant to the terms of this Agreement.

VII. Consents from Approved Claimants.

36. Obtaining Consents: Within five (5) days of the Agreement Date, the Receiver shall provide to each Approved Claimant for which the Receiver has contact information a copy

of the Settlement Agreement and a written Consent, in the form that is attached hereto as **Exhibit J**, along with a request to the Approved Claimant to express approval of the Settlement by executing and returning the Consent to the Receiver. During the period between the Agreement Date and the Settlement Effective Date, the Receiver shall seek to secure a written Consent from each Approved Claimant. For any Approved Claimant for which the Receiver does not currently have contact information, the Receiver shall notify EY and the Parties shall work in good faith to determine whether contact information can be obtained. If contact information is obtained, the Receiver shall provide to such Approved Claimant a copy of the Settlement Agreement and a written Consent, in the form that is attached hereto as **Exhibit J**, along with a request to the Approved Claimant to express approval of the Settlement by executing and returning the Consent to the Receiver, and shall seek to secure written Consents from each such Approved Claimant.

37. Filing Consents: The Receiver shall submit all Consents obtained with the Approval Motion (defined below). For any additional consents received while the Approval Motion is pending, the Receiver shall submit such Consents in a supplemental filing or filings in the SEC Action.

VIII. Motion in the SEC Action; Notice.

38. Approval Motion: No later than fifteen (15) days from the Agreement Date, unless otherwise agreed by the Parties in writing, the Receiver shall file in the SEC Action a motion (the “Approval Motion”) that requests:

- a. Entry of an order substantially in the form attached hereto as **Exhibit D** (the “Preliminary Approval & Scheduling Order”) that (i) preliminarily approves the Settlement; (ii) approves the content and plan for publication and dissemination of Notice; (iii) sets the date by which any objection to the Settlement or this Agreement must be filed; and (iv) schedules a Hearing (if the Federal Court determines that a Hearing is required) to

consider final approval of the Settlement and entry of the Final Settlement Approval & Bar Order; and

b. Following such procedure, entry of the Final Settlement Approval & Bar Order.

In advance of filing the Approval Motion and its accompanying papers, the Receiver shall provide EY a reasonable opportunity to review and comment on such papers. Any description of the Litigation or events in the Litigation in the motion papers shall be consistent with the Parties' desire to put their disputes behind them. The Receiver has sole and ultimate authority over the content of the final motion papers, but agrees to consider in good faith any comments provided by EY in the course of its advance review.

39. Bar Order Necessary to Settlement: The Parties represent and warrant that entry of the terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) that are set out in the proposed Final Settlement Approval & Bar Order that is attached hereto as **Exhibit B** are a necessary Condition of their Settlement. In particular, EY is not willing to agree to the Settlement or this Agreement (including its requirement for the payment of the very substantial Settlement Amount) without the assurance of "total peace" in relation to the Settled Claims; and the terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) as they are set out in the proposed the Final Settlement Approval & Bar Order that is attached hereto as **Exhibit B** are necessary to provide EY and the EY Released Parties such "total peace."

40. Notice: With respect to the content and plan for publication and dissemination of Notice, the Receiver will propose in the Approval Motion that Notice in substantially the form attached hereto as **Exhibit C** be sent (a) via e-mail, first-class mail, or international delivery service to all Bar Order Parties listed in Paragraphs 4(c) through (i) for whom the Receiver currently has

contact information in his files; and (b) 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; and that such Notice also be posted on the website of the Receiver, along with copies of this Agreement and all public filings made with the Federal Court relating to the Settlement, and Court approval of the Settlement. With respect to any Bar Order Party listed in Paragraphs 4(c) through (i) for whom the Receiver does not currently have contact information, the Receiver shall notify EY and the Parties shall work in good faith to determine whether contact information can be obtained. If contact information is obtained, the Receiver shall provide the Notice substantially in the form attached hereto as **Exhibit C** to such Bar Order Party via e-mail, first-class mail, or international delivery service.

41. Notice Preparation and Dissemination: The Receiver shall be responsible for the preparation and dissemination of the Notice pursuant to this Agreement and in accordance with the directions of the Federal Court. In the case of any refusal or failure by the Receiver to prepare and disseminate Notice pursuant to this Agreement, EY shall not have any claim against the Receiver other than the ability to seek specific performance from the Federal Court in the SEC Action (and EY may seek such relief without having to formally intervene in the SEC Action). To the extent the Receiver becomes aware that he has been unable to deliver either e-mailed or mailed Notice to any Bar Order Party in Paragraphs 4(c) through (i), the Receiver shall notify EY of the identity of the Bar Order Parties in Paragraphs 4(c) through (i) to whom such Notice was not effectuated, and the Parties shall work together in good faith to determine whether Notice can be effectuated by other reasonably available methods. The Receiver shall maintain documentation of his efforts to fulfill the dissemination of Notice that is required by this Agreement and the Federal Court. The Parties do not intend, by this Agreement, to give any Person, other than as specifically provided to EY under this Agreement, any right or recourse against the Receiver in connection with the Notice process.

42. No Recourse Against EY: No Bar Order Party or any other Person shall have any recourse against EY or the other EY Released Parties with respect to any claims that may arise from or relate to the Notice process. EY and the rest of the EY Released Parties have no responsibility, obligation, or liability whatsoever with respect to the content of the Notice, the distribution of the Notice, or the Notice process.

IX. Dismissal in the Broward Court.

43. Stay of Proceedings: In the Broward County Litigation, EY filed a Motion to Stay Litigation of Non-Arbitrable Claims Pending Completion of Arbitration; and the Broward Court entered an order granting the requested stay on February 23, 2018. The Parties agree to jointly advocate for maintenance of the stay of the Broward County Litigation pending the Federal Court's approval of the Settlement and this Agreement and the eventual dismissal of the Litigation against EY, and to cooperate with each other in seeking and maintaining such stay until the Broward County Litigation against EY is dismissed pursuant to this Agreement.

44. Dismissal with Prejudice: Within ten (10) days of the Federal Court's Final Settlement Approval & Bar Order becoming Final, the Receiver shall file the joint dismissal in the Broward Court in the form attached hereto as **Exhibit A**, which includes provisions that: (i) the claims pending in the Broward County Litigation are jointly dismissed with prejudice; and (ii) each Party will pay its own attorneys' fees and costs.

X. Dismissal of the AAA Arbitration.

45. Stay of Proceedings: The Parties agree to jointly advocate for maintenance of the stay of the AAA Arbitration pending the Federal Court's approval of the Settlement and this Agreement and the eventual dismissal of the Litigation against EY, and to cooperate with each other in seeking and maintaining such stay until the Litigation against EY is dismissed pursuant to this Agreement.

46. Dismissal with Prejudice: Within ten (10) days of the Federal Court's Final Settlement Approval and Bar Order becoming Final, the Parties agree to enter a dismissal with prejudice of the AAA Arbitration against EY in the form of the AAA joint dismissal (attached hereto as **Exhibit E**).

XI. Dismissal of the CPR Arbitration.

47. Stay of Proceedings: The Parties agree to jointly advocate for maintenance of the stay of the CPR Arbitration pending the Federal Court's approval of the Settlement and this Agreement and the eventual dismissal of the Litigation against EY, and to cooperate with each other in seeking and maintaining such stay until the Litigation against EY is dismissed pursuant to this Agreement.

48. Dismissal with Prejudice: Within ten (10) days of the Federal Court's Final Settlement Approval and Board Order becoming Final, the Parties agree to enter a dismissal with prejudice of the CPR Arbitration against EY in the form of the CPR joint dismissal (attached hereto as **Exhibit F**).

XII. Cooperation in Seeking Settlement Approval.

49. Parties to Advocate: The Receiver shall take all reasonable steps to advocate for the Federal Court to approve the Settlement, the terms of this Agreement, and the Final Settlement Approval & Bar Order. EY shall have the same obligation to the extent it chooses to appear in the SEC Action, as well as an obligation to assist the Receiver, as he may so request, in advocating for the Federal Court to approve the Settlement, the terms of this Agreement, and the Final Settlement Approval & Bar Order. Both Parties shall take all reasonable steps to obtain dismissal with prejudice of each of the Broward County Litigation, the AAA Arbitration, and the CPR Arbitration.

50. No Challenge: The Parties shall not challenge the approval of the Settlement or the Final Settlement Approval & Bar Order, nor shall they encourage or assist any Person, including, without limitation, any Bar Order Party, in challenging the Settlement or the Final Settlement Approval & Bar Order.

XIII. Termination.

51. Conditions Necessary to Agreement: The Parties represent and acknowledge that all of the Conditions were necessary to the Parties' agreement to this Settlement, are each an essential term of the Settlement and this Agreement, and that the Settlement would not have been reached in the absence of these terms.

52. Termination: If any of the Conditions (b) through (f) fails to come to pass (except as provided in Paragraph 53 below), then the Settlement and this Agreement (i) shall be deemed null and void and of no further effect whatsoever (except for the provisions of this Paragraph 52, and Paragraphs 68–72, which shall survive); (ii) shall not be admissible in any ongoing or future proceedings for any purpose whatsoever; and (iii) shall not be the subject of or basis for any claims by or against any Party. If this Agreement terminates pursuant to this Paragraph 52, then each Party shall be returned to the position such Party occupied immediately before executing this Agreement. If this Agreement terminates pursuant to this Paragraph 52, then EY will be entitled to all funds in the Escrow Account, including the Settlement Amount plus any earned interest. In such event, to effectuate transfer of the funds in the Escrow Account back to EY, EY shall issue to the Escrow Agent an Instruction to Transfer Escrow Property and Interest Income to EY's Repayment Account in substantially the form of Exhibit D to the Escrow Agreement, with a copy to be sent the same day to the Receiver by Federal Express and e-mail. In such event of termination and return of the Settlement Amount and earned interest to EY, EY shall be responsible for any

Taxes on the interest earned on the Settlement Amount during such time the Settlement Amount was in the Escrow Account.

53. Material Modification to Orders: If the Federal Court requires or adopts a material modification or limitation as a condition of approving the Final Settlement Approval & Bar Order, or if the Final Settlement Approval & Bar Order is modified or limited on appeal in a material way, then the Conditions shall have failed to come to pass, and the Settlement and this Agreement shall terminate pursuant to Paragraph 52; except that if such material modification or limitation occurs, the Parties agree to (i) consult with each other in good faith to determine if there are steps that can be taken to maintain the Settlement and this Agreement, including any modifications thereto that may be necessary and appropriate; and (ii) take steps to preserve the status quo as may be necessary during the period necessary for such consultation and discussion and any resulting dispute resolution process. If, despite such consultation efforts, the Parties are unable to resolve the issue or reach agreement on whether the Agreement has terminated pursuant to Paragraph 52, then such dispute shall be resolved pursuant to the dispute resolution process set forth in Section XIX.

54. No Other Termination Right: The Parties do not have the right to withdraw from, or otherwise terminate, the Settlement or this Agreement for any reason other than as provided in this Section XIII.

XIV. Distribution Plan.

55. Duties: The Receiver, with the approval and guidance of the Federal Court, shall be solely responsible for preparing, filing any motion seeking approval of, and implementing the Distribution Plan, including, without limitation, receiving, managing, and disbursing any funds under any Distribution Plan. The Receiver owes no duties to EY or the other EY Released Parties in connection with the distribution of any funds received under this Agreement, nor does EY

having standing to object or subject the Receiver to any enforcement action relating to any distribution plan or any actual distribution, except with respect to the Receiver's obligation in Paragraph 56.

56. Distribution by Check: The Receiver intends to make any distributions of the Settlement Amount by Approved Claimants pursuant to the Distribution Plan by check. As an additional confirmation of certain of the releases that EY and the other EY Released Parties will receive under this Agreement and/or in the Final Settlement Approval & Bar Order, and not intended to alter the releases provided herein or in the Final Settlement Approval & Bar Order, the Receiver must include the following statement, without alteration, on the reverse of all checks sent to Approved Claimants pursuant to the Distribution Plan, above where the endorser will sign:

BY ENDORSING THIS CHECK, I RELEASE ALL SETTLED CLAIMS, KNOWN OR NOT, ACCRUED OR NOT, AGAINST EY AND THE OTHER EY RELEASED PARTIES, ARISING FROM OR RELATING TO FOUNDING PARTNERS CAPITAL MANAGEMENT COMPANY, THE FOUNDING PARTNERS FUNDS, ANY OF THEIR PERSONNEL, OR ANY INVESTMENT IN OR WITH SUCH ENTITIES, AS SET FORTH MORE FULLY IN THE SETTLEMENT AGREEMENT.

