

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. 597-1, pp. 1-35] (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 **10:00 a.m. on October 25, 2023**. 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 September 18, 2023**. All objections filed with the Court must:

- a. contain the case number, and 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:

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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 October 6, 2023**. 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.

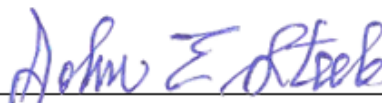
9. If the Settlement is approved by the Court, the Court will enter the Final Settlement Approval & Bar Order in this proceeding. If entered, the Final Settlement Approval & Bar Order will permanently enjoin all Bar Order Parties, including Approved Claimants and Unapproved Claimants, from bringing, 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 16th day of August 2023.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished:
All Counsel of Record