

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.

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**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 Entities<sup>1</sup> 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 17<sup>th</sup> 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

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<sup>1</sup> 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 [D.E. 597], 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](mailto: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 Parties<sup>2</sup>) from pursuing Settled Claims<sup>3</sup> against EY Released Parties<sup>4</sup>—including claims you may possess.

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<sup>2</sup> “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.

<sup>3</sup> “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.” [D.E. 597-1.]

<sup>4</sup> “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”). 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 October 25, 2023 at 10:00 a.m. (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 September 18, 2023. 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>).