

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

DANIEL S. NEWMAN, as RECEIVER
for FOUNDING PARTNERS STABLE-
VALUE FUND, LP; FOUNDING
PARTNERS STABLE-VALUE FUND
II, LP; FOUNDING PARTNERS
GLOBAL FUND, LTD.; and
FOUNDING PARTNERS HYBRID-
VALUE FUND, L.P.,

Plaintiff,

vs.

ERNST & YOUNG, LLP, a Delaware
Limited Liability Partnership; and
MAYER BROWN LLP, an Illinois
Limited Liability Partnership,

Defendants.

Case No. 10-49061



SECOND AMENDED COMPLAINT

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COMPLAINT

Plaintiff DANIEL S. NEWMAN solely in his capacity as court-appointed Receiver for 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, L.P. (“Hybrid-Value Fund”) (collectively, “Founding Partners”), for his Complaint against Defendants Ernst & Young, LLP (“E&Y”) and Mayer Brown LLP (“Mayer Brown”) alleges as follows:

I. PRELIMINARY STATEMENT.

1. Plaintiff brings this action against E&Y and Mayer Brown to recover damages for the over \$550 million that was lost by the four funds constituting Founding Partners as a direct and proximate result of Defendants’ misconduct as alleged herein. Plaintiff is also the assignee of claims assigned by (1) Harrison Family Investments LP; (2) Clanton Harrison IRA; (3) Leslie T. Merrick Investment Trust; (4) Chris Dance; (5) Kenny Allan Troutt Descendants Trust; (6) Double S Partners; (7) John Miller; (8) Vassar Point LLC; (9) Telesis IIR, L.P.; (10) Glen Gibson; (11) Ron Mann, IRA; (12) Walter E. Johnson; (13) TJNJH Investment Partnership; (14) Kathleen A. Olberts Living Trust; (15) Annandale Partners, LP; (16) Annandale Partners II, LP; (17) J. Christopher Dance IRA; (18) R. Michael Bales; (19) Clear Fir Partners, LP; (20) John E Cunningham IV; (21) Carolyn A Cunningham; (22) Sayden Ranch, LP; (23) Cunningham Children’s Trust; (24) Gary Sledge; (25) Stiles A. Kellet, Jr.; (26) Kellett Family Partners, LP; (27) Chariot Stable Asset Fund, LP; (28) MJA Innovative Income Fund, LP; (29) Maxwell Halstead Partners LLC; (30) Haines All Seasons Select Fund, LLC; (31) Haines All

Seasons Select Fund II, LLC; (32) Dakota Partners LLP; (33) PP Partnership LP; (34) Rodger Sanders; (35) Stuart Frankenthal; (36) J. Mark Lozier Revocable Trust; (37) Four J Partnership LP; and (38) Paul Loeb.

2. Through Stable-Value and later Stable-Value II, the Founding Partners' funds loaned hundreds of millions of dollars to two factoring companies who, according to Stable-Value's E&Y-audited financial statements, used the loan proceeds to purchase short-term (120-day), high-quality (primarily healthcare) receivables payable by the government or by insurance companies. Those receivables would then purportedly serve as collateral fully securing the Founding Partners' loans, and provide a stable, reliable source of income from which the factoring companies could make scheduled interest payments to Founding Partners.

3. The business of Stable-Value and Stable-Value II consisted almost exclusively of making loans of investors' money to these two factoring companies.

4. Unbeknownst to the limited partners and other innocent decision-makers of Founding Partners, the factoring companies used hundreds of millions of dollars of the loan proceeds to purchase receivables that were much riskier and for longer terms than those disclosed in the financial statements and to make unsecured loans or "advances" to entities related to the factoring companies.

5. E&Y knew about the factoring companies' undisclosed and improper uses of Stable-Value loan proceeds, but did not require any disclosure of these facts in either Stable-Value's or any of the other Founding Partners funds' financial statements. E&Y instead issued unqualified or "clean" audit opinions on those financial statements.

6. Mayer Brown also knew about the factoring companies' undisclosed and improper uses of Stable-Value loan proceeds, but did not disclose or require any disclosure of these facts to the limited partners and other innocent decision-makers of Founding Partners, and instead prepared disclosure documents that concealed the improper uses of Stable-Value loan proceeds and misrepresented the actual use of Stable-Value loan proceeds to the limited partners and other innocent decision-makers of Founding Partners.

7. The factoring companies' misuse of Stable-Value loan proceeds rendered the factoring companies incapable of repaying the loans resulting in substantial losses.

8. Stable-Value, Stable-Value II, and Hybrid-Value Fund are limited partnerships. Investors in each of those funds became limited partners pursuant to an agreement of limited partnership pertaining to each fund.

9. Global Fund is a Cayman Islands hedge fund with approximately 84% of its customers' assets invested in Stable-Value and Stable-Value II. A substantial portion of Hybrid-Value Fund assets were likewise invested in Stable-Value and Stable-Value II.

10. Founding Partners Capital Management Co. ("FPCM") is the general partner for Stable-Value, Stable-Value II, and Hybrid-Value Fund, and the investment manager for Global Fund.

11. Each of the Founding Partners' funds issued annual financial statements that were provided to the limited partners in the funds.

