

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 RECORD**

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 Second (2021) Motion for Court Approval to Recognize Transfers of Claims in Receivership Books and Records ("Motion").

The SEC does not object to the relief sought herein.

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 Claims Order, the Court approved certain claims made by investors in the claims process ("Approved Claimants"), as reflected on Revised Schedule A at D.E. 417-5. [See D.E. 430 at 31].

4. Various Approved Claimants or their representatives have recently contacted the Receiver requesting that the Receiver update the Receivership's books and records to reflect the transfer of their approved claims, subject to the approval of the Court. The Receiver, through this Motion, asks the Court for approval to allow him to recognize the transfers specified in this Motion for purposes of Court authorized distributions made by the Receiver.

5. The Court approved an identical motion, related to the recognition of other transfers, on May 11, 2021. [D.E. 539; 541].

6. Before applying to the Court for approval to recognize the transfer of these approved claims, the Receiver required that the Approved Claimants and all other parties to the transfer (collectively, "Transfer Parties") execute a sworn letter agreement ("Sworn Agreement"). The Receiver has received executed Sworn Agreements for each of the transfers the Receiver seeks approval to recognize in the Receivership's books and records. By executing the Sworn Agreements, the Transfer Parties acknowledged, agreed, and swore to:

- a. The amount of the approved claims, as approved by the Court in D.E. 430;
- 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 their representatives, successors, and assigns, for any effect of Sworn Agreement or the requested transfer;
- i. The Transfer Parties' indemnification and hold harmless of the Receiver, the Receivership Entities, and all their representatives, successors, and assigns, for any effect of Sworn Agreement or the requested transfer; and
- j. The transfer was not done to avoid probate, creditors, or any other legal process.

7. The Receiver also obtained supporting documentation related to the requested transfers.

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

9. As noted above, 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; and D.E. 541].

10. The Receiver has conferred with counsel for the U.S. Securities and Exchange Commission ("SEC") who has indicated the SEC does not oppose the relief requested in this Motion.

**A. Claimants No. 28**

11. Claimant No. 28, an individual retirement account ("IRA"), has an approved claim totaling \$800,000 ("Claimant 28"). [D.E. 417-5 at 1].

12. The owner of Claimant 28 passed away on or about February 12, 2014. The Receiver was contacted by Claimant 28's representatives, who requested that the Receiver's books and records reflect that Claimant 28's approved claim is transferred to an IRA belonging to the surviving wife of the owner of Claimant 28, subject to the approval of the Court.

13. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update, including documentation reflecting that the surviving wife of the owner of Claimant 28 is the executor of the owner's estate and the beneficiary of Claimant 28. The Receiver now seeks Court approval to recognize this transfer in the Receivership's books and records.

**B. Claimant No. 37**

14. Claimant No. 37, a husband and wife, has an approved claim totaling \$500,000 ("Claimant 37"). [D.E. 417-5 at 1].

15. Both the husband and wife have passed away, in 2014 and 2012 respectively. The Receiver was contacted by representatives of their son, who requested that the Receiver's books and records reflect that the approved claim of Claimant 37 is transferred to a trust for which the son is the trustee, subject to the approval of the Court.

16. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update, including documentation reflecting that the son is the named executor of the estates of his mother and father (together, Claimant 37). The Receiver now seeks Court approval to recognize this transfer in the Receivership's books and records.

**C. Claimant No. 69**

17. Claimant No. 69, an IRA, has an approved claim totaling \$207,000 ("Claimant 69"). [D.E. 417-5 at 2].

18. The account holder of Claimant 69 passed away on or about February 1, 2018. The Receiver was contacted by the account holder's two surviving children, who requested that the Receiver's books and records reflect that Claimant 69's approved claim be transferred to the deceased account holder personally, to be part of her estate, subject to the approval of the Court.

19. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update, including documentation showing that the son is the executor of the deceased account holder's estate, and that both surviving children are beneficiaries of the deceased account holder's estate. The Receiver now seeks Court approval to recognize this transfer in the Receivership's books and records.

**D. Claimant No. 84**

20. Claimant No. 84, an IRA Rollover for a deceased individual who passed away before the claim was submitted, has an approved claim totaling \$66,800 (“Claimant 84”). [D.E. 417-5 at 2].

21. The Receiver was contacted by the husband of the deceased account holder of Claimant 84, who requested that the Receivership update its books and records to reflect that the approved claims be transferred to him, subject to the approval of the Court.

22. As described above, the Receiver obtained a Sworn Agreement and supporting documentation related to this requested update, including documentation showing that the husband of the deceased owner of Claimant 84 (his wife) is the executor and beneficiary of his wife’s estate. The Receiver seeks Court approval to recognize it in the Receivership’s books and records.

**E. Claimant No. 93**

23. Claimant No. 93, an IRA, has an approved claim totaling \$125,000 (“Claimant 93”). [D.E. 417-5 at 2].

24. The Receiver was contacted by the account holder of Claimant 93, who requested that the Receivership update its books and records to reflect that his approved claim be transferred to National Advisors Trust.

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. 94**

26. Claimant No. 94, a husband and wife, has an approved claim totaling \$375,000 (“Claimant 94”). [D.E. 417-5 at 2].

27. The Receiver was contacted by the husband and wife who own Claimant 94. They requested that the Receiver's books and records reflect that Claimant 94's approved claim be transferred to JP Morgan Chase, subject to the approval of the Court.

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.

### **CONCLUSION**

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

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2021, 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.

Dated: August 10, 2021.

Respectfully submitted,  
**NELSON MULLINS BROAD AND CASSEL LLP**

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**SERVICE LIST**

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