57. No Responsibility: EY and the other EY Released Parties shall have no responsibility, obligation, or liability whatsoever with respect to (i) the creation, terms, interpretation, or implementation of any Distribution Plan; (ii) the administration of the Settlement unless otherwise provided in this Agreement; (iii) the management, investment, or distribution of any funds from the Settlement Amount (or any portion thereof) or any other funds paid or received in connection with the Settlement, once the Settlement Amount (or any portion thereof) together with any earned interest is paid to the Receiver pursuant to Section IV; (iv) the payment or withholding of Taxes that may be due or owing by the Receiver with respect to the Settlement Amount or any portion thereof or interest thereon, or due and owing by any recipient of funds from

the Settlement Amount, except as set forth in Paragraph 52 in the event of termination; (v) the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid to or received by Approved Claimants in connection with the Settlement, this Agreement, or the Distribution Plan; or (vi) any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. As of the Settlement Effective Date, the Receiver, as well as any and all other Persons for whom the Receiver has authority to act, fully, finally, and forever release, relinquish, and discharge EY and the other EY Released Parties from any and all such responsibility, obligation, and liability.

XV. Releases, Covenants Not to Sue, and Other Covenants.

58. Release by the Receiver: As of the Settlement Effective Date, the Receiver (including on behalf of the Receivership Estate, the Founding Partners Entities, and the Assignors, as well as any and all other Persons for whom the Receiver has authority to act) fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Settled Claims against EY and the other EY Released Parties.

59. Release by EY: As of the Settlement Effective Date, EY fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Settled Claims against the Receiver Released Parties and against the FP Offshore Released Parties (as that term is defined in the FP Offshore consent and release attached hereto as **Exhibit G**).

60. Covenant Not to Sue by the Receiver: As of the Settlement Effective Date, and except as may be necessary to seek the approvals and/or orders in the SEC Action and the Litigation that are contemplated by this Agreement, the Receiver covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against any

of EY or the other EY Released Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or relates to the Settled Claims, whether in a court or any other Forum, and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever. Notwithstanding the foregoing, however, the Receiver retains the right to sue to enforce or effectuate this Agreement, or to assert an alleged breach of this Agreement.

61. Covenant Not to Sue by EY: As of the Settlement Effective Date, and except as may be necessary to seek the approvals and/or orders in the SEC Action and the Litigation that are contemplated by this Agreement, EY covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against any of the Receiver Released Parties or the FP Offshore Released Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or relates to the Settled Claims, whether in a court or any other Forum, and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever. Notwithstanding the foregoing, however, EY retains the right to sue to enforce or effectuate this Agreement or to assert an alleged breach of this Agreement (or the consent and release provided by FP Offshore in **Exhibit G**).

62. Complete Defense: Any Person released under this Agreement may plead this Agreement as a complete defense and bar to any Settled Claim brought in contravention hereof.

63. No Release of Obligations Under Agreement: Notwithstanding anything to the contrary in this Agreement, the releases and covenants contained in this Agreement do not release the Parties' rights and obligations under this Agreement or the Settlement.

XVI. Representations and Warranties.

64. No Additional Claims: The Receiver represents that he does not know of, and has not filed or asserted, any claim or potential claim that he owns, possesses, or has the authority to assert (on behalf of the Receivership Estate, the Founding Parties Entities, the Assignors, or otherwise) against EY or the other EY Released Parties that is not being released pursuant to the terms of this Agreement and/or the Final Settlement Approval & Bar Order. The Receiver further represents that he does not know of any claim or potential claim against EY or the other EY Released Parties that is within the scope of the Settled Claims and that is not being released pursuant to the terms of this Agreement, the consent and release from FP Offshore attached as **Exhibit G** hereto, and/or the Final Settlement Approval & Bar Order. EY represents that it does not know of, and has not filed or asserted, any claim or potential claim that it owns, possesses, or has the authority to assert against the Receiver, any of the other Receiver Released Parties, or any of the FP Offshore Released Parties that is not being released pursuant to the terms of this Agreement and/or the Final Settlement Approval & Bar Order.

65. No Assignment, Encumbrance, or Transfer: The Receiver represents and warrants that he is the owner of the Settled Claims that he is releasing under this Agreement (including the Settled Claims of Assignors that have been assigned to the Receiver) and that he has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised any of the Settled Claims that he is releasing under this Agreement. EY represents that it is the owner of the Settled Claims that it is releasing under this Agreement and that it has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised any of the Settled Claims that it is releasing under this Agreement.

66. Authority: Each Person executing this Agreement or any related documents on behalf of an estate or entity represents and warrants that he or she has the full authority to execute

the documents on behalf of the estate or entity he or she represents and that he or she has the authority to take appropriate action required or permitted to be taken pursuant to this Agreement to effectuate its terms.

XVII. No Admission of Fault or Wrongdoing.

67. No Admission: The Settlement, this Agreement, and the negotiation and mediation thereof, shall in no way constitute, be construed as, or be evidence of an admission or concession of any violation of any statute or law; of any fault, liability, or wrongdoing; or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses asserted or that could have been asserted in the Litigation or any other proceeding relating to any Settled Claim, or any other proceeding in any Forum. The Settlement and this Agreement are a resolution of disputed claims in order to avoid the risk and very substantial expense of protracted litigation. The Settlement, this Agreement, and evidence thereof shall not be used, directly or indirectly, in any way, in the Litigation, the SEC Action, or in any other proceeding, other than to seek the orders and approvals contemplated by this Agreement or to enforce the terms of the Settlement and this Agreement.

XVIII. Publicity.

68. Media Inquiries: The Parties agree that, in order to facilitate their joint interest in finally resolving the substantial disputes between them, no Party or his, her, or its counsel shall make any statements concerning any aspect of the Settlement, this Agreement, the Receiver's claims against EY in the Litigation, or the Settled Claims, to the media or any media representative, except that the Parties and their counsel shall be permitted to provide a media representative who contacts a Party or his, her, or its counsel seeking comment on such matters with (i) one or more statement(s) whose content is agreed upon in advance by the Parties, and/or (ii) confirmation that the Litigation and disputes among the Parties regarding the subject matter of the Litigation have

been settled to the satisfaction of the Parties, without the admission of liability by any Party. No Party or his, her, or its counsel may communicate with the media or a media representative so as to encourage interest in or publicity about the Settlement, this Agreement, the Receiver's claims against EY in the Litigation, or the Settled Claims.

69. Statements by Others: Counsel for the Parties shall inform their respective stakeholders (the Receiver Released Parties, the EY Released Parties, and the Bar Order Parties) with whom they are discussing or are requested to discuss the Settlement or this Agreement, as well as any other Person (excluding the media or any media representative) who approaches the Party (or his, her, or its counsel) to express interest in or discuss the Settlement, of the terms of Paragraph 68 and its importance to the Settlement and this Agreement. The Parties and their counsel, respectively, shall encourage the Persons referenced in the preceding sentence who are not expressly bound by Paragraph 68 to similarly avoid making statements to the media or media representative(s) concerning the Settlement, this Agreement, the Receiver's claims against EY in the Litigation, or the Settled Claims.

70. Exclusions: Nothing in Paragraphs 68 and 69 is intended to curtail or limit in any way (i) the ability of any Person to make statements in the Federal Court, the Broward Court, the AAA Arbitration, or the CPR Arbitration; or (ii) the ability of the Parties and their counsel to hold discussions with Approved Claimants or other Bar Order Parties as part of developing support for the Settlement and this Agreement or addressing actual or potential objections thereto.

XIX. Dispute Resolution.

71. Mandatory Mediation: With respect to any dispute between the Receiver and EY arising out of or relating to the Settlement or this Agreement, including any dispute referenced in Paragraph 53, the Parties shall first seek to mediate such disputes with a mediator acceptable to both Parties. The Parties agree to participate in such mediation in good faith over the course of

not less than thirty (30) days, or such longer period as is necessary to allow the Parties to meet not less than two times with the mediator in an effort to resolve their dispute. The fees, costs, and expenses charged by the mediator shall be borne equally by the Parties. The Parties shall each bear their own attorneys' fees, costs, and expenses with respect to the mediation process contemplated by this Paragraph 71.

72. Venue and Jurisdiction: The Federal Court shall retain jurisdiction and venue over the subject matter of this Agreement and the Parties for the duration of the performance of the terms and provisions of this Agreement. After mediation efforts pursuant to Paragraph 71 have been exhausted, including mediation regarding any dispute referenced in Paragraph 53, the Federal Court shall be the exclusive jurisdiction for the resolution of any disputes between the Parties arising from or out of the Settlement or this Agreement, including but not limited to requests to construe or interpret this agreement or to effectuate or enforce compliance with its terms. The Parties agree to conduct all proceedings in the Federal Court that are contemplated by this Paragraph 72 in as confidential of a manner as possible. The Parties shall each bear their own attorneys' fees, costs, and expenses with respect to any proceedings in the Federal Court contemplated by this Paragraph 72. For avoidance of doubt, in the event that the Settlement or this Agreement is terminated pursuant to Section XIII, nothing in this Paragraph 72 shall constitute or be construed as a waiver of the arbitration clauses in the engagement letters between EY and any of the Founding Partners Funds, to which the Broward Court found the Receiver to be bound with respect to certain claims.

XX. Miscellaneous.

73. Final and Complete Resolution: The Parties intend this Agreement and the Settlement to be and constitute a final, complete, and worldwide resolution of all matters and disputes between (i) the Receiver Released Parties, on the one hand, and (ii) EY and the other EY

Released Parties, on the other hand; and this Agreement, including its exhibits, shall be interpreted to effectuate this purpose.

74. Binding Agreement: As of the Agreement Date, this Agreement shall be binding upon and shall inure to the benefit of the Parties, as well as their respective heirs, executors, administrators, successors, and assigns, although certain provisions do not become effective until the Settlement Effective Date (as set forth in this Agreement). No Party may assign any of its rights or obligations under this Agreement without the express written consent of the other Party. EY may not assign any of its rights or obligations under this agreement that concern FP Offshore without the express written consent of FP Offshore.

75. Disclaimer of Reliance: The Parties represent and acknowledge that in negotiating and entering into the Settlement and this Agreement they have not relied on, and have not been induced by, any representation, warranty, statement, estimate, communication, or information, of any nature whatsoever, whether written or oral, by or on behalf of the other Party or any agent of the other Party, or concerning such other Party, except as expressly set forth in this Agreement. To the contrary, each of the Parties affirmatively represents and acknowledges that the Party is relying solely on the express terms contained within this Agreement. The Parties each have consulted with legal counsel and advisors, have considered the advantages and disadvantages of entering into the Settlement and this Agreement, and have relied solely on their own judgment and the advice of their respective legal counsel in negotiating and entering into the Settlement and this Agreement.

76. Third-Party Beneficiaries: This Agreement is not intended to and does not create rights enforceable by any Person other than the Parties (or their respective heirs, executors, administrators, successors, and assigns, as provided in Paragraph 74 of this Agreement); except, however, that if this Agreement provides that a Person is released or should not be sued as a

consequence of a covenant not to sue, then such Person may enforce the release or covenant not to sue as it relates to said Person.

77. Negotiation and Drafting: The Parties agree and acknowledge that they each have reviewed and cooperated in the preparation of this Agreement, that no Party should or shall be deemed the drafter of this Agreement or any provision hereof, and that any rule, presumption, or burden of proof that would construe this Agreement, any ambiguity, or any other matter, against the drafter shall not apply and is waived. The Parties are entering into this Agreement freely, after good-faith, arm's-length negotiation, with the advice of counsel, and in the absence of coercion, duress, and undue influence.

78. Construction: The titles and headings in this Agreement are for convenience only, are not part of this Agreement, and shall not bear on the meaning of this Agreement. The words "include," "includes," or "including" shall be deemed to be followed by the words "without limitation." The words "and" and "or" shall be interpreted broadly to have the most inclusive meaning, regardless of any conjunctive or disjunctive tense. Words in the masculine, feminine, or neuter gender shall include any gender. The singular shall include the plural, and vice versa. "Any" shall be understood to include and encompass "all," and "all" shall be understood to include and encompass "any." All dollar amounts in this Agreement are expressed in United States dollars. Any reference herein to any statute, rule, regulation, or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended, or supplemented from time to time.

79. Cooperation: The Parties agree to execute any additional documents reasonably necessary to finalize and carry out the terms of this Agreement. In the event a third party or any Person other than a Party at any time challenges any term of this Agreement or the Settlement, including the Final Settlement Approval & Bar Order, the Parties agree to cooperate with each

other, including using reasonable efforts to make documents or personnel available as needed to defend any such challenge. Further, the Parties shall reasonably cooperate to defend and enforce the Preliminary Approval & Scheduling Order, the Final Settlement Approval & Bar Order, and to maintain the stays described in Paragraphs 43, 45, and 47 of this Agreement.

80. Notice: Any notices, documents, or correspondence of any nature required to be sent pursuant to this Agreement shall be transmitted by both e-mail and overnight delivery to the following recipients, and will be deemed transmitted upon the earlier of receipt by e-mail or receipt by the overnight delivery service:

If to the Receiver:

Daniel S. Newman
NELSON MULLINS RILEY & SCARBOROUGH LLP
One Biscayne Tower — 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 373-9467
Email: dan.newman@nelsonmullins.com

Richard Williams
Alex Morris
BEUS GILBERT MCGRODER PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Email: rwilliams@beusgilbert.com
Email: amorris@beusgilbert.com

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

If to EY:

Tobias Stern
ERNST & YOUNG LLP
One Manhattan West
New York, NY 10001
Telephone: (212) 773-4117
Email: tobias.stern@ey.com

Steven M. Farina
Katherine M. Turner
WILLIAMS & CONNOLLY LLP
680 Maine Ave SW
Washington, DC 20024
Telephone: (202) 434-5526
E-mail: sfarina@wc.com
E-mail: kturner@wc.com

Each Party shall provide notice of any change to the service information set forth above to all other Parties by the means set forth in this Paragraph 80.

