

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT  
and WILLIAM L. GUNLICKS,

Defendants,

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

Relief Defendants.

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

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

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

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

3. In its initial Claims Order dated July 3, 2014 [D.E. 430], the Court approved certain claims made by investors in the claims process, as reflected on Revised Schedule A at D.E. 417-5.

4. In its subsequent Claims Order dated April 9, 2021 [D.E. 538], the Court approved certain claims made by non-investors in the claims process, as reflected on Revised Schedule A at D.E. 535-1.

5. Together, the investors referred to in paragraph 3 above, and non-investors referred to in paragraph 4 above, are referred to as "Approved Claimants". [D.E. 535-1].

6. Several Approved Claimants or their representatives have contacted the Receiver to request that the Receiver update the Receivership's books and records, subject to the approval of the Court, to reflect the transfer of their approved claims ("Approved Claims"). The Receiver, through this Motion, asks the Court for approval to allow him to update his books and records to reflect the transfers for purposes of Court authorized distributions.

7. Before filing this Motion, the Receiver required that the Approved Claimants and all other parties to the transfer (collectively, "Transfer Parties") execute sworn letter agreements ("Sworn Agreements"). The Receiver has received executed Sworn Agreements for each of the transfers the Receiver includes in this Motion. By executing the Sworn Agreements, the Transfer Parties acknowledged, agreed, and swore to:

- a. The amount of their Approved Claims, as approved by the Court in D.E. 535-1;

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

8. The Receiver also obtained supporting documentation related to the transfers.

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

10. The Court already permitted the Receiver to reflect similar transfers in this matter in the Receivership's books and records. [D.E. 430; D.E. 477; D.E. 492; D.E. 541 and D.E. 549].

**A. Claimant No. 25**

11. Claimant No. 25 has an Approved Claim totaling \$850,000 (“Claimant 25”). [D.E. 535-1 at 1].

12. The Receiver was contacted by Claimant 25’s representatives, who requested that the Receiver update his books and records to reflect a transfer of its claim.

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

**B. Claimant No. 36**

14. Claimant No. 36 has an Approved Claim totaling \$542,000 (“Claimant 36”). [D.E. 535-1 at 1].

15. The Receiver was contacted by Claimant 36’s representatives, who requested that the Receiver update his books and records to reflect the transfer of its claim.

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

**C. Claimant No. 46**

17. Claimant No. 46 has an Approved Claim totaling \$500,000 (“Claimant 46”). [D.E. 535-1 at 1].

18. The Receiver was contacted by Claimant 46’s representatives, who requested that the Receiver update his books and records to reflect the transfer of its claim to two trusts in equal shares.

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

**D. Claimant No. 78**

20. Claimant No. 78 has an Approved Claim totaling \$140,000 ("Claimant 78"). [D.E. 535-1 at 2].

21. The owner of Claimant 78 passed away on or about December 10, 2022. The Receiver was contacted by Claimant 78's nephew, who requested that the Receivership update its books and records to reflect that the Approved Claim be transferred to him as the surviving relative of the owner of Claimant 78.

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

**E. Claimant No. 79**

23. Claimant No. 79, an IRA Rollover, has an Approved Claim totaling \$127,500 ("Claimant 79"). [D.E. 535-1 at 2].

24. The owner of Claimant 79 passed away on or about January 12, 2022. The Receiver was contacted by Claimant 79's wife, who requested that the Receivership update its books and records to reflect that the Approved Claim be transferred to her as the surviving wife of the owner of Claimant 79.

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

**F. Claimant No. 194**

26. Claimant No. 194 has an Approved Claim totaling \$201,000 (“Claimant 194”). [D.E. 535-1 at 4].

27. Claimant 194 passed away on or about January 2, 2022. The Receiver was contacted by Claimant 194’s daughter as the Executor of his Estate, who requested that the Receiver’s books and records reflect that Claimant 194’s Approved Claim be transferred to his 3 children in equal shares.

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

**G. Claimant No. 196**

29. Claimant No. 196 has an Approved Claim totaling \$35,000 (“Claimant 78”). [D.E. 535-1 at 2].

30. Claimant 196 passed away on or about February 19, 2021. The Receiver was contacted by Claimant 196’s son, who requested that the Receivership update its books and records to reflect that the Approved Claim be transferred to Claimant’s wife.

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

**H. Claimant No. 199**

32. Claimant No. 199 has an Approved Claim totaling \$143,787 (“Claimant 199”). [D.E. 535-1 at 4].

33. Claimant 199 passed away on or about August 18, 2022. The Receiver was contacted by Claimant 199's son, who requested that the Receiver's books and records reflect that Claimant 199's Approved Claim be transferred to the Claimant's three children in equal shares.

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

### **CONCLUSION**

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

Dated: February 27, 2024.

Respectfully submitted,

**NELSON MULLINS RILEY & SCARBOROUGH**

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By: /s/ Christopher Cavallo

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

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

**SERVICE LIST**

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