

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

**JOINT MOTION
FOR ENTRY OF AMENDED ORDER AND FINAL JUDGMENT**

The 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.; and Founding Partners Hybrid-Value Fund, L.P. (collectively, the “Receivership Entities”), along with non-party Ernst & Young LLP (“EY”), respectfully submit this joint motion for entry of an amended Final Settlement Approval and Bar Order, along with entry of final judgment in the form attached as **Exhibit A**.

1. The Receiver and EY appeared before the Court on October 25, 2023, for a hearing on the Receiver’s Motion to Approve Proposed Settlement with EY, to Approve the Proposed

Notice of Settlement and Bar Order Proceedings, and to Enter the Final Settlement Approval & Bar Order (“Motion”) [D.E. 597].

2. During the hearing, the Court inquired whether the Receiver and EY were seeking entry of a judgment as a separate document pursuant to Federal Rule of Civil Procedure 58. Counsel for the Receiver and counsel for EY conveyed that they were seeking a final judgment under Federal Rule of Civil Procedure 54(b) and did not think a separate document under Rule 58 was necessary. The Receiver and EY were both mistaken and now apologize to the Court for their confusion at the hearing.

3. Upon further review of this matter, counsel for the Receiver and counsel for EY have concluded that the entry of judgment in separate document is necessary to effectuate finality of the Final Settlement Approval and Bar Order, *see* Fed. R. Civ. P. 54(b); Fed. R. Civ. P. 58(a), (b)(2)(B), as was done in connection with the approval of the Receiver’s settlement with Mayer Brown LLP, *see* Final Settlement Approval & Bar Order Regarding Receiver’s Litigation with Mayer Brown LLP ¶ 14 [D.E. 527]; Final Judgment [D.E. 528].

4. Accordingly, the Receiver and EY jointly and respectfully request that the Court enter an amended Final Settlement Approval and Bar Order to omit from Paragraph 5(D) the current sentence “The parties agreed at the Final Approval Hearing that this partial final judgment as to the Settlement need not be filed as a separate document pursuant to Rule 58.” In place of that sentence, the Receiver and EY respectfully request the following language:

During the Final Approval Hearing, the parties had indicated to the Court that they did not need the Final Settlement Approval and Bar Order to be filed as a separate document pursuant to Rule 58. Subsequent to the entry of the Final Settlement Approval and Bar Order (ECF No. 610), on October 26, 2023, the Receiver and EY indicated that they had reevaluated that issue and requested that the partial final judgment as to the Settlement be filed as a separate document pursuant to Rule 58.

Pursuant to Fed. R. Civ. P. 58(b)(2), the Clerk of the Court shall enter a partial final judgment incorporating and referencing this Amended Final Settlement Approval and Bar Order Regarding Receiver's Litigation With Ernst & Young LLP. The case otherwise remains open.

5. The Receiver and EY attach as Ex. A hereto the proposed form for the final judgment to be entered by the Clerk of the Court.

6. Counsel for the Receiver and EY appreciate the Court's identification of this issue during the hearing and the Court's consideration of this request. We apologize again for any inconvenience the relief sought may cause the Court.

WHEREFORE, the Receiver and EY respectfully request entry of an amended Final Settlement Approval and Bar Order including the above-referenced changes, as well as entry of partial final judgment in the form of Ex. A.

Dated: October 23, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 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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FOUNDING PARTNERS HYBRID-VALUE FUND, L.P.,

Relief Defendants.

FINAL JUDGMENT IN A CIVIL CASE
(partial)

IT IS ORDERED AND ADJUDGED pursuant to this Court's Order of October __, 2023, partial Final Judgment is entered as it relates to the Amended Final Settlement Approval and Bar Order Regarding Receiver's Litigation With Ernst & Young LLP (Doc. #___).

October __, 2023

CLERK

/s/ _____

Copies to: All parties of record