12. Founding Partners engaged E&Y to audit those financial statements for each of the years 2000 through 2007, and paid E&Y hundreds of thousands of dollars in

fees for its audits. Global Fund was audited by E&Y's affiliated firm, E&Y Bermuda, although the audit opinions (all unqualified or "clean") on Global Fund's financial statements were issued by the affiliated firm, E&Y Cayman Islands.

13. Founding Partners engaged Mayer Brown to represent Founding Partners, including without limitation with respect to the preparation and amendment of documents relating to transactions with the factoring companies, and the preparation of disclosure documents directed to the limited partners in the Founding Partners funds.

14. As described in detail herein, E&Y and Mayer Brown owed to Founding Partners and their limited partners numerous professional, fiduciary, contractual, and other duties.

15. The limited partners of Stable-Value and Stable-Value II were wholly innocent and unaware of the misconduct alleged herein.

16. In connection with its audits of the financial statements of Stable-Value, E&Y also audited the factoring companies who were the recipients of Stable-Value's loans of investor funds from 2002 through 2004. In connection with its 2005 and 2006 audits of Stable-Value, E&Y performed Agreed-Upon Procedures ("AUPs") on the factoring companies' portfolio of receivables serving as collateral for the Stable-Value loans. These audits and Agreed-Upon Procedures were performed by separate engagements with Founding Partners and the factoring companies.

17. E&Y knew at the times it performed its audit/Agreed-Upon Procedures work at the factoring companies, that FPCM and Founding Partners lacked the expertise and capability to value the receivables serving as collateral for the loans. The limited

partners and other innocent decision-makers of FPCM and Founding Partners relied upon and reposed trust and confidence in E&Y to perform procedures on the collateral portfolio sufficient to confirm the adequacy of the collateral and to advise Founding Partners of any inadequacy. E&Y thus owed fiduciary duties to Founding Partners and to their limited partners, including the duties of due care, loyalty, and full disclosure of all material facts.

18. As a result of its audits/Agreed-Upon Procedures at the factoring companies, E&Y knew that beginning in approximately 2003 the factoring companies began to misuse Founding Partners' loan proceeds by, among other things, purchasing receivables that were longer-term, less liquid, and much riskier in nature than what was represented to limited partners and investors in the financial statements. For example, the factoring companies began to use tens of millions of dollars of Stable-Value funds' money annually to purchase un-adjudicated workers compensation claims and other speculative forms of income which were not collectible (if they were collectible at all) for many years. In addition, the factoring companies began to misuse and misappropriate Stable-Value funds' money by making tens of millions of dollars of unsecured personal and related-party gifts or "advances" of cash, instead of purchasing receivables.

19. E&Y's own workpapers establish that E&Y had actual knowledge of the factoring companies' use of hundreds of millions of dollars of Stable-Value fund assets to purchase workers compensation and other receivables that were of substantially less liquidity, collectability and value than the quality short-term healthcare receivables represented in the financial statements. E&Y also knew about the factoring companies'

use of tens of millions of dollars of Stable-Value fund assets to make unsecured gifts or “advances” to hospitals affiliated with the factoring companies. E&Y also knew that none of these facts were disclosed in Founding Partners’ financial statements.

20. Nonetheless, for each of the years 2000 through 2006, E&Y issued unqualified audit opinions in which it represented that: (a) it was independent; (b) it had conducted audits of Stable-Value’s financial statements in accordance with applicable professional standards, specifically generally accepted audit standards (“GAAS”); (c) it had a reasonable basis for its opinions; and (d) Stable-Value’s financial statements presented fairly in accordance with generally accepted accounting principles (“GAAP”), Stable-Value’s financial position, results of operations changes in partners’ capital and cash flows. As discussed in detail herein, E&Y knew that each of these representations were false when made.

21. E&Y addressed each of these audit opinions to “The Partners” of Stable-Value, and knew that Stable-Value’s general partner, FPCM, would provide the financial statements and E&Y’s accompanying audit opinions to the limited partners of Stable-Value, and to other innocent decision-makers of FPCM and Founding Partners.

22. Mayer Brown also knew that Stable-Value’s general partner, FPCM, would provide the financial statements and E&Y’s accompanying audit opinions to the limited partners of Stable-Value, and to other innocent decision-makers of FPCM and Founding Partners.

23. E&Y knew that the limited partners and other innocent decision-makers of FPCM and Founding Partners would rely upon E&Y's audit opinions in refraining from taking action to protect Founding Partners assets loaned to the factoring companies.

24. E&Y resigned as Founding Partners' auditor immediately after the 2006 audit due, according to internal E&Y documents, to the unacceptably high risk associated with the audits without disclosing their real reasons to Founding Partners. Thereafter, at least one E&Y partner lobbied for and secured E&Y's reengagement to audit Founding Partners' fiscal year 2007 financial statements in the hope of securing additional business from entities related to and/or affiliated with the factoring companies who were funded by Founding Partners.

25. E&Y knew that the 2007 financial statements were grossly and materially misstated and misleading, containing misrepresentations similar to those in the 2006 financial statements. But E&Y refused to issue an adverse audit opinion, or otherwise reveal the truth, instead dragging the audit out for over one year until shortly before Founding Partners was placed in the current receivership.

26. In connection with the 2007 audit, E&Y also knew that FPCM was using a January 2007 Confidential Offering Memorandum, containing misrepresentations similar to those in the 2006 audited financial statements that Stable-Value investor funds were used to purchase high-quality, short-term healthcare receivables, and identifying E&Y as Founding Partners' auditor.