81. Choice of Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida (or United States federal law, to the extent applicable), including any applicable statutes of limitation, without regard to any otherwise applicable principles of conflicts of law or choice of law rules (whether of the State of Florida or any other jurisdiction) that would result in the application of the substantive or procedural rules or law of any other jurisdiction.

82. Timing: If any deadline imposed by this Agreement falls on a non-business day, then the deadline is extended until the next business day.

83. Waiver: The waiver by a Party of any breach of this Agreement by the other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

84. Exhibits: The exhibits annexed to this Agreement are incorporated by reference as though fully set forth in this Agreement.

85. Integration and Modification: This Agreement sets forth the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations, and communications, whether oral or written,

with respect to such subject matter, including drafts of the Agreement and email and other exchanges between counsel for the Parties discussing or summarizing the terms of the Settlement before this Agreement was finalized. Neither this Agreement, nor any provision or term of this Agreement, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by both Parties.

86. Counterparts and Signatures: This Agreement may be executed in one or more counterparts, each of which for all purposes shall be deemed an original but all of which taken together shall constitute one and the same instrument. A signature delivered by e-mail, fax, or other electronic means shall be deemed to be, and shall have the same binding effect as, a handwritten, original signature.

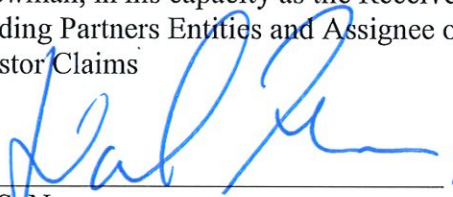
IN WITNESS HEREOF, the Parties have executed this Agreement signifying their agreement to the foregoing terms.

Daniel S. Newman, in his capacity as the Receiver
for the Founding Partners Entities and Assignee of
Certain Investor Claims

Dated: July ^{25th} 2023

By: _____

Daniel S. Newman

 , Receiver

Ernst & Young LLP

Dated: July 24, 2023

By: _____

Meredith Moss, Deputy General Counsel



EXHIBIT A

**IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL DISTRICT
IN AND FOR BROWARD COUNTY, FLORIDA**

DANIEL S. NEWMAN, as RECEIVER for
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,

Plaintiff,

v.

ERNST & YOUNG, LLP, a Delaware Limited
Liability Partnership; and MAYER BROWN
LLP, an Illinois Limited Liability Partnership,

Defendants.

Case No. 10-49061(19)

Chief Judge Jack Tuter

JOINT STIPULATION OF DISMISSAL

Having agreed to a settlement among and between the Receiver and Ernst & Young LLP (the "Settlement"), and following the entry of the Order Approving Settlement and Entering Bar Order by the U.S. District Court for the Middle District of Florida (Case No. 2:09-CV-229-JES-NPM), the Parties hereby stipulate and agree, by and between counsel and subject to the approval of the Court, and pursuant to Rule 1.420(a)(1) of the Florida Rules of Civil Procedure, that: (1) all claims set forth in the Complaint, filed on December 30, 2010; all claims set forth in the First Amended Complaint, filed on April 7, 2011; all claims set forth in the Second Amended Complaint, filed on April 25, 2011; all claims set forth in the Third Amended Complaint, filed on August 3, 2015; and all claims set forth in the Fourth Amended Complaint, filed on February 1, 2018, are dismissed with prejudice by joint stipulation; (2) all claims for relief between the

Receiver and Ernst & Young LLP are dismissed with prejudice by joint stipulation; and (3) each Party bears its own costs and attorneys' fees.

L. Richard Williams
Alex Morris
BEUS GILBERT MCGRODER PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Facsimile: (480) 429-3100
Email: rwilliams@beusgilbert.com
Email: amorris@beusgilbert.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

Attorneys for the Receiver

Steven M. Farina
Katherine M. Turner
WILLIAMS & CONNOLLY LLP
680 Maine Ave SW
Washington, DC 20024
Telephone: (202) 434-5000
Facsimile: (202) 434-5029
Email: sfarina@wc.com
Email: kturner@wc.com

Attorneys for Ernst & Young LLP

DONE by the parties on this _____ day of _____, 20__.

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT CO.
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.

ORDER APPROVING SETTLEMENT AND ENTERING BAR ORDER

Before the Court is the Motion to Approve Proposed Settlement with Ernst & Young LLP, to Approve the Proposed Notice of Settlement and Bar Order Proceedings, and to Enter the Final Settlement Approval & Bar Order (the “Approval Motion”), filed by Daniel S. Newman (the “Receiver”) in his capacities as (a) the court-appointed receiver for the Founding Partners Entities,¹ and (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 Ernst & Young LLP, the remaining defendant in the case filed by the Receiver in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward

¹ The “Founding Partners Entities” are Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (formerly known as 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. (formerly known as Founding Partners Equity Fund, L.P.).

Court”), that is captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Broward County Litigation”), as well as the respondent in the following arbitrations: American Arbitration Association, Miami Regional Office (“AAA”), case captioned *Newman v. Ernst & Young LLP*, Case No. 01-18-0003-2029 (the “AAA Arbitration”); and International Institute for Conflict Prevention & Resolution (“CPR”), case captioned *Newman v. Ernst & Young LLP*, Case No. G-21-63-S (the “CPR Arbitration,” and together with the AAA Arbitration and the Broward County Litigation, the “Litigation”). The Settlement Agreement at issue (the “Agreement”) is attached as Exhibit 1 to the Approval Motion [ECF No.]. All capitalized terms not defined herein shall have the same meaning as set forth in the Agreement.

Following notice and a hearing, having considered the case filings related to the Settlement, and having heard the arguments of counsel, the Court hereby **GRANTS** the Approval Motion, as set forth below. For the reasons set forth herein, the Court finds that the terms of the Agreement are adequate, fair, reasonable, and equitable, and that the Settlement should be and is hereby **APPROVED**. The Court further finds that entry of the bar order sought in the Approval Motion—and now provided herein—is both essential to the Settlement between the Receiver and Ernst & Young LLP (the “Parties”) and fair and equitable under the circumstances.

I. BACKGROUND, FINDINGS, AND CONCLUSIONS OF LAW.

[To be drafted, and to include addressing any objections that may be filed.]

II. RELEASES, BARS, INJUNCTIONS, AND RESTRAINTS.

A. Release of EY Released Parties.

Consistent with Paragraphs 58 and 60 of the Agreement, and as of the Settlement Effective Date, the EY Released Parties² shall be completely released, acquitted, and forever discharged by

² “EY Released Parties” means Ernst & Young LLP, Ernst & Young U.S. LLP, Ernst & Young Global Services, Ernst & Young Global Limited, and each and all of the current and former member firms of Ernst & Young Global Limited (including, without limitation, EY Bermuda Ltd. and EY Cayman Ltd.), as well as all of the foregoing’s respective present and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “EY Released Parties” shall also include the insurers and reinsurers

all Bar Order Parties³ from the following (“Settled Claims”): any and all actions, causes of action, suits, liabilities, claims, rights of action, rights of levy or attachment, or demands whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity, or otherwise, that such Bar Order Party ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with:

- (i) any of the conduct complained of in the SEC Action or the Litigation;
- (ii) any of the Founding Partners Entities;
- (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities;
- (iv) Ernst & Young LLP’s relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to William L. Gunlicks);
- (v) Ernst & Young LLP’s provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to William L. Gunlicks);

of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

³ “Bar Order Parties” means (a) the Receiver; (b) the Receivership Estate; (c) the Founding Partners Entities; (d) FP Offshore; (e) the Assignors; (f) each Approved Claimant; (g) each Unapproved Claimant; (h) Mayer Brown LLP; (i) the following Founding Partners Capital Management Company (“FPCM”) employees or personnel associated with FPCM and/or the Founding Partners Entities: William L. Gunlicks, Judy Aller, William V. Gunlicks, Philip Fues, Chris Bowers, Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson; and (k) the following individuals and trusts associated with Gunlicks: James B. Gunlicks; Nissa Cox; Annalee Good; the William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox; the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; and the William L. Gunlicks Irrevocable Trust f/b/o of William V. Gunlicks; and (j) any investor in any of the Founding Partners Entities. The inclusion of any particular Person within the definition of “Bar Order Parties” for the purposes of this Agreement does not necessarily mean that such Person has an interest in the Receivership Estate. The inclusion of a Person within the definition of “Bar Order Parties” encompasses all manners in which such Person invested in one or more of the Founding Partners Entities, including but not limited to investments made or held through an Individual Retirement Account (“IRA”) or a trust.

- (vi) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks;
- (vii) any conduct or omission by Sun Capital, Inc.; Sun Capital Healthcare, Inc.; Promise Healthcare, Inc.; Success Healthcare, Inc.; or any of their respective related or affiliated entities, subsidiary entities, principals, or employees;
- (viii) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against Ernst & Young LLP or any other Person; or
- (ix) the subject matter of the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending or was commenced in any forum on or after March 25, 2009.

“Settled Claims” also specifically includes, without limitation, all claims (or facts relating thereto) against any EY Released Party that each Bar Order Party does not know or suspect to exist in his, her, or its favor at the time of release, which, if known by that Person, might have affected his, her, or its decisions with respect to the Agreement and the Settlement. “Settled Claims” also includes contingent and non-contingent claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts. Each Bar Order Party releases and relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute.⁴

⁴ California Code § 1542 provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

B. Release of Receiver Released Parties.

Pursuant to the provisions of Paragraphs 59 and 61 of the Agreement, and as of the Settlement Effective Date, the Receiver Released Parties⁵ shall be completely released, acquitted, and forever discharged by Ernst & Young LLP from all Settled Claims.

C. Bars, Restraints, and Injunctions.

The Court hereby permanently bars, restrains, and enjoins all Bar Order Parties (and all Persons acting in concert with such Bar Order Party or claiming by, through, or under such Bar Order Party), all and individually, from directly, indirectly, or through a third party, instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against any EY Released Party, (i) the Litigation (except as is necessary to bring the Litigation to final conclusion with respect to Ernst & Young LLP pursuant to the terms of the Agreement) or (ii) any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum, including, without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with the Founding Partners Entities or Gunlicks; this case or its subject matter; the Litigation or its subject matter; or any Settled Claim.

The foregoing specifically includes (but is not limited to) any claim against any EY Released Party, however denominated, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Bar Order Party or the claim asserted by such Bar Order Party arises out of, relates to, or is based in whole or in part upon (a) such Bar Order Party's actual or

⁵ “Receiver Released Parties” means the Receiver, the Founding Partners Entities, and the Assignors. “Receiver Released Parties” also includes each of the foregoing persons’ respective present and former partners, limited partners, general partners, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Receiver Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

alleged liability to the Receiver, the Receivership Estate, or the Founding Partners Entities, or (b) money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to the Receiver, the Receivership Estate, or the Founding Partners Entities, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. There is no indication of collusion, bad faith, or wrongful conduct between the Parties in connection with reaching agreement on the Settlement and the Settlement Amount, and the Court affirmatively finds that there has been none. As such, the Court expressly finds that the Agreement was entered into in good faith.

D. Exclusions.

The foregoing releases, bars, injunctions, and restraints do not (i) release the rights and obligations of the Receiver and Ernst & Young LLP under the Settlement, the Agreement, or this Final Settlement Approval & Bar Order; (ii) bar the Receiver or Ernst & Young LLP from enforcing, effectuating, or suing for alleged breaches of the Settlement or the Agreement; or (iii) bar any Person released under the Agreement, the release agreements attached as Exhibit G to the Agreement, or this Final Settlement Approval & Bar Order from enforcing, effectuating, or suing to enforce such release. Nothing in Part II.C of this Final Settlement Approval & Bar Order is intended to bar claims against Persons other than the EY Released Parties, or to create rights in such other Persons against any Bar Order Parties.

Notwithstanding anything herein or in the Agreement to the contrary, this Final Settlement Approval & Bar Order shall not apply to any federal, state, or local governmental agency, including but not limited to the Securities and Exchange Commission.