27. The January 2007 Confidential Offering Memorandum was prepared by Mayer Brown.

28. Had E&Y refused to issue an unqualified audit opinion on Stable-Value's 2006 financial statements and otherwise revealed the truth about the factoring companies' use of Founding Partners' assets as E&Y was required to do, the limited partners and innocent decision-makers of FPCM and Founding Partners would have taken immediate action to protect those assets as described in detail herein.

29. Had Mayer Brown revealed the truth about the factoring companies' use of Founding Partners' assets as Mayer Brown was required to do, the limited partners and innocent decision-makers of FPCM and Founding Partners would have taken immediate action to protect those assets as described in detail herein.

30. As the result of Defendants' misrepresentations and concealment of the truth, all or a substantial amount of the over \$550 million dollars which Founding Partners loaned to the factoring companies to purchase receivables and which constituted 95% of Stable-Value's portfolio, has now been lost. The factoring companies are in default and have ceased making interest payments on the loans. Moreover, only a small percentage of the outstanding loan balance is invested in and purportedly secured by the less risky, short-term, high-quality receivables that FPCM and Defendants described to limited partners and other innocent decision-makers.

II. THE 2009 SEC COMPLAINT AND RECEIVERSHIP.

31. On April 20, 2009, the Securities and Exchange Commission ("SEC") filed a five-count securities fraud complaint naming FPCM and its principal, William L. Gunlicks ("Gunlicks"), as defendants. See *Securities and Exchange Commission v.*

Founding Partners Capital Management Co. and William L. Gunlicks, et al., Case No. 2:09-CV-00290JES-SPC (M.D. Fla.).

32. In its Complaint, the SEC alleged that FPCM violated the anti-fraud provisions of the federal securities laws, including Sections 17(a)(1)-(a)(3) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934, Sections 206(1), (2) and (4) of the Advisers Act of 1940, and violated the SEC's December 3, 2007 Cease and Desist Order against FPCM.

33. In its Complaint, the SEC specifically alleged that FPCM and Gunlicks misrepresented through, among other things, "offering materials" and "audited financials" that investment in Stable-Value "was an investment in loans to Sun Capital that were fully secured by healthcare receivables" and that "Sun Capital would collect these receivables in less than 150 days or have them replaced with new receivables or covered by other funding." These offering materials and financial statements concealed the factoring companies' purchases of receivables that were longer term and substantially riskier than what was represented to limited partners and other innocent decision-makers of Founding Partners.

34. In addition the SEC in its Complaint alleged that FPCM and Gunlicks were in violation of a 3 December 2007 Cease and Desist Order in which the SEC found that FPCM had "caused Stable-Value to pay an undisclosed fee to a related entity, and caused several of its funds to engage in transactions inconsistent with their offering memoranda." In its complaint, the SEC alleged that FPCM failed to disclose the Cease and Desist Order as required by its terms.

35. On April 20, 2009, Judge John E. Steele of the United States District Court for the Middle District of Florida entered an order appointing a receiver (the “Initial Receiver”) for Founding Partners and FPCM. The Initial Receiver was subsequently replaced by Daniel S. Newman, Esq. on May 20, 2009.

36. The Receiver was ordered to, among other things, “take immediate possession of all property, assets and estates of every kind of [the Receivership Entities] ... and institute such actions and legal proceedings ... as the Receiver deems necessary.” The Receiver may institute legal proceedings to recover funds for Founding Partners, which when recovered will be distributed to investors.

III. JURISDICTION AND VENUE.

37. This Court has jurisdiction over this matter and over the Defendants.

38. E&Y is subject to personal jurisdiction pursuant to Florida’s long-arm Statute, 48.193. E&Y is subject to general and specific jurisdiction in Florida because it operates a business in Florida, it maintains offices throughout Florida, it performs services in Florida and it offers services to the public through Florida-licensed accountants. In addition, E&Y committed torts in Florida.

39. Mayer Brown is subject to personal jurisdiction in Florida pursuant to Florida’s long-arm statute, 48.193, Fla. Stat., because it purposefully availed itself of jurisdiction in Florida. Mayer Brown committed torts in Florida, performed services for Founding Partners in Florida, its professionals visited the offices of Founding Partners in Florida, it rendered bills to Founding Partners in Florida, it negotiated on Founding

Partners' behalf in Florida, and Mayer Brown employed attorneys licensed to practice law in Florida.

40. Venue is proper in this Judicial Circuit and Broward County because E&Y maintains offices in Broward County where events giving rise to the action occurred and the causes of action accrued, and because one or more E&Y's partners, including the partners for the Founding Partners engagement, are residents of Broward County.

41. Founding Partners' claims herein are governed by Florida law, because Florida has the most significant relationship with Founding Partners' claims asserted herein. Founding Partners was based in Florida, E&Y maintains offices in Florida, and many of the services at issue were performed by E&Y and Mayer Brown in Florida.

IV. PARTIES.

42. Daniel S. Newman is the court-appointed receiver for Founding Partners.

43. E&Y is a Delaware Limited Liability Partnership with offices throughout the United States. E&Y is one of the so-called "Big Four" accounting firms.

44. E&Y was engaged to serve as outside auditor of Founding Partners, and audited Founding Partners' financial statements for at least the fiscal years 2000 through 2007.

45. E&Y issued unqualified or "clean" audit opinions on Founding Partners' annual financial statements for each of the fiscal years ending December 31, 2000 through 2006.

46. E&Y did not complete its audit of Founding Partners' fiscal year 2007 financial statements.

47. Defendant Mayer Brown LLP is an Illinois Limited Liability Partnership with its principal place of business in Chicago, Illinois. Mayer Brown was formerly known as Mayer Brown Rowe and Maw LLP. Mayer Brown is a global law firm, employing over 1500 lawyers, and promotes its “*global reach*” and its “local market knowledge and deep understanding of industry-specific issues to ensure we provide the best solution for the client *anywhere in the world*” on its internet website at <http://www.mayerbrown.com> (emphasis added).

48. All conditions precedent necessary to bringing this action and the claims herein have occurred, have been excused or have been waived.

V. THE FOUNDING PARTNERS FUNDS.

49. Stable-Value is a Delaware limited partnership with its principal place of business in Naples, Florida. Stable-Value was formerly known as Founding Partners Multi-Strategy Fund LP. FPCM is the general partner of Stable-Value. As noted, Stable-Value lent funds to Sun Capital and Sun Capital Healthcare (collectively “Sun Capital”) for the purchase of high quality, short-term commercial and healthcare receivables fully securing the loans and generating stable high returns.

50. Stable-Value II is a Delaware limited partnership with its principal place of business in Naples, Florida. FPCM is the general partner of Stable-Value II. Stable-Value II was created in or around 2007 after Stable-Value approached the maximum number of permissible investors. Stable-Value II’s portfolio was entirely invested in Stable-Value as of December 2008.

51. Global Fund is a Cayman company registered as a mutual fund in the Cayman Islands. FPCM is Global Fund's investment manager. Global Fund invested the vast majority of its assets in Stable-Value. As of December 2008, approximately 84% of Global Fund's portfolio was invested in Stable-Value.

52. Hybrid-Value Fund f/k/a Founding Partners Equity Fund, LP, is a Delaware limited partnership with its principal place of business in Naples, Florida. FPCM is Hybrid-Value Fund's general partner. Hybrid-Value Fund's investment strategy consisted of investing its assets in diversified equities and fixed income structured financial portfolio programs, although a substantial and material portion of Hybrid-Value Fund's portfolio was at all relevant times invested in Stable-Value.

VI. INNOCENT DECISION-MAKERS OF FOUNDING PARTNERS.

53. There were at all relevant times one or more innocent limited partners of Founding Partners and other innocent decision-makers within FPCM and Founding Partners who could and would have taken action to protect Founding Partners and the funds invested in Founding Partners had they known the truth about Sun Capital's improper use of those funds. Those actions would have included, but not been limited to:

- (a) consulting an attorney and following the attorney's advice;
- (b) reporting to state and federal authorities, including the SEC, the use of Founding Partners' investor funds in contravention of what had been represented to investors so that the SEC could have taken appropriate action to protect the funds before Sun Capital was rendered incapable of repaying its debt to Founding Partners as the debt became due or at all;

(c) taking timely action to recover Founding Partners' funds loaned to Sun Capital at a time when Sun Capital was not insolvent and/or when Sun Capital was capable of returning to Founding Partners the loaned amounts or collateral of at least equivalent value;

(d) bringing timely action against Sun Capital to enjoin its use of Founding Partners' loan proceeds in ways contrary to its agreements with Founding Partners and contrary to what had been represented to Founding Partners' limited partners and innocent decision-makers, and to recover damages incurred at a time when Sun Capital would have been capable of paying such damages;

(e) bringing timely legal actions against FPCM and Gunlicks to enjoin their fraud and breaches of fiduciary duty to Founding Partners and their limited partners as described herein; and

(f) removing or causing the removal of Gunlicks and FPCM as general partner, and the removal of any other person responsible for the use of Founding Partners' funds in any manner inconsistent with the representations in Founding Partners' financial statements, offering memoranda and elsewhere as alleged in this Complaint.

54. At all relevant times the innocent decision-makers of FPCM and Founding Partners were unaware that Sun Capital was using Founding Partners' loan proceeds as alleged herein to:

- (a) purchase workers' compensation receivables and disproportionate share receivables ("DSH");
- (b) purchase and/or hold receivables aged beyond 120 days; and/or
- (c) make unsecured loans and gifts to related parties.

VII. OTHER NON-PARTIES.

A. FPCM and Gunlicks.

55. FPCM is a Florida corporation with its principal place of business in Naples, Florida. FPCM is registered with the SEC as an investment adviser. In December 2007, FPCM consented to the entry of a SEC order censuring it and ordering it to cease and desist from committing or causing any violations of Section 17(a)(2) of the Securities Act. *In the Matter of Founding Partners Capital Management Co. and William Gunlicks*, Administrative Proceeding File No. 3-12896.

56. FPCM began operations in or around 1996.

57. FPCM was established as a private hedge fund that by 2000 primarily acted as a lender of monies to a group of affiliated entities, which purchased or factored receivables.

58. During the material time period, FPCM employed certain individuals who assisted in the management of FPCM. These individuals include at least the following: Judy Aller, FPCM's controller; Phillip Fues, FPCM's chief credit officer; and Leonard Llewellyn, managing director.

59. FPCM owed fiduciary duties to Founding Partners and to their investors and limited partners, including the duties of due care, loyalty, and full disclosure of material facts.