III. OTHER MATTERS RELATING TO THE APPROVED SETTLEMENT.

A. No Responsibility or Liability for the EY Released Parties for Certain Matters.

The EY Released Parties have no responsibility, obligation, or liability whatsoever for the following:

- (i) Any attorneys' fees, costs, or expenses that may be owed to or approved for payment to the Receiver's counsel;
- (ii) the content of the Notice, the distribution of the Notice, or the Notice process;

- (iii) the creation, terms, interpretation, or implementation of any Distribution Plan(s);
- (iv) the administration of the Settlement;
- (v) the management, investment, or distribution of the Settlement Amount (or any portion thereof) or any other funds paid or received in connection with the Settlement, once the Settlement Amount (or any portion thereof) is paid to the Receiver pursuant to Section IV of the Agreement;
- (vi) the payment or withholding of Taxes that may be due or owing by the Receiver or the Receivership Estate once the Receiver receives the Settlement Amount or any portion thereof, or due and owing by any recipient of funds from the Settlement Amount;
- (vii) the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid to or received by Approved Claimants in connection with the Settlement, the Agreement, or any Distribution Plan(s); or
- (viii) any losses, attorneys' fees, expenses, vendor payment, expert payments, or other costs incurred by the Receiver or any other Person (other than Ernst & Young LLP) in connection with any of the foregoing matters.

No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement, the Agreement, or this Final Settlement Approval & Bar Order, unless such appeal, challenge, decision, or other matter means any of the Conditions has failed to come to pass such that the Settlement Effective Date has not arisen pursuant to Paragraph 23 of the Agreement.

B. No Admission of Fault.

Nothing in this Final Settlement Approval & Bar Order or the Agreement (including its exhibits), and no aspect of the Settlement or negotiation or mediation thereof, is or shall be construed to be a finding, admission, or concession of (a) any violation of any statute or law; (b) any fault, liability, or wrongdoing; or (c) any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in the Litigation, or any other proceeding.

C. Continuing Jurisdiction.

Without in any way affecting the finality of this Final Settlement Approval & Bar Order, the Court retains continuing and exclusive jurisdiction for purposes of (i) the Approval Motion, the Preliminary Approval & Scheduling Order, the Notice, and Distribution Plan(s), and this Final Settlement Approval & Bar Order (including, without limitation, the injunctions, bar orders, and releases herein); (ii) entering orders concerning the administration or implementation of the Settlement, the Agreement, and the Distribution Plan(s); (iii) the continuation of this proceeding and the Receivership; and (iv) the activities and conduct of the Receiver. This provision is intended to be consistent with the agreement between the Receiver and Ernst & Young LLP, reflected in Paragraph 72 of the Agreement.

D. Finality.

This Final Settlement Approval & Bar Order (i) includes a permanent injunction appealable under 28.U.S.C. § 1292(a)(1); and (ii) resolves all claims that are pending in this proceeding with respect to an asset of the Receivership Estate—namely, the Receiver’s claims against Ernst & Young LLP. Upon entry of this Final Settlement Approval & Bar Order, there is no further action required by this Court to resolve the Receiver’s claims against Ernst & Young LLP. As such, the Court expressly finds and determines that this Final Settlement Approval & Bar Order is a partial final judgment under Federal Rule of Civil Procedure 54(b). The Court also expressly finds and determines, pursuant to Rule 54(b), that there is no just reason for any delay in entering this partial final judgment. To the contrary, any delay in this Final Settlement Approval & Bar Order reaching finality would defeat the purpose of the Settlement (and impede the progress of this Receivership proceeding) because the Settlement is expressly conditioned on this Final Settlement Approval & Bar Order becoming Final as defined in the Agreement. Deferring finality of this Final Settlement Approval & Bar Order until the Receivership proceeding is fully and finally concluded as to all matters and all issues would delay the effectiveness of the Settlement and thereby delay the payment of the Settlement Amount into the Receivership Estate. For all these reasons, the Court intends this Final Settlement Approval & Bar Order to become Final upon the expiration of any

right to appeal, despite the continued pendency of this proceeding, including the Receivership. Pursuant to Rule 54(b), the Court expressly directs the Clerk of the Court to immediately enter this Final Settlement Approval & Bar Order as a partial final judgment.

E. Service of Final Settlement Approval & Bar Order.

Counsel for the Receiver shall serve this Final Settlement Approval & Bar Order via email, first-class mail, or international delivery service, on any Person who filed an objection to approval of the Settlement, the Agreement, or this Final Settlement Approval & Bar Order.

DONE AND ORDERED in Fort Myers, Florida, on this ____ day of _____, 20__.

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished:
All Counsel of Record

EXHIBIT C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT CO.
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.

NOTICE OF SETTLEMENT AND BAR ORDER PROCEEDINGS

PLEASE TAKE NOTICE that Daniel S. Newman (“the Receiver”), in his capacities as (a) the court-appointed receiver for the Founding Partners Entities¹ and (b) the assignee of claims of certain investors in one or more Founding Partners Entities, has reached an agreement (the “Settlement Agreement”) to settle all claims asserted or that could have been asserted against Ernst & Young LLP in (a) the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), in a case captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Broward County Litigation”); (b) the American Arbitration Association (“AAA”), in

¹ 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.).

a case captioned *Newman v. Ernst & Young LLP*, AAA Case No. 01-18-0003-2029 (the “AAA Arbitration”); and (c) the International Institute for Conflict Prevention & Resolution (“CPR”), in a case captioned *Newman v. Ernst & Young LLP*, CPR Case No. G-21-63-S (the “CPR Arbitration,” and together with the AAA Arbitration and the Broward County Litigation, the “Litigation”).

PLEASE TAKE FURTHER NOTICE that the Receiver has filed a Motion to Approve Proposed Settlement with Ernst & Young LLP, to Approve the Proposed Notice of Settlement, and to Enter the Final Settlement Approval & Bar Order (the “Approval Motion”), in *SEC v. Founding Partners Capital Management Co.*, No. 2:09-CV-229-JES-NPM (M.D. Fla.) (the “SEC Action”). A copy of the Settlement Agreement, as well as a complete copy of the Approval Motion and other supporting papers may be obtained from the Court’s docket in the SEC Action [ECF No.], and are also available on the Receiver’s website (<http://www.foundingpartners-receivership.com>). A copy of these documents may also be obtained by e-mail or telephone request to Trish Anzalone (E-mail: Trish.Anzalone@nelsonmullins.com; Telephone: 305-373-9469). All capitalized terms not defined in this Notice of Settlement and Bar Order Proceedings are defined in the Settlement Agreement, which is attached as Exhibit 1 to the Approval Motion.

PLEASE TAKE FURTHER NOTICE that the Approval Motion requests that the Court approve the Settlement and enter a bar order permanently enjoining all parties to be barred (defined

in the Settlement Agreement as Bar Order Parties²) from pursuing Settled Claims³ against EY Released Parties⁴—including claims you may possess.

² “Bar Order Parties” means (a) the Receiver; (b) the Receivership Estate; (c) the Founding Partners Entities; (d) FP Offshore; (e) the Assignors; (f) each Approved Claimant; (g) each Unapproved Claimant; (h) Mayer Brown; (i) the following Founding Partners Capital Management Company (“FPCM”) employees or personnel associated with FPCM and/or the Founding Partners Entities: William L. Gunlicks, Judy Aller, William V. Gunlicks, Philip Fues, Chris Bowers, Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson; and (k) the following individuals and trusts associated with Gunlicks: James B. Gunlicks; Nissa Cox; Annalee Good; the William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox; the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; and the William L. Gunlicks Irrevocable Trust f/b/o of William V. Gunlicks; and (j) any investor in any of the Founding Partners Entities. The inclusion of any particular Person within the definition of “Bar Order Parties” for the purposes of this Agreement does not necessarily mean that such Person has an interest in the Receivership Estate. The inclusion of a Person within the definition of “Bar Order Parties” encompasses all manners in which such Person invested in one or more of the Founding Partners Entities, including but not limited to investments made or held through an Individual Retirement Account (“IRA”) or a trust.

³ “Settled Claim(s)” means any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that a Releasor ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) any of the conduct complained of in the SEC Action or the Litigation; (ii) any of the Founding Partners Entities; (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities; (iv) EY’s relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to Gunlicks); (v) EY’s provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to Gunlicks); (vi) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks; (vii) any conduct or omission by Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Success Healthcare, Inc., or any of their respective related or affiliated entities, subsidiary entities, principals, or employees; (viii) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against EY, EY’s counsel, or any other Person; or (ix) the subject matter of the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending or was commenced in any Forum on or after March 25, 2009. “Settled Claims” specifically includes, without limitation, all claims (or facts relating thereto) that each Releasor does not know or suspect to exist in his or its favor at the time of release, which, if known by that Person, might have affected his or its decisions with respect to this Agreement and the Settlement. See Paragraph 20 of the Settlement Agreement for a complete definition of “Settled Claims.” [ECF No. .]

⁴ “EY Released Parties” means EY, Ernst & Young U.S. LLP, Ernst & Young Global Services, Ernst & Young Global Limited, and each and all of the current and former member firms of Ernst & Young Global Limited (including, without limitation, EY Bermuda Ltd. and EY Cayman Ltd.), as well as all of the foregoing’s respective present and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “EY Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

PLEASE TAKE FURTHER NOTICE that the settlement amount to be paid by Ernst & Young LLP (the “Settlement Amount”) will be deposited and funds from it distributed by the Receiver pursuant to a Distribution Plan hereafter to be approved by the Court in the SEC Action.

This matter may affect your rights, and you may wish to consult an attorney.

The material terms of the Settlement Agreement are as follows:

- a) Ernst & Young LLP will pay the Settlement Amount pursuant to the terms of the Settlement Agreement, which terms define when EY is required to deposit such amount with the Receiver;
- b) The Receiver will fully release the EY Released Parties from Settled Claims, which include, in general, claims arising from or relating to the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., William L. Gunlicks, the matters raised in the SEC Action or the Litigation, or any conduct by Ernst & Young LLP relating to the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., or William L. Gunlicks, with prejudice;
- c) The Settlement Agreement requires entry of a Final Settlement Approval & Bar Order in the SEC Action, which will permanently enjoin Bar Order Parties, which include all Approved Claimants and Unapproved Claimants, from bringing, encouraging, assisting, continuing, or prosecuting against the EY Released Parties the Litigation, or any 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;
- d) The Receiver will disseminate notice of the Settlement Agreement (*i.e.*, this Notice) to all Bar Order Parties, using the contact information in the Receiver’s files,

through one or more of the following: first-class mail, e-mail, international delivery, CM/ECF notification, and/or publication on the website maintained by the Receiver (<http://www.foundingpartners-receivership.com>);

- e) Approved Claimants who receive funds from the Settlement Amount pursuant to any Distribution Plan will, upon accepting the funds, confirm that they fully release the EY Released Parties from any and all Settled Claims; and
- f) After the Final Settlement Approval & Bar Order is entered, the Litigation will be dismissed with prejudice as to Ernst & Young LLP, with each party bearing its own costs and attorneys' fees.

Pursuant to the Court's Preliminary Approval & Scheduling Order, the final hearing on the Approval Motion is set for [REDACTED] at [REDACTED] (the "Final Approval Hearing"). Any objection to the Settlement Agreement or its terms, the Approval Motion, or the Final Settlement Approval & Bar Order must be filed, in writing, with the Court in the SEC Action in accordance with the requirements set forth Paragraph IV of the Preliminary Approval of Settlement and Scheduling Order (the "Preliminary Approval & Scheduling Order") no later than [date included in Preliminary Approval & Scheduling Order, requested to be thirty (30) days after such order]. Such written objection shall include the information required by Paragraph IV(a)–(f) of the Preliminary Approval & Scheduling Order and shall be served in accordance with the requirements set forth in Paragraph IV of the Preliminary Approval & Scheduling Order. Any objections not filed by this date will be deemed waived and will not be considered by the Court. Those wishing to appear and to orally present their written objections at the Final Approval Hearing must include a request to so appear within their written objections.

The date, time, and place for the Final Approval Hearing shall be subject to adjournment or change by the Court without further notice other than that which may be posted by means of ECF in the SEC Action, which the Receiver will also post on his website (<http://www.foundingpartners-receivership.com>).

EXHIBIT D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT CO.
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.

PRELIMINARY APPROVAL OF SETTLEMENT AND SCHEDULING ORDER

Before the Court is the Motion to Approve Proposed Settlement with Ernst & Young LLP, to Approve the Proposed Notice of Settlement, and to Enter the Final Settlement Approval & Bar Order (the “Approval Motion”), filed by Daniel S. Newman (the “Receiver”) in his capacities as (a) the receiver appointed by this Court for the Founding Partners Entities¹ and (b) the assignee of claims of certain investors in one or more Founding Partners Entities, which investors are referred to herein as “Assignors.”

The Approval Motion concerns a proposed settlement (the “Settlement”) among and between the Receiver and Ernst & Young LLP, the remaining defendant in the case filed by the Receiver in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the

¹ 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 as Founding Partners Equity Fund, L.P.).

“Broward Court”), that is captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Broward County Litigation”), as well as the respondent in the following arbitrations: American Arbitration Association, Miami Regional Office (“AAA”), in the case captioned *Newman v. Ernst & Young LLP*, Case No. 01-18-0003-2029 (the “AAA Arbitration”); International Institute for Conflict Prevention & Resolution (“CPR”), in the case captioned *Newman v. Ernst & Young LLP*, Case No. G-21-63-S (the “CPR Arbitration,” and together with the AAA Arbitration and the Broward County Litigation, the “Litigation”). The Settlement Agreement at issue is attached as Exhibit 1 to the Approval Motion [ECF No.] (the “Settlement Agreement”). All capitalized terms not defined herein shall have the same meaning as set forth in the Settlement Agreement.