60. Gunlicks was the president and CEO of FPCM, and as such is the primary beneficiary of FPCM's management fees. In the SEC administrative proceeding, Gunlicks consented to the entry of an SEC order requiring him to cease and desist from committing or causing any violations of Section 17(a)(2) of the Securities Act of 1933.

61. Gunlicks was the person primarily responsible for the creation and management of FPCM. E&Y provided tax services to him and his family for nearly 25 years.

62. Gunlicks personally managed the Founding Partners' funds and the investment of those funds in Sun Capital. Gunlicks also personally managed Founding Partners' relationship with Sun Capital and negotiated with Sun Capital.

63. Gunlicks owed fiduciary duties to Founding Partners and to their investors and limited partners, including the duties of due care, loyalty, and full disclosure of material facts.

64. The misconduct of FPCM and Gunlicks alleged herein, including but not limited to, the preparation and dissemination of false and fraudulent financial statements and offering memoranda, was completely and totally adverse to the interests of Founding Partners, and Founding Partners in no way benefitted therefrom. Indeed, the misconduct of FPCM and Gunlicks alleged herein only resulted in the depletion and loss of Founding Partners' assets, and exposure of those assets to an extreme and undisclosed risk of loss.

B. Sun Capital.

65. Sun Capital, Inc. ("SCI") is a Florida corporation with its principal place of business in Boca Raton, Florida. SCI purported to be in the business of providing accounts receivable funding for commercial companies. The financing was funded with loans from Stable-Value.

66. Sun Capital Healthcare, Inc. ("SCHI") is a Florida corporation with its principal place of business in Boca Raton, Florida. SCHI purported to be in the business of providing accounts receivable financing to healthcare providers. The financing was funded with loans from Stable-Value.

67. SCHI and SCI are based in Boca Raton, Florida. Their principals are Howard Koslow, Lawrence Leder and Peter Baronoff. Two other related entities, Promise Healthcare, Inc. and Success Healthcare, LLC were essentially owned and controlled by the same owners of SCHI and SCI.

68. Collectively, SCHI and SCI are referred to herein as the "Sun Capital" entities.

69. In its working papers, E&Y described Sun Capital as "a specialty finance company that performs factoring almost exclusively in the healthcare area (with a small amount of commercial receivables as well)."

VIII. FOUNDING PARTNERS' INVESTMENT STRATEGY – LOANS TO SUN CAPITAL SECURED BY FACTORED RECEIVABLES.

70. Stable-Value and Stable-Value II purportedly applied an investment strategy designed to yield stable above-average returns through lending facilities used to purchase accounts receivable primarily in the healthcare sector.

71. Since 2001, Stable-Value used money invested in the funds by individual and institutional investors and family trusts to make loans to Sun Capital to finance Sun Capital's discounted purchase of receivables. These loans are the primary focus of Stable-Value's investment program and represent approximately 95% of its portfolio. Founding Partners' three other funds, Stable-Value II, Global Fund, and Hybrid-Value Fund, were invested in part or in whole in Stable-Value.

72. Pursuant to the written loan agreements between Stable-Value and Sun Capital, Sun Capital could use the loan proceeds to purchase healthcare and commercial receivables, although it has focused primarily on purchasing healthcare receivables. Under the agreements, Sun Capital could draw on the loans to purchase the receivables which would generate income to pay interest on the loans on a monthly basis and which would provide security and funds to repay the principal. Sun Capital charged its factoring clients a fee of approximately 3% per month until it collected the receivables and paid Stable-Value interest of approximately 1.3% per month.

73. FPCM charged Stable-Value a 1.75% annualized management fee on the total assets of the fund. Stable-Value investors did not receive any automatic distributions from the fund. According to fund documents, however, redemptions of

investments were available on a quarterly basis requested in writing with at least sixty days notice.

74. In or around June 2000, Stable-Value began lending to SCHI and later to its affiliate, SCI. Stable-Value's loans were made pursuant to detailed Credit and Security Agreements with SCHI and later SCI. During its audits, E&Y reviewed or should have reviewed these and other material agreements. Under the SCHI Agreement, SCHI was required to borrow only from Stable-Value, and it was permitted to use the funds only for approved uses, primarily for factoring healthcare accounts receivable. The SCHI Agreement established a "borrowing base," consisting of a cushion of collateral determined by a specified formula to assure loans were sufficiently collateralized.

75. As it was originally intended, Stable-Value loaned monies to SCHI to facilitate SCHI's purchase of healthcare accounts receivable, and SCI purchased commercial accounts receivable with monies received from Stable-Value.

76. Neither Stable-Value nor any of the other Founding Partners' funds received any fees or other remuneration from investment in any of the Founding Partners' funds or from loans to Sun Capital. Rather, all administrative or managerial fees were paid to FPCM, and any income generated from loans to Sun Capital was held or re-loaned to Sun Capital solely for the benefit of Founding Partners' investors.

77. As represented in the E&Y-audited Founding Partners' financial statements, and in disclosure documents prepared, reviewed, or amended by Mayer Brown, at all relevant times, the vast majority of the funds Founding Partners loaned to

Sun Capital were loaned to SCHI, purportedly for the purchase of high-quality short-term healthcare receivables, which were to fully secure the loans and generate stable yields.

78. Factoring involves the purchase of accounts receivable – monies owed to a company – at a discount in exchange for the right to be paid the full debt owed on the accounts receivable. Both the offering memorandum for Stable-Value and supplements to the offering memorandum for Stable-Value use the following illustration of the factoring process:

Determination of net amount to be funded to Seller Gross Amount of Claim (Invoice)	\$100,000
Adjustment for anticipated disallowances Based upon field audit @ 20%	<u>(\$20,000)</u>
Net Collectible Amount (NCA) as determined Pursuant to Purchase and Sale Agreement	\$80,000
Advance percentage	80%
Gross amount to be funded to Seller	\$64,000
Less 30 day discount fee deducted (3% of NCA)	<u>(\$2,400)</u>
Net amount to be funded to Seller	<u>\$61,600</u>
Request for Loan Advance Sun Capital Healthcare, Inc. (SCH) submits request to Founding Partners Multi-Strategy Fund, L.P. (Partnership) for loan advance	
Founding Partners transfers funds to SCH	\$61,600
SCH purchases receivables and funds Seller	(\$61,600)
Collection of Receivables Invoice pays on the 90th day after purchase and remittance is sent to bank lockbox Lock-Box Bank transfers funds from lockbox to SCH	
	\$80,000
Payments from Collection of Receivables	

SCH pays down loan	(\$61,600)
Payment to SCH of additional discount fee (\$80,000 @ 6%)	(\$4,800)
Reserve balance either held until other invoices are paid or transferred to Seller	<u>(\$13,600)</u>
Balance for this Flow of Funding Illustration	<u>\$0</u>

79. Pursuant to the SCHI Agreement and as more fully explained therein, SCHI was only permitted to purchase eligible receivables of certain quality and character. Under the SCHI Agreement, SCHI was required to replace any receivables that had not been collected within a specified time period with fresh receivables to maintain the borrowing base. It is widely understood that generally accounts receivables become more difficult to collect as they age.

80. Stable-Value entered into a similar Credit and Security Agreement dated January 24, 2002 with SCI (the "SCI Agreement") which provided that Stable-Value would lend monies to SCI for the purchase of eligible commercial accounts receivable. Among other characteristics, SCI could not factor accounts receivable that could not be insured, such as a law firm's receivables. Mayer Brown drafted the SCI Agreement for Stable-Value.

81. In exchange for the loans, SCHI and SCI were required to pay Stable-Value interest on a monthly basis. The principal would be due at the end of specified terms, unless accelerated.

82. Pursuant to the SCHI and SCI Agreements drafted by Mayer Brown, Stable-Value was supposed to receive a fully-perfected, first-priority security interest in the accounts receivable being purchased by the Sun Capital entities.

83. The SCHI and SCI Agreements prohibited the respective Sun Capital entities from using the loans Stable-Value extended unless they were purchasing eligible receivables, repaying the loans or using the monies for certain other approved uses.

84. Mayer Brown and E&Y knew that the cornerstone of the relationship between Founding Partners and the Sun Capital entities was the safety and collectability of the factored accounts receivable.

85. Mayer Brown knew or should have known that purchases of worker compensation and/or DSH accounts receivable constituted a material breach of the SCHI Agreement and that any modifications to the SCHI Agreement to permit the purchase of these accounts receivable had to be in writing.

86. Mayer Brown and E&Y knew that SCHI was factoring non-compliant accounts receivable and ineligible accounts receivable, and specifically that SCHI was factoring highly risky workers compensation and DSH receivables.

87. Mayer Brown knew that Stable-Value had not modified the SCHI Agreement in writing to permit the factoring of workers compensation and DSH accounts receivable. Mayer Brown failed to advise the limited partners and innocent decision makers concerning SCHI's non-compliant purchases of highly risky workers compensation and DSH accounts receivable in investment solicitation documents.

88. Upon information and belief, Mayer Brown knew that SCHI and SCI were in breach of the SCHI and SCI Agreements, and was aware of SCI and SCHI's deviation from the terms of the SCI and SCHI Agreements, but it did not advise the limited partners and innocent decision makers that SCI and SCHI were deviating from the terms of the Agreements. Mayer Brown also failed to advise the limited partners and innocent decision makers concerning the legal consequences of such breaches and deviations for Founding Partners, or concerning waiver of default.

89. Upon information and belief, Mayer Brown drafted certain amendments to the SCI and SCHI Agreements that extended the maturity date for repayment of principal and increases in the total amount borrowed, knowing that these amendments caused Founding Partners' exposure to default by SCI and SCHI to increase. Mayer Brown failed to advise the limited partners and innocent decision makers concerning the legal consequences and risks to Founding Partners of those amendments.

90. SCHI began to experience significant defaults in payment of the accounts receivable it factored, a fact known to Mayer Brown.

91. SCHI purchased highly risky accounts receivable from troubled hospitals that desperately needed funds to remain in operation. Mayer Brown knew that SCHI was factoring for troubled hospitals, but it failed to advise the limited partners and innocent decision makers of those transactions.