In the Approval 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 Approval Motion, and the Approval 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 Ernst & Young LLP. 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 [REDACTED] : [REDACTED] .m. on [REDACTED]. 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 B 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 C to the Settlement Agreement and finds that the methodology, distribution, and dissemination of Notice described in the Approval 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 Order, to cause the Notice in substantially the same form attached as Exhibit C 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 this action or the Litigation.

b. The Receiver is hereby directed, no later than five (5) calendar days after entry of this Order, to cause the Settlement Agreement, the Approval 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 shall provide such Bar Order Party with a copy of the settlement materials posted in his website by e-mail 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 the 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 objection due no later than [date to be inserted by the Court, requested to be thirty (30) days after entry of the Preliminary Approval & Settlement Order]. All objections filed with the Court must:

- a. contain the name, address, telephone number, and (if applicable) e-mail address of the Person filing the objection;
- b. contain the name, address, telephone number, and e-mail 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 Approval Motion; 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 e-mail or first-class mail, upon each of the following:

Counsel for the Receiver:

L. Richard Williams
Alex Morris
BEUS GILBERT McGRODER PLLC
701 North 44th Street
Phoenix, AZ 85008
Telephone: (480) 429-3000
Facsimile: (480) 429-3100
rwilliams@beusgilbert.com
amorris@beusgilbert.com

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

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

Counsel for Ernst & Young LLP

Steven M. Farina
Katherine M. Turner
Adrienne E. Van Winkle
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, SW
Washington, DC 20024
Telephone: (202) 434-5000
sfarina@wc.com
kturner@wc.com
avanwinkle@wc.com

Tobias Stern
ERNST & YOUNG LLP
One Manhattan West
401 9th Avenue
New York, NY 10001
Telephone: (212) 773-3000
tobias.stern@ey.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 Final Settlement Approval & Bar Order.

6. Ernst & Young LLP is 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 [REDACTED]. Ernst & Young LLP 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 that 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 Claimants and Unapproved Claimants, from bringing, encouraging, assisting, continuing, or prosecuting against the EY 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 Approval Motion, or this Order to be construed, deemed, or used as an admission, concession, or declaration by or against Ernst & Young LLP 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, she, 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 or dismissal 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 ____ day of _____, 2023.

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished:
All Counsel of Record

EXHIBIT E

**AMERICAN ARBITRATION ASSOCIATION
MIAMI, FLORIDA**

DANIEL S. NEWMAN, as RECEIVER for
FOUNDING PARTNERS STABLE VALUE
FUND, LP; FOUNDING PARTNERS
STABLE VALUE FUND II, LP; FOUNDING
PARTNERS GLOBAL FUND, LTD.; and
FOUNDING PARTNERS HYBRID-VALUE
FUND, L.P.,

Claimant,

vs.

ERNST & YOUNG, LLP, a Delaware Limited
Liability Partnership,

Respondent.

Case No. 01-18-0003-2029

Chair Charles J. Moxley, Jr.
Hon. Mary Barzee Flores
Arbitrator Barbara A. Mentz

JOINT STIPULATION OF DISMISSAL

Having agreed to a settlement among and between the Receiver and Ernst & Young LLP (the "Settlement"), and following the entry of the Final Settlement Approval & Bar Order by the U.S. District Court for the Middle District of Florida (Case No. 2:09-CV-229-JES-NPM), the Parties hereby stipulate and agree, by and between counsel, and pursuant to Rule 1.420(a)(1) of the Florida Rules of Civil Procedure, that: (1) all claims set forth in the Complaint for Damages and Demand for Arbitration, filed on August 16, 2018, are dismissed with prejudice by joint stipulation; (2) all claims for relief between the Receiver and Ernst & Young LLP are dismissed with prejudice by joint stipulation; and (3) each Party bears its owns costs and attorneys' fees.

L. Richard Williams
Alex Morris
BEUS GILBERT MCGRODER PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Facsimile: (480) 429-3100
Email: rwilliams@beusgilbert.com
Email: amorris@beusgilbert.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

Attorneys for the Receiver

Steven M. Farina
Katherine M. Turner
WILLIAMS & CONNOLLY LLP
680 Maine Ave SW
Washington, DC 20024
Telephone: (202) 434-5000
Facsimile: (202) 434-5029
Email: sfarina@wc.com
Email: kturner@wc.com

Attorneys for Ernst & Young LLP

DONE by the parties on this _____ day of _____, 20__.

EXHIBIT F

**INTERNATIONAL INSTITUTE FOR CONFLICT PREVENTION & RESOLUTION
NON-ADMINISTERED ARBITRATION**

DANIEL S. NEWMAN, as RECEIVER for
FOUNDING PARTNERS STABLE VALUE
FUND, LP; FOUNDING PARTNERS STABLE
VALUE FUND II, LP; FOUNDING
PARTNERS GLOBAL FUND, LTD.; and
FOUNDING PARTNERS HYBRID-VALUE
FUND, L.P.,

Claimant,

vs.

ERNST & YOUNG, LLP, a Delaware Limited
Liability Partnership,

Respondent.

CPR Case No. G-21-63-S

JOINT STIPULATION OF DISMISSAL

Having agreed to a settlement among and between the Receiver and Ernst & Young LLP (the "Settlement"), and following the entry of Final Settlement Approval & Bar Order by the U.S. District Court for the Middle District of Florida (Case No. 2:09-CV-229-JES-NPM), the Parties hereby stipulate and agree, by and between counsel, and pursuant to Rule 19.4 of the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration, that: (1) all claims set forth in the Complaint for Damages and Demand for Arbitration, filed on March 10, 2021, are dismissed with prejudice by joint stipulation; (2) all claims for relief between the Receiver and Ernst & Young LLP are dismissed with prejudice by joint stipulation; and (3) each Party bears its own costs and attorneys' fees.

L. Richard Williams
Alex Morris
BEUS GILBERT MCGRODER PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Facsimile: (480) 429-3100
Email: rwilliams@beusgilbert.com
Email: amorris@beusgilbert.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

Attorneys for the Receiver

Steven M. Farina
Katherine M. Turner
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
Telephone: (202) 434-5000
Facsimile: (202) 434-5029
Email: sfarina@wc.com
Email: kturner@wc.com

Attorneys for Ernst & Young LLP

DONE by the parties on this _____ day of _____, 20__.

EXHIBIT G

CONSENT TO SETTLEMENT AND RELEASE

This Consent to Settlement and Release (“Consent”) is entered into by FP Offshore, Ltd. (“FP Offshore”) in connection with the Settlement entered into by the Receiver (as defined below) and Ernst & Young LLP (“EY”).

WHEREAS, pursuant to a May 20, 2009 order in the action captioned *SEC v. Founding Partners Capital Management Co.*, Civil Action No. 2:09-cv-00229-JES-SPC (M.D. Fla.) (the “SEC Action”), Daniel S. Newman (the “Receiver”) was appointed as receiver for Founding Partners Capital Management Company and for Founding Partners Stable-Value Fund, L.P. (formerly known as 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. (formerly known as Founding Partners Equity Fund, L.P.) (collectively, the “Founding Partners Funds” and, together with Founding Partners Capital Management Company, the “Founding Partners Entities”);

WHEREAS, on December 30, 2010, the Receiver filed a Complaint in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), with the case captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Broward County Litigation,” and together with the Arbitrations (as defined below), the “Litigation”), asserting claims of the Founding Partners Funds and naming Mayer Brown, LLP (“Mayer Brown”) and EY as defendants;

WHEREAS, the Receiver amended his Complaint in the Broward County Litigation on four occasions (April 7, 2011, April 25, 2011, August 3, 2015, and February 1, 2018) and, in the course of such amendments, added claims of 38 Assignors (the “Assigned Claims”);

WHEREAS, the Fourth Amended Complaint in the Broward County Litigation dated February 1, 2018 asserts claims against EY for professional malpractice, aiding and abetting a breach of fiduciary duty, breach of fiduciary duty, aiding and abetting a fraud, fraud, aiding and abetting breaches of statutory duties, and negligent misrepresentation;

WHEREAS, in the Broward Court, EY moved to compel arbitration of all the Receiver’s claims, based on arbitration clauses in engagement letters with three of the four Founding Partners Funds, and the Broward Court granted EY’s motion to compel arbitration of all claims against it;

WHEREAS, on October 11, 2017, on a motion for rehearing filed by the Receiver, the Florida Fourth District Court of Appeal affirmed the trial court’s order in part, reversed it in part, and found that Founding Partners Global Fund Ltd.’s “claims are derivative of those of the other Founding Partners” and were therefore arbitrable, but that the Assigned Claims were not subject to arbitration;

WHEREAS, in a Complaint for Damages and Demand for Arbitration, the Receiver brought claims in a proceeding before the American Arbitration Association (“AAA”) against

EY on August 16, 2018, with the case captioned *Newman v. Ernst & Young LLP*, AAA Case No. 01-18-0003-2029 (the “AAA Arbitration”);

WHEREAS, the AAA panel heard oral arguments on EY’s motion to dismiss certain of the arbitrable claims on January 18, 2020, and on March 27, 2020, granted in part EY’s motion to dismiss, stating that certain claims were dismissed without prejudice because they were not arbitral in AAA (the “CPR Claims”);

WHEREAS, on March 10, 2021, in a Complaint for Damages and Demand for Arbitration, the Receiver brought the CPR Claims in a proceeding before the International Institute for Conflict Prevention & Resolution (“CPR”) against EY, with the case captioned *Newman v. Ernst & Young, LLP*, CPR Case No. G-21-63-S (the “CPR Arbitration,” and together with the AAA Arbitration, the “Arbitrations”).

WHEREAS, in the Litigation, the Receiver asserts claims against EY in his capacities as (i) the court-appointed receiver for the Founding Partners Funds; and (ii) the assignee of certain claims of certain of the Assignors;

WHEREAS, FP Offshore is the owner of Approved Claim No. 217 in the Receivership Estate and the assignee of certain other rights pursuant to the Assignments dated April 5, 2016 from Founding Partners Global Fund, Ltd. (in Official Liquidation) and Founding Partners Global Fund Inc. (in Official Liquidation) (collectively, the “Assignments”);

WHEREAS, the Receiver and EY have agreed to settle all claims, disputes, and issues between them, including all claims in the Litigation, as set forth in a Settlement Agreement by and between them (the “Settlement Agreement,” to which this Consent is attached as Exhibit G);

WHEREAS, EY has asked FP Offshore to confirm its consent and acceptance of the Settlement Agreement and to provide EY the releases set forth herein;

WHEREAS, the Receiver intends to seek approval in the SEC Action to make a further distribution from the Receivership Estate under a plan to be submitted to, and approved by, the Court in the SEC Action (the “Distribution Plan”);

WHEREAS, the Receiver has represented that the above recitals are true and correct to the best of his knowledge, information, and belief after reasonable inquiry;

NOW, THEREFORE, in consideration of the agreements, covenants, and releases set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FP Offshore agrees as follows:

1. Approval and Acceptance. FP Offshore hereby acknowledges, agrees, and confirms that, by its execution of this Consent, FP Offshore approves and accepts the Settlement Agreement, and agrees to the releases within this Consent.

2. Definitions. Capitalized terms used herein and not otherwise defined in this Consent shall have the meaning set forth in the Settlement Agreement.

3. Consent as Supplement to Settlement Agreement and Final Settlement Approval & Bar Order. FP Offshore acknowledges that it meets the definitions of “Approved Claimant” and “Bar Order Party” under the Settlement Agreement. This Consent is in addition to the releases and relief provided to EY in the Settlement Agreement and Final Settlement Approval & Bar Order, and is not intended to alter the terms of the Settlement Agreement or Final Settlement Approval & Bar Order, including, without limitation, those terms that apply to FP Offshore by virtue of its status as an Approved Claimant and Bar Order Party.

4. Legal Capacity. FP Offshore represents that it has the requisite power, authority, and legal capacity to make, execute, enter into, and deliver this Consent and to fully perform its duties and obligations under this Consent, and that no approvals by any court or regulatory body are required to provide it with such authority. FP Offshore also represents that neither this Consent nor the performance by FP Offshore of any duty or obligations under this Consent will violate any other contract, agreement, obligation, or restriction by which FP Offshore is bound.

5. No Challenge. FP Offshore shall not challenge the approval of the Settlement, the Final Settlement Approval & Bar Order, or the dismissals with prejudice of the Broward County Litigation, the AAA Arbitration, or the CPR Arbitration, nor shall it encourage or assist any Person in challenging the Settlement, the Final Settlement Approval & Bar Order, or the motions or other actions to obtain dismissals with prejudice of the Litigation.