IX. WITH E&Y'S AND MAYER BROWN'S KNOWLEDGE AND ASSISTANCE, FPCM AND GUNLICKS TOUTED THE SAFETY OF THE SUN CAPITAL LOANS.

92. The cornerstone of FPCM's presentation of the Stable-Value investment opportunity was the safety and lack of risk of the loans to Sun Capital, which provided steady and stable returns. Stable-Value's E&Y-audited financial statements, which were provided to limited partners and other innocent decision-makers, likewise represented the relative safety of the loans due to the criteria applicable to factored receivables serving as collateral for the loans. For example, the 2005 financial statements, audited by E&Y, represented that Stable-Value's purpose was to achieve stable and above-average returns, while preserving capital, through an investment strategy that "utilizes a healthcare and commercial receivable investment product." The 2005 financial statements further represented that receivables factored by SCHI, which represented the vast majority of Stable-Value's loans, were healthcare receivables payable by insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid, and that healthcare receivables "that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers."

93. Stable-Value's offering materials stated the loans were secured by healthcare receivables that "are the payment obligations of Federal and State government agencies, and certain U.S. insurance companies rated by various rating firms."

94. E&Y and Mayer Brown knew that FPCM and Gunlicks also represented to limited partners and other innocent decision-makers that the loans were collateralized according to strict criteria such that the underlying receivables would only be "investment

grade.” Moreover, Gunlicks explained to limited partners and other innocent decision-makers that the loan agreements provided that all of Sun Capital’s assets, including the receivables, collateralized the loan balance and any accrued interest.

95. For example, in Stable-Value’s “Confidential Supplement to Confidential Memorandum dated May 2002” (the “May 2002 Memorandum”), FPCM and Gunlicks represented that Stable-Value’s “investment objective is to achieve above-average rates of return in the long-term, while preserving capital and its purchasing power in the short-term. The Partnership’s investment program is designed to accomplish this objective through the implementation of a Stable-Value investment strategy that has no correlation to the equity and bond markets.”

96. The May 2002 Memorandum further represented that:

Pursuant to the Credit and Security Agreements [between Stable-Value and SCHI, SCHI] agrees to use the Proceeds of the loans to finance [SCHI’s] purchase of receivables arising out of the delivery of medical, surgical, diagnostic or other healthcare related goods or services (such receivables being referred to collectively as “Healthcare Receivables” payable by third parties (the “Third Party Payors”) such as insurance companies, Blue Cross/Blue Shield plans and government programs such as Medicare and Medicaid. Pursuant to the Credit and Security Agreement, loan proceeds that have not been used by [SCHI] to acquire Healthcare Receivables are to be held in a bank account (the “Holding Account”) until they are used to acquire Healthcare Receivables or to make payments to [Stable-Value].

The May 2002 Memorandum also represented that eligible receivables under the agreement between Stable-Value and SCHI would consist of receivables “that satisfy certain criteria, including that fewer than one hundred twenty (120) days have passed

since the date on which the applicable services were provided by the applicable seller to the applicable patient.”

97. Founding Partners’ monthly performance reports reassured its limited partners that “the loans are secured by the healthcare receivables.”

98. Founding Partners’ monthly performance reports, which were provided to its limited partners, represented that as of January 2007, approximately 93% of the healthcare receivable payors were rated Aa or above by rating firms such as Moody’s, Standard & Poor’s, and A.M. Best.

99. As an essential part of its audits of the financial statements of Founding Partners, E&Y was required by GAAS to understand Founding Partners’ business. This required E&Y to read and understand Founding Partners’ offering and promotional materials, including those prepared by Mayer Brown, and to read and understand other reports of Stable-Value’s performance provided to limited partners. Accordingly, E&Y was obligated to read and understand the offering material and performance reports referenced above.

X. SUN CAPITAL BEGAN TO USE STABLE-VALUE’S FUNDS TO PURCHASE INELIGIBLE AND HIGH-RISK RECEIVABLES AND TO MAKE HIGH RISK LOANS TO RELATED-PARTY ENTITIES.

100. Beginning in approximately 2003, Sun Capital began to invest in receivables of a materially different character than what was permitted in the agreements and what FPCM and Gunlicks were continually representing to limited partners and investors. In addition, Sun Capital began to misuse and misappropriate the proceeds of

the loans from Stable-Value by diverting the loan proceeds to affiliated entities, and to themselves, for purposes unrelated to the purchase of receivables.

A. Worker's Compensation Receivables.

101. At first, at least by 2004, SCHI began purchasing workers' compensation receivables with funds loaned to SCHI by Stable-Value. The collectability of these receivables was substantially less certain than the healthcare receivables represented to limited partners and investors, in part because they were based on un-adjudicated workers' compensation claims.

102. Moreover, as E&Y documented in its audit workpapers, these workers' compensation receivables "typically have a longer collection period that may be a number of years." In fact, these receivables could and did take many years to collect, creating greater liquidity risks for Sun Capital and, in turn, for Stable-Value's limited partners. It is generally understood that the longer it takes to collect a receivable, the less likely it is that the full amount or any portion thereof will actually be recovered.

103. It was virtually certain that all of the workers' compensation receivables would age beyond 120 days, and substantially so before they could potentially be collected. Indeed, the majority of these workers' compensation receivables SCHI purchased were also not eligible for purchase by SCHI at inception because they were already more than 120 days old (or in some cases, more than 150 days old) at the time of purchase.

104. These workers' compensation receivables also did not present the option for Sun Capital to return any uncollectible amounts because Sun Capital purchased them

in bulk at a discount. For instance, Sun Capital purchased some workers' compensation receivables for \$11.5 million that had a face value of \$23 million.

105. SCHI purchased tens of millions of dollars of ineligible workers' compensation accounts receivable with E&Y's actual knowledge.

B. Disproportionate Share ("DSH") Payments.

106. In or about 2004, SCHI began purchasing (with Stable-Value funds) a risky type of healthcare "receivable" called "Disproportionate Share" payments (commonly referred to in the industry as "DSH"). DSH payments are a special type of Medicare and Medicaid payment the government makes to healthcare providers in poor or underserved areas. The government initially makes a payment at the normal reimbursement rate and in the normal collection period. The second payment – the DSH – is an amount in excess of the normal rate, which the government pays on average two years after the date of service, and then only if the provider is still operating. According to E&Y's workpapers, DSH payments "typically take up to 3 years to collect"

107. DSH payments did not constitute true "receivables" because the government had no obligation to pay them and could discontinue or reduce the payments at any time. They, at best, constituted a "hope" that the government would pay at some point in the future at a rate similar to those received in the past.

108. Anticipated DSH payments are thus considerably riskier than standard healthcare receivables. They add significant liquidity risks due to their collection delays. More importantly, they add a "going concern" risk that ties their collectability to the provider's ability to continue to operate successfully. The risk was very substantial, and

the purchase of DSH was reckless, because these “receivables” were often purchased from hospitals that were already financially distressed.

109. Anticipated DSH payments were ineligible for purchase under SCHI’s agreement with Stable-Value due to the length of time it took to receive them, because they were not receivables for healthcare services, and because they did not actually constitute accounts receivable.

110. The SCHI Agreement was not amended to permit the purchase of workers’ compensation accounts receivable or DSH. It was also not amended to change the definition of borrowing base, which was affected by the non-compliant purchases of workers compensation and DSH.

C. Related Party Transactions, Including Unsecured Diversion of Founding Partners’ Funds.

111. In 2003, Sun Capital’s principals, through two separate corporations, began purchasing distressed hospitals and associated real estate. Among these hospitals were long-term acute care facilities that were organized and owned under the corporate structure of Promise Healthcare, Inc. (“Promise Healthcare”), which was owned by the Sun Capital principals and other companies directly or indirectly owned by the Sun Capital principals.

112. The Sun Capital principals acquired other hospitals, which they owned and organized under the corporate structure of Success Healthcare, Inc. (“Success”). Success was likewise owned by the Sun Capital principals and other companies directly or indirectly owned by the Sun Capital principals.

113. In addition, by no later than 2006, a substantial and material amount of the healthcare receivables purchased by Sun Capital with Stable-Value funds consisted of receivables purchased from Promise Healthcare – a related party to and under common ownership with Sun Capital. Sun Capital purchased millions of dollars of these receivables from Promise Healthcare in 2006 alone.

114. Also by 2006, Sun Capital began using substantial amounts of Stable-Value funds to provide working capital advances to Promise Healthcare and Success to purchase hospitals and land, to improve hospitals, and to subsidize the substantial losses incurred by struggling hospitals to keep them from closing.

115. These advances were an extremely high-risk misuse of Stable-Value funds, and were in no way authorized by the SCHI Agreement or the SCI Agreement. The advances were unsecured, did not generate income, and were not even subject to any repayment obligations. Indeed Sun Capital was not even motivated to recover the amounts advanced, but simply to keep the hospitals owned by the principals of Sun Capital afloat. It was or should have been apparent to E&Y that Sun Capital never had any intention of even attempting to collect these related-party advances from the hospitals.

XI. FOR YEARS, E&Y SERVED AS FOUNDING PARTNERS' OUTSIDE AUDITOR AND WAS INTIMATELY FAMILIAR WITH FOUNDING PARTNERS, FPCM AND SUN CAPITAL.

A. E&Y Knew the Founding Partners' Audits Were High Risk.

116. E&Y performed audits of the Founding Partners' financial statements for at least the fiscal years 2000 through 2007.

117. E&Y was or should have been intimately familiar with the business, operations and financial condition of Founding Partners as well as FPCM.

118. E&Y negligently, recklessly, or intentionally failed to designate its audits of Founding Partners as “high-risk” which would or should have triggered additional and/or enhanced audit procedures.

119. In its workpapers for at least its audits of Stable-Value’s 2005 and 2006 financial statements, E&Y specifically identified the following fraud risks consistent with the audits:

“Identified Fraud Risks

- Management consists of a few individuals who can override controls in place,
- Misappropriation of investor cash receipts,
- The Fund does not have ownership of securities,
- Investments are not recorded at fair value, and
- Management utilizes trading activities prohibited by the SEC and other regulatory agencies.”

B. E&Y Was Intimately Familiar With the Operations of and Receivables Factored by Sun Capital.

120. E&Y knew and understood that essentially all of Stable-Value’s business consisted of making loans to Sun Capital.

121. Founding Partners’ financial condition was dependent on Sun Capital’s ability to repay the loans from Stable-Value and to make scheduled interest payments on the outstanding principal balance.

122. Because essentially all of Stable-Value's business consisted of loans to fund the factoring operations of Sun Capital, an audit of Stable-Value's financial statements pursuant to GAAS necessarily required E&Y to gain an accurate and detailed understanding of the business, operations, and financial condition of Sun Capital and the Promise Healthcare and Success hospitals.

123. Especially because the safety of the loans was a key and critical feature of investment in Stable-Value, an audit of