6. Release. As of the Settlement Effective Date, FP Offshore, on behalf of itself and its officers, directors, partners, predecessors, and successors, including in its capacity as the owner of Approved Claim No. 217 in the Receivership Estate and in its capacity as the assignee of other rights pursuant to the Assignments, and otherwise to the fullest extent of FP Offshore’s authority, including on behalf of any other Person (as defined in the Settlement Agreement) claiming or purporting to hold a claim by or through FP Offshore or its predecessors (collectively, with FP Offshore, the “FP Offshore Releasing Parties”), fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Settled Claims against EY and the other EY Released Parties.

7. Release of Unknown Claims. With respect to the Settled Claims (which include the Unknown Claims), FP Offshore, on behalf of itself and the FP Offshore Releasing Parties, expressly waives, releases, and relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute. California Code § 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

8. Covenant Not to Sue. As of the Agreement Date, and except as may be necessary to seek the approvals and orders appurtenant to the Settlement Agreement in the SEC Action or

the Litigation, FP Offshore (on behalf of itself and the other FP Offshore Releasing Parties) covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against EY or any of the other EY Released Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or relates to the Settled Claims, whether in a court or any other Forum, and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever.

9. No Release of Obligations under Settlement Agreement. Notwithstanding anything to the contrary in this Consent, the releases and covenants contained in this Consent do not release the obligations of EY under the Settlement Agreement.

10. No Additional Claims. FP Offshore represents that it does not know of, and has not filed or asserted, any claim or potential claim that it owns, possesses, or has the authority to assert against EY or any of the other EY Released Parties that is not being released pursuant to the terms of this Consent or the Final Settlement Approval and Bar Order.

11. No Assignment, Encumbrance, or Transfer. FP Offshore represents that it is the beneficial owner of any Settled Claim that it is releasing under this Consent and the owner of Approved Claim No. 217; that it is the assignee of certain other rights pursuant to the Assignments; and that it has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised any part of Approved Claim No. 217, any of the rights it acquired pursuant to the Assignments, or any of the Settled Claims it is releasing under this Consent.

12. Final and Complete Resolution. FP Offshore intends this Consent to be and constitute a final, complete, and worldwide resolution of all matters and disputes between it and EY and the other EY Released Parties, and this Consent, along with the Settlement Agreement, shall be interpreted to effectuate this purpose.

13. Distribution. As an additional confirmation of certain of the releases that EY and the other EY Released Parties receive under this Consent, and without any alteration of the releases provided herein or in the Final Settlement Approval & Bar Order, FP Offshore must include the following statement, without alteration, on the request for confirmation of wire instruction related to FP Offshore's distribution of any portion of the Settlement Amount it receives from the Receiver pursuant to the Distribution Plan, or with any check sent to its investors, members, or beneficiaries that distributes any portion of the Settlement Amount that FP Offshore receives from the Receiver pursuant to the Distribution Plan, in each case below which the endorser will sign:

BY SIGNING THIS DOCUMENT AND RECEIVING FUNDS FROM THE DISTRIBUTION PLAN, SOME OF WHICH FUNDS DERIVE FROM THE SETTLEMENT AGREEMENT, I CONFIRM THAT I HAVE RECEIVED A COPY OF THE SETTLEMENT AGREEMENT BETWEEN THE FOUNDING PARTNERS RECEIVER AND ERNST & YOUNG LLP, AND THAT I RELEASE ALL SETTLED CLAIMS, KNOWN OR UNKNOWN, ACCRUED

OR NOT, AGAINST EY AND THE OTHER EY RELEASED PARTIES (AS THOSE TERMS ARE DEFINED IN THE SETTLEMENT AGREEMENT) ARISING FROM OR RELATING TO FOUNDING PARTNERS CAPITAL MANAGEMENT COMPANY, FOUNDING PARTNERS GLOBAL FUND, LTD. AND THE OTHER FOUNDING PARTNERS FUNDS, ANY OF THEIR PERSONNEL, OR ANY INVESTMENT IN SUCH ENTITIES, AS SET FORTH MORE FULLY IN THE SETTLEMENT AGREEMENT.

In the event that any investor or other Person entitled to receive funds under the Distribution Plan fails to endorse the request for confirmation of wire instructions or check as set forth in this Paragraph 13, and, in a proceeding commenced in the Grand Court of the Cayman Islands (“Cayman Payment Proceeding”), the court thereafter orders FP Offshore to pay that investor or other Person entitled to receive any portion of the funds distributed under the Distribution Plan that FP Offshore receives from the Receiver such sums as it finds are due to that Person pursuant to Cayman Islands law, EY shall not have a claim against FP Offshore or its directors, their respective agents, officers, or professional advisors by virtue of complying with such order and paying such sums, so long as FP Offshore has (a) provided email notice to EY, through its counsel at Williams & Connolly LLP, of the initiation of the Cayman Payment Proceeding as soon as practicable after FP Offshore becomes aware of such proceeding, and in all events prior to the entry of an order by the Grand Court of the Cayman Islands regarding the distribution of the funds at issue; (b) not objected in the event EY decides to seek to intervene in the proceeding; (c) informed the Grand Court of the Cayman Islands in the Cayman Payment Proceeding that the funds at issue were received by FP Offshore pursuant to a U.S.-court approved Distribution Plan, certain of the funds for which were derived in connection with a settlement between the Receiver and EY in litigation between those parties, and that EY has stated that it would not have paid the Settlement Amount absent assurances of “total peace” and complete releases of EY and the other EY Released Parties, of which the language set forth in this Paragraph 13 is an important part; and (d) in the event EY does not intervene, provided EY with the court record(s) in which FP Offshore provided the notification required by subsection (a) and the orders from the Grand Court of the Cayman Islands in the Cayman Payment Proceeding providing for the distribution of the funds. The notice to EY required by this Paragraph subsection (a) shall be effectuated by e-mail to the following e-mail addresses: sfarina@wc.com and kturner@wc.com. Nothing in this Paragraph shall require FP Offshore to defend any Cayman Payment Proceeding or appeal the order entered in any such proceeding.

14. No Assignment. FP Offshore may not assign any of its rights or obligations under this Consent without the express written consent of EY.

15. Support for Settlement. FP Offshore represents and warrants that, prior to executing this Consent, FP Offshore representatives consulted with certain of FP Offshore’s investors regarding their views on the proposed settlement with EY. FP Offshore represents and warrants that no investor or other Person entitled to receive any portion of funds under the Distribution Plan has informed FP Offshore’s directors, in the course of such consultations, prior to FP Offshore executing this Consent, that such investor or other Person objects to FP Offshore’s execution of this consent or to such investor or other Person providing the release set forth in Paragraph 13 prior to receiving his, her, or its share of funds distributed under the Distribution Plan that the Receiver distributes to FP Offshore pursuant to such plan.

16. Disclaimer of Reliance. FP Offshore represents and acknowledges that in entering into this Consent, it has not relied on, and has not been induced by, any representation, warranty, statement, estimate, communication, or information, of any nature whatsoever, whether written or oral, by or on behalf of EY or any agent thereof, or concerning EY, except as expressly set forth in this Consent or the Settlement Agreement. FP Offshore represents and acknowledges that it is relying solely on the express terms contained within this Consent and the Settlement Agreement, that it has consulted with legal counsel and advisors, that it has considered the advantages and disadvantages of entering into this Consent, and that it has relied solely on its own judgment and advice of its legal counsel in negotiating and entering into this Consent. FP Offshore is entering into this Consent freely, with the advice of counsel and in the absence of coercion, duress, or undue influence.

17. Termination. If the Settlement Agreement terminates pursuant to the terms of the Settlement Agreement, then this Consent shall be deemed null and void and of no further effect whatsoever (except the provisions of this Paragraph 17 shall survive), shall not be admissible in any ongoing or future proceedings for any purpose whatsoever, and shall not be the subject or basis for any claims by or against FP Offshore. If this Consent terminates pursuant to this Paragraph 17, then FP Offshore will be returned to the position it occupied immediately before executing this Consent. Except as expressly set forth in this Paragraph 17, this Consent may not be terminated.

18. Governing Law and Venue. The validity, interpretation, and performance of this Consent shall be governed by and construed and enforced in accordance with the laws of the State of Florida, including any applicable statutes of limitation, without regard to any otherwise applicable principles of conflicts or law or choice of law rules (whether of the State of Florida or any other jurisdiction) that would result in the application of substantive or procedural rules or law of any other jurisdiction. FP Offshore agrees that any action or proceeding arising out of or relating to this Consent shall be brought only in the Broward Court, and that no costs or attorneys' fees may be awarded to FP Offshore in connection with such a proceeding.

19. Integration and Modification. This Consent, read together with the Settlement Agreement, sets forth the entire understanding and agreement of FP Offshore with respect to the subject matter of this Consent, and supersedes all prior agreements, understandings, negotiations, and communications, whether oral or written, with respect to such subject matter, including drafts of the Consent or the Settlement Agreement. Neither this Consent, nor any of its provisions or terms, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by FP Offshore and EY.

20. Signatures. A signature to this Consent that is delivered by fax, e-mail, or other electronic means shall be deemed to be, and shall have the same binding effect as, a handwritten, original signature.

IN WITNESS WHEREOF, FP Offshore has executed this Consent signifying its agreement to the foregoing terms.

FP Offshore, Ltd.

By: _____
Ian Stokoe, Director

Dated: _____, 2023

EXHIBIT H

ESCROW AGREEMENT

This Escrow Agreement dated this 24th day of July, 2023 (the “Escrow Agreement”), is entered into by and among Daniel S. Newman, not individually, but solely in his capacity as the Court-appointed receiver for Founding Partners Capital Management Company; 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. (the “Receiver”), Ernst & Young, LLP (“EY,” and together with the Receiver, the “Parties,” and individually, each a “Party”), and Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States, as escrow agent (“Escrow Agent”).

RECITALS

A. The Parties entered into a settlement agreement dated July 24, 2023 (the “Settlement Agreement”) to resolve the Receiver’s claims against EY currently pending in the Seventeenth Judicial Circuit in and for Broward County, Florida; the American Arbitration Association; and the International Institute for Conflict Prevention & Resolution, as set forth in further detail in the Settlement Agreement. The Settlement Agreement provides amongst its terms for EY, within thirty (30) days of the Agreement Date, to deliver the Settlement Amount of two-hundred million United States dollars (\$200,000,000) to the Escrow Account, to be held in escrow until EY instructs the transfer of the funds to the Payment Account or, in the event certain Conditions do not occur, EY instructs the return of the funds to EY. Unless otherwise defined herein, all capitalized terms in this Escrow Agreement shall have the same meaning as defined in the Settlement Agreement.

B. Upon EY’s placement of the Settlement Amount into the Escrow Account, the Escrow Agent agrees to hold and distribute such funds in accordance with the terms of this Escrow Agreement.

C. The Parties acknowledge that the Escrow Agent is not a party to, is not bound by, and has no duties or obligations under, the Settlement Agreement, that all references in this Escrow Agreement to the Settlement Agreement are for convenience, and that the Escrow Agent shall have no implied duties beyond the express duties set forth in this Escrow Agreement.

In consideration of the promises and agreements of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and the Escrow Agent agree as follows:

ARTICLE 1 ESCROW DEPOSIT

Section 1.1. Receipt of Escrow Property. Subject to and pursuant to the terms of the Settlement Agreement, EY anticipates that it will deliver to the Escrow Agent, via wire to the Escrow Account in accordance with the instructions provided by the Receiver in substantially the form of Exhibit I of the Settlement Agreement, the amount of two-hundred million United States dollars (\$200,000,000) (the “Escrow Property”) in immediately available funds.

Section 1.2. Interest.

(a) The Escrow Agent is authorized and directed to hold the Escrow Property in the Escrow Account, which shall be an escrow holding account bearing the available rate of interest for such escrow holding accounts. The Escrow Agent shall not invest any of the Escrow Property in any manner. Any interest income on the Escrow Property shall become part of the Escrow Property, and shall be disbursed in accordance with Section 1.3 or Section 3.5 of this Escrow Agreement.

(b) As soon as practicable following the last day of each calendar month during the term of this Escrow Agreement, the Escrow Agent will deliver to the Parties a statement (a "Monthly Statement") setting forth: (i) the value of the Escrow Property in the Escrow Account at such date; (ii) the amount of interest earned on the Escrow Property during the period covered by such Monthly Statement; and (iii) the amounts, if any, disbursed from the Escrow Property in accordance with the terms of this Escrow Agreement with respect to the period covered by such Monthly Statement.

Section 1.3. Disbursements. The Escrow Agent shall hold the Escrow Property in the Escrow Account until such time as EY issues to the Escrow Agent one of the following instructions:

- (a) an executed Instruction to Transfer Escrow Property to the Receiver's Payment Account, in substantially the form set forth in Exhibit C to this Escrow Agreement, in which case the Escrow Agent shall execute the instructions therein to effectuate the immediate transfer of the Escrow Property from the Escrow Account to the Payment Account; or
- (b) an executed Instruction to Transfer Escrow Property to EY's Repayment Account, in substantially the form set forth as Exhibit D to this Escrow Agreement, in which case the Escrow Agent shall execute the instructions therein to effectuate the transfer of the Escrow Property from the Escrow Account to the Repayment Account twenty-five (25) days after receipt of the executed Instruction to Transfer Escrow Property to EY's Repayment Account.

The Escrow Agent shall not make any other disbursement or transfer of the Escrow Property other than those authorized in Section 1.3(a) or (b) of this Escrow Agreement, except as set forth in Section 3.5.

Section 1.4. Security Procedure for Transfers of Escrow Property. Prior to any disbursement or transfer of the Escrow Property, whether pursuant to an EY instruction under Section 1.3 above or in connection with the resolution of a disagreement under Section 3.5(i) or (ii) below, the Escrow Agent shall confirm such instruction received in the name of a Party by means of the security procedure selected by such Party and communicated to the Escrow Agent through a signed certificate in the form of Exhibit A-1 or Exhibit A-2 attached hereto, which upon receipt by the Escrow Agent shall become a part of this Escrow Agreement. Once delivered to the Escrow Agent, Exhibit A-1 or Exhibit A-2 may be revised or rescinded only by a writing signed by an authorized

representative of the Party. Such revisions or rescissions shall be effective only after actual receipt and following such period of time as may be necessary to afford the Escrow Agent a reasonable opportunity to act on it. If a revised Exhibit A-1 or A-2 or a rescission of an existing Exhibit A-1 or A-2 is delivered to the Escrow Agent by an entity that is a successor-in-interest to such Party, such document shall be accompanied by additional documentation satisfactory to the Escrow Agent showing that such entity has succeeded to the rights and responsibilities of the Party under this Escrow Agreement.

The Parties understand that the Escrow Agent's inability to receive or confirm funds transfer instructions pursuant to the security procedure selected by such Party may result in a delay in accomplishing such funds transfer, and agree that the Escrow Agent shall not be liable for any loss caused by any such delay.

Section 1.5. Income Tax Allocation and Reporting.

(a) The Parties agree that, for tax reporting purposes, all interest income on the Escrow Property shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service, be reported as having been earned by the Receiver and Receivership Estate, whether or not such income was disbursed during such calendar year, except that in the case that the Escrow Property is transferred to EY's Repayment Account, all interest shall be reported as having been earned by EY in the year that the Escrow Property was transferred to the Repayment Account.

(b) For certain payments made pursuant to this Escrow Agreement, the Escrow Agent may be required to make a "reportable payment" or "withholdable payment" and in such cases the Escrow Agent shall have the duty to act as a payor or withholding agent, respectively, that is responsible for any tax withholding and reporting required under Chapters 3, 4, and 61 of the United States Internal Revenue Code of 1986, as amended (the "Code"). The Escrow Agent shall have the sole right to make the determination as to which payments are "reportable payments" or "withholdable payments." Within thirty (30) days of the Agreement Date, the Parties shall each provide to the Escrow Agent an executed IRS Form W-9 or appropriate IRS Form W-8 (or, in each case, any successor form), and shall promptly update any such form to the extent such form becomes obsolete or inaccurate in any respect during the term of the Escrow Agreement. The Escrow Agent shall have the right to request from any Party to this Escrow Agreement any additional forms, documentation, or other information as may be reasonably necessary for the Escrow Agent to satisfy its reporting and withholding obligations under the Code. To the extent any such forms to be delivered under this Section 1.5(b) are not provided prior to the date hereof or by the time the related payment is required to be made or are determined by the Escrow Agent to be incomplete and/or inaccurate in any material respect, the Escrow Agent shall be entitled to withhold (without liability) a portion of any interest earned on the Escrow Property to the extent withholding is required under Chapters 3, 4, or 61 of the Code, and shall have no obligation to gross up any such payment.

(c) To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the interest on the Escrow Property, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Property. In the event the Escrow Property

is disbursed pursuant to Section 1.3(a) of this Escrow Agreement and for such time as the Escrow Property remains in the Escrow Account, the Receiver shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Property and the interest thereon unless such tax, late payment, interest, penalty or other expense was directly caused by the negligence, gross negligence, or misconduct of the Escrow Agent. In the event the Escrow Property is disbursed pursuant to Section 1.3(b) of this Escrow Agreement, EY shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Property and the interest thereon unless such tax, late payment, interest, penalty or other expense was directly caused by the negligence, gross negligence, or misconduct of the Escrow Agent. The indemnifications provided by this Section 1.5(c) are in addition to the indemnification provided in Section 3.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

(d) The Parties hereto acknowledge that, in order to help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person or corporation who opens an account and/or enters into a business relationship. The Parties hereby agree that they shall provide the Escrow Agent with such information as the Escrow Agent may request including, but not limited to, each Party's name, physical address, tax identification number and other information that will assist the Escrow Agent in identifying and verifying each Party's identity, such as organizational documents, certificates of good standing, licenses to do business, or other pertinent identifying information.

Section 1.6. Termination. This Escrow Agreement shall terminate upon the disbursement of all of the Escrow Property in accordance with Section 1.3 of this Escrow Agreement, except that the provisions of Sections 1.5(c), 3.1, 3.2, and 3.5 hereof shall survive termination.

Section 1.7. Notice. Any correspondence or notice to be provided under this Escrow Agreement shall be sent to all parties.

ARTICLE 2 DUTIES OF THE ESCROW AGENT

Section 2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstance will the Escrow Agent be deemed to be a fiduciary to any Party or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. With the exceptions of the instructions described in Section 1.3 of this Escrow Agreement and the definitions of capitalized terms incorporated by reference from the Settlement Agreement into this Escrow Agreement, the Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any

provision of any such agreement, instrument, or document. Except with respect to the instructions described in Section 1.3 of this Escrow Agreement and the definitions of capitalized terms incorporated by reference from the Settlement Agreement into this Escrow Agreement, references in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

Section 2.2. Duly Authorized Agents. Concurrent with the execution of this Escrow Agreement, the Parties each shall deliver to the Escrow Agent Exhibit A-1 and Exhibit A-2, which contain authorized signer designations in Part I thereof. The Parties represent and warrant that each person signing this Escrow Agreement is duly authorized and has legal capacity to execute and deliver this Escrow Agreement, along with each exhibit, agreement, document, and instrument to be executed and delivered by the Parties to this Escrow Agreement.

Section 2.3. No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

ARTICLE 3 PROVISIONS CONCERNING THE ESCROW AGENT

Section 3.1. Indemnification. The Parties, jointly and severally, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, attorneys' fees and expenses or other professional fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates, unless such loss, liability, cost, damage or expense shall have been directly caused by the misconduct, negligence, or gross negligence of the Escrow Agent. The provisions of this Section 3.1 shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 3.2. Limitation of Liability. THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S NEGLIGENCE, GROSS NEGLIGENCE, OR MISCONDUCT, OR (II) SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

Section 3.3. Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and

expenses to which the Escrow Agent is entitled through the date of removal. Such resignation or removal, as the case may be, shall be effective thirty (30) calendar days after the delivery of such notice or upon the earlier joint appointment by the Parties of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order, upon which the Escrow Agent shall immediately transfer the Escrow Property to the designated successor escrow agent. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) calendar days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

Section 3.4. Compensation. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit B, which compensation shall be paid by the Receiver by check. In the event that the Settlement Agreement is terminated and the Escrow Property is returned to EY, EY shall reimburse the Receiver for any compensation the Receiver paid to the Escrow Agent pursuant to this Section 3.4. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated by the Receiver for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event. If any amount due to the Escrow Agent hereunder is not paid within thirty (30) calendar days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Property with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Property.

Section 3.5. Disagreements. If any conflict, disagreement, or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, retain the Escrow Property until the Escrow Agent (i) receives a final non-appealable order from the U.S. District Court for the Middle District of Florida (Fort Myers Division), consistent with the venue provision provided for in Section 4.5 of this Agreement or (ii) receives a written agreement executed by each of the Parties directing delivery of the Escrow Property, in which event the Escrow Agent shall be authorized to disburse the Escrow Property in accordance with such final court order, or written agreement of the Parties, or (iii) files an interpleader action in the U.S. District Court for the Middle District of Florida (Fort Myers Division). Any such court order shall be accompanied by a written

instrument of the presenting Party certifying that such court order is final, non-appealable and from the U.S. District Court for the Middle District of Florida (Fort Myers Division), upon which instrument the Escrow Agent shall be entitled to conclusively rely without further investigation. The Escrow Agent shall be entitled to act on any such written agreement of the Parties or court order.

Section 3.6. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation, or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges of the Escrow Agent as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 3.7. Attachment of Escrow Property; Compliance with Legal Orders. In the event that any Escrow Property shall be attached, garnished, or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment, or decree shall be made or entered by any court order affecting the Escrow Property, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders, or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order, or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance, even if such writ, order or decree is subsequently reversed, modified, annulled, set aside, or vacated. The Escrow Agent shall further have no obligation to pursue any action that is not in accordance with applicable law.

Section 3.8 Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

ARTICLE 4 MISCELLANEOUS

Section 4.1. Binding Agreement, Successors and Assigns. The Parties and Escrow Agent represent and warrant that the execution and delivery of this Escrow Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Escrow Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms. This Escrow Agreement shall be binding on and inure to the benefit of the Parties

and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

Section 4.2. Escheat. The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Property escheat by operation of law.

Section 4.3. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) on the day of transmission if sent by electronic mail (“e-mail”, as long as such e-mail is accompanied by a PDF signature or similar version of the relevant document bearing an authorized signature, which such signature shall, in the case of each of the parties, be a signature set forth in Exhibit A-1 or A-2, as applicable) to the e-mail address given below, and written confirmation of receipt is obtained promptly after completion of transmission, or (iii) by overnight delivery with a reputable national overnight delivery service. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to Receiver:

Daniel S. Newman
Jonathan Etra
Nelson Mullins Riley & Scarborough LLP
One Biscayne Tower — 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 373-9400
Email: dan.newman@nelsonmullins.com
Email: jonathan.etra@nelsonmullins.com

Richard Williams
Alex Morris
Paul Dirkmaat
Beus Gilbert McGroder PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Email: rwilliams@beusgilbert.com
Email: amorris@beusgilbert.com

Email: pdirkmaat@beusgilbert.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
Email: szg@grossmanroth.com

If to EY:

Tobias Stern
Ernst & Young LLP
One Manhattan West
New York, NY 10001
Telephone: (212) 773-4117
Email: tobias.stern@ey.com

Steven M. Farina
Katherine M. Turner
Williams & Connolly LLP
680 Maine Ave SW
Washington, DC 20024
Telephone: (202) 434-5526
E-mail: sfarina@wc.com
E-mail: kturner@wc.com

If to the Escrow Agent:

Wells Fargo Bank, National Association
Legal Specialty Group
550 S. Tryon Street, 45th Floor
Charlotte, NC 28202, MAC D1086-451
Attention: Peter F. Haugh
Telephone: (704) 374-6938
E-mail: peter.haugh@wellsfargo.com

Section 4.4. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Section 4.5. Venue. The sole and exclusive venue for all disputes arising out of or related in any way to this Agreement, including any disputes or relief referenced in Section 3.5 of this Agreement, shall be in the U.S. District Court for the Middle District of Florida (Fort Myers Division).

Section 4.6. Entire Agreement. This Escrow Agreement and the exhibits hereto set forth the entire agreement and understanding of the Parties and the Escrow Agent related to the Escrow Property.

Section 4.7. Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent.

Section 4.8. Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any Party or the Escrow Agent of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

Section 4.9. Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

Section 4.10. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. This Escrow Agreement shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"); (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any party and shall have no duty to investigate, confirm, or otherwise verify the validity or authenticity thereof.

Section 4.11. Trial by Jury. Each of the Parties and the Escrow Agent hereby irrevocably waives all right to trial by jury to the extent permitted by law in any litigation, action, proceeding in any court arising out of, relating to or in connection with this Escrow Agreement.

Section 4.12. Publication; disclosure. By executing this Escrow Agreement, the Parties and the Escrow Agent acknowledge that this Escrow Agreement (including the exhibits hereto) contains certain information that is sensitive and confidential in nature and agree that such information needs to be protected from improper disclosure, including the publication or dissemination of this Escrow Agreement and related information to individuals or entities not a party to this Escrow Agreement. The Parties further agree to take reasonable measures to mitigate any risks associated with the publication or disclosure of this Escrow Agreement and information contained therein,

including, without limitation, the redaction of the manual signatures of the signatories to this Escrow Agreement, or, in the alternative, publishing a conformed copy of this Escrow Agreement. If a Party must disclose or publish this Escrow Agreement or information contained therein pursuant to any regulatory, statutory, or governmental requirement, as well as any judicial, or administrative order, subpoena or discovery request, it shall notify in writing the other Party and the Escrow Agent at the time of execution of this Escrow Agreement of the legal requirement to do so. If any Party becomes aware of any threatened or actual unauthorized disclosure, publication or use of this Escrow Agreement, that Party shall promptly notify in writing the other Party and the Escrow Agent and shall be liable for any unauthorized release or disclosure.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

By: Daniel S. Newman,
Not Individually, but solely in his
capacity as Court-appointed
Receiver

Name: Daniel S. Newman

Title: Receiver

By: Ernst & Young LLP

Name: Meredith Moss

Title: Deputy General Counsel

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Escrow Agent

By: _____

Name: _____

Title: _____

EXHIBIT A-1

The Receiver certifies that the names, titles, telephone numbers, e-mail addresses, and specimen signatures set forth in Parts I and II of this Exhibit A-1 identify the persons authorized to provide direction and initiate or confirm transactions, including funds transfer instructions, on behalf of the Receiver, and that the option checked in Part III of this Exhibit A-1 is the security procedure selected by the Receiver for use in verifying that a funds transfer instruction received by the Escrow Agent is that of the Receiver.

The Receiver has reviewed each of the security procedures and has determined that the option checked in Part III of this Exhibit A-1 best meets its requirements; given the size, type and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part III of this Exhibit A-1, the Receiver acknowledges that it has elected to not use the other security procedures described and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by the Receiver.

NOTICE: The security procedure selected by the Receiver will not be used to detect errors in the funds transfer instructions given by the Receiver.

Part I

Name, Title, Telephone Number, Electronic Mail (“e-mail”) Address and Specimen Signature for person(s) designated to provide direction, including but not limited to funds transfer instructions, and to otherwise act on behalf the Receiver

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Part II

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Part III

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part II above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit A-1.

CHECK box, if applicable:

If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail, as described in Option 2.

Option 2. Confirmation by e-mail. The Escrow Agent shall confirm funds transfer instructions by e-mail to a person at the e-mail address specified for such person in Part II of this Exhibit A-1. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit A-1. The Receiver understands the risks associated with communicating sensitive matters, including time sensitive matters, by e-mail. The Receiver further acknowledges that instructions and data sent by e-mail may be less confidential or secure than instructions or data transmitted by other methods. The Escrow Agent shall not be liable for any loss of the confidentiality of instructions and data prior to receipt by the Escrow Agent.

CHECK box, if applicable:

If the Escrow Agent is unable to obtain confirmation by e-mail, the Escrow Agent may, at its discretion, confirm by telephone call-back, as described in Option 1.

*Option 3. Delivery of funds transfer instructions by password protected file transfer system only - no confirmation. The Escrow Agent offers the option to deliver funds transfer instructions through a password protected file transfer system. If the Receiver wishes to use the password protected file transfer system, further instructions will be provided by the Escrow Agent. If the Receiver chooses this Option 3, it agrees that no further confirmation of funds transfer instructions will be performed by the Escrow Agent.

*Option 4. Delivery of funds transfer instructions by password protected file transfer system with confirmation. Same as Option 3 above, but the Escrow Agent shall confirm funds transfer instructions by telephone call-back or e-mail (must check at least one, may check both) to a person at the telephone number or e-mail address designated on Part II above. By checking a box in the prior sentence, the party shall be deemed to have agreed to the terms of such confirmation option as more fully described in Option 1 and Option 2 above.

**The password protected file system has a password that expires every 60 days. If you anticipate having infrequent activity on this account, please consult with your Escrow Agent before selecting this option.*

Dated this ____ day of _____, 20__.

By _____

Name:

Title:

EXHIBIT A-2

EY certifies that the names, titles, telephone numbers, e-mail addresses and specimen signatures set forth in Parts I and II of this Exhibit A-2 identify the persons authorized to provide direction and initiate or confirm transactions, including funds transfer instructions, on behalf of EY, and that the option checked in Part III of this Exhibit A-2 is the security procedure selected by EY for use in verifying that a funds transfer instruction received by the Escrow Agent is that of EY.

EY has reviewed each of the security procedures and has determined that the option checked in Part III of this Exhibit A-2 best meets its requirements; given the size, type and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part III of this Exhibit A-2, EY acknowledges that it has elected to not use the other security procedures described and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by EY.

NOTICE: The security procedure selected by EY will not be used to detect errors in the funds transfer instructions given by EY.

Part I

Name, Title, Telephone Number, Electronic Mail (“e-mail”) Address and Specimen Signature for person(s) designated to provide direction, including but not limited to funds transfer instructions, and to otherwise act on behalf of EY

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Part II

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Part III

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

- Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part II above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit A-2.
- CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail, as described in Option 2.
- Option 2. Confirmation by e-mail. The Escrow Agent shall confirm funds transfer instructions by e-mail to a person at the e-mail address specified for such person in Part II of this Exhibit A-2. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit A-2. EY understands the risks associated with communicating sensitive matters, including time sensitive matters, by e-mail. EY further acknowledges that instructions and data sent by e-mail may be less confidential or secure than instructions or data transmitted by other methods. The Escrow Agent shall not be liable for any loss of the confidentiality of instructions and data prior to receipt by the Escrow Agent.
- CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by e-mail, the Escrow Agent may, at its discretion, confirm by telephone call-back, as described in Option 1.
- *Option 3. Delivery of funds transfer instructions by password protected file transfer system only - no confirmation. The Escrow Agent offers the option to deliver funds transfer instructions through a password protected file transfer system. If EY wishes to use the password protected file transfer system, further instructions will be provided by the Escrow Agent. If EY chooses this Option 3, it agrees that no further confirmation of funds transfer instructions will be performed by the Escrow Agent.
- *Option 4. Delivery of funds transfer instructions by password protected file transfer system with confirmation. Same as Option 3 above, but the Escrow Agent shall confirm funds transfer instructions by telephone call-back or e-mail (must check at least one, may check both) to a person at the telephone number or e-mail address designated on Part II above. By checking a box in the prior sentence, the party shall be deemed to have agreed to the terms of such confirmation option as more fully described in Option 1 and Option 2 above.

**The password protected file system has a password that expires every 60 days. If you anticipate having infrequent activity on this account, please consult with your Escrow Agent before selecting this option.*

Dated this ____ day of _____, 20__.

By _____
Name:
Title:

EXHIBIT B

FEEES OF ESCROW AGENT

Schedule of fees to provide escrow agent services

Account Establishment/Opening Fee \$2,500.00

EXHIBIT C

Wells Fargo Bank, National Association
Legal Specialty Group
550 S. Tryon Street, 45th Floor
Charlotte, NC 28202, MAC D1086-451
Attention: Peter F. Haugh
Telephone: (704) 374-6938
E-mail: peter.haugh@wellsfargo.com

Re: Instruction to Transfer Escrow Property and any Interest Income to Receiver's
Payment Account

To Whom It May Concern:

Pursuant to the Escrow Agreement dated July 24, 2023, Ernst & Young LLP,
requests that Wells Fargo Bank, N.A., the Escrow Agent, disburse all Escrow Property
plus interest earned thereon to the Receiver's Payment Account.

Ernst & Young LLP

By: Meredith Moss, Deputy General Counsel

EXHIBIT D

Wells Fargo Bank, National Association
Legal Specialty Group
550 S. Tryon Street, 45th Floor
Charlotte, NC 28202, MAC D1086-451
Attention: Peter F. Haugh
Telephone: (704) 374-6938
E-mail: peter.haugh@wellsfargo.com

Re: Instruction to Transfer Escrow Property and Interest Income to EY's Repayment Account

To Whom It May Concern:

Pursuant to the Escrow Agreement dated July 24, 2023, between Daniel S. Newman, not individually, but solely in his capacity as the Court-appointed receiver for Founding Partners Capital Management Company; 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. (the "Receiver"), Ernst & Young LLP ("EY"), and Wells Fargo Bank, National Association ("Wells Fargo"); and the Settlement Agreement dated July 24, 2023 between the Receiver and EY (the "Settlement Agreement"), EY requests that Wells Fargo, as Escrow Agent, disburse all Escrow Property in the amount of two-hundred million U.S. dollars (\$200,000,000), together with interest income in the amount of \$_____ and any additional interest earned between the date of this Instruction to Transfer Property and Interest Income to EY's Repayment Account (the "Instruction") and the date of disbursement, to EY's Repayment Account twenty-five (25) calendar days after receipt of this Instruction. All capitalized terms in this Instruction have the definitions ascribed to them in the Settlement Agreement.

In issuing this Instruction, EY and its counsel, Williams & Connolly LLP, represent that at least one of the following events has occurred:

1. At least one of the Conditions in subparagraphs (b) or (c) of Paragraph 23 of the Settlement Agreement has failed to come to pass in a manner that results in termination of the Settlement Agreement pursuant to Paragraph 52;
2. At least one of the Conditions in subparagraphs (d), (e), or (f) of Paragraph 23 of the Settlement Agreement has failed to come to pass because the Receiver has failed to execute the joint dismissal referred to in such subparagraph of Paragraph 23 of the Settlement Agreement; or
3. The Court has required or adopted a material modification of the Bar Order within the scope of Paragraph 53 of the Settlement Agreement and, after

exhausting the dispute resolution procedures in Paragraphs 53, 71 and 72 of the Settlement Agreement, (a) neither the Parties to the Settlement Agreement nor the Court has resolved the dispute; or (b) the final resolution of the dispute results in termination of the Settlement Agreement.

The undersigned represent they have the authority to sign this Instruction and on behalf of their respective entities.

Ernst & Young LLP
By: Meredith Moss, Deputy General Counsel

Williams & Connolly LLP
Steven M. Farina

Copy sent by e-mail and FedEx
on _____, 2023 to:

Dan Newman
Nelson Mullins Riley & Scarborough LLP
One Biscayne Tower, 21st Floor
2 South Biscayne Blvd
Miami, FL 33131
dan.newman@nelsonmullins.com

L. Richard Williams
Beus Gilbert McGroder PLLC
701 North 44th Street
Phoenix, AZ 85008
rwilliams@beusgilbert.com

Stuart Grossman
Grossman Roth Yaffa Cohen
2525 Ponce de Leon Blvd, Ste 1150
Coral Gables, FL 33134
szg@grossmanroth.com

EXHIBIT I

WIRE INSTRUCTION FORM

Capitalized terms in this Wire Instruction Form shall have the meanings set forth in the Settlement Agreement between Daniel S. Newman and Ernst & Young LLP (the “Settlement Agreement”), dated July 24, 2023.

The Receiver, by and through his undersigned counsel, hereby provides the following wire transfer instructions for the Escrow Account, as defined in Paragraph 6 of the Settlement Agreement:

For benefit of:

Account Number:

Bank Name and Address:

Routing Number:

The Receiver, by and through his undersigned counsel, hereby provides the following wire transfer instructions for the Payment Account, as defined in Paragraph 15 of the Settlement Agreement:

For benefit of:

Account Number:

Bank Name and Address:

Routing Number:

EY’s compliance with Section IV of the Settlement Agreement using the foregoing wire instructions will discharge its obligations under the Settlement Agreement to effect delivery of the Settlement Amount. EY is authorized to rely conclusively upon the foregoing wire instructions and is not responsible for errors or omissions contained herein. In the event of any disbursement of all or part of the Settlement Amount from the Escrow Account not instructed by EY, whether

through mistake, wrongful conduct of any Person, or by any other cause or reason, EY shall have no further liability to the Receiver for payment of such amount of the Settlement Amount that was disbursed without EY's instruction.

Dated: July __, 2023

L. Richard Williams
Alex Morris
BEUS GILBERT MCGRODER PLLC
701 N. 44th Street
Phoenix, AZ 85008-6504
Telephone: (480) 429-3000
Email: rwilliams@beusgilbert.com
amorris@beusgilbert.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 the Receiver

EXHIBIT J

CONSENT

This CONSENT is executed by the undersigned claimant, who is the holder of a Court-approved claim, as reflected by the Court’s Order dated July 3, 2014, in the Founding Partners Receivership, Case No. 09-cv-229, pending before the United States District Court for the Middle District of Florida (“Claimant”).

Claimant has received a copy of the Settlement Agreement (the “Settlement Agreement”) between Daniel S. Newman, in his capacity as the Court-appointed receiver (the “Receiver”) for Founding Partners Capital Management Company; 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. and in his capacity as assignee of the claims of certain investors in 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., on the one hand, and Ernst & Young LLP (“EY”), on the other hand.

Claimant approves of the Settlement Agreement and its terms, and finds that the Settlement Agreement is in the best interest of the investors in 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. Claimant authorizes the Receiver and his counsel to use this Consent to advise the Court of Claimant’s support for the Settlement Agreement, including, without limitation, Claimant’s support for the terms of the Settlement Agreement related to the Court’s entry of the Final Settlement Approval & Bar Order. Claimant understands that, if entered by the Court, Claimant would be subject to Final Settlement Approval & Bar Order.

Claimant hereby represents and warrants that Claimant has the requisite power, authority, and legal capacity to make, execute, enter, and deliver this Consent. A signature delivered by facsimile or other electronic means shall be deemed to be, and shall have the same binding effect as a handwritten, original signature.

IT WITNESS WHEREOF, the undersigned has set its hand this ___ day of _____, 2023.

By: _____

Name: _____

Title: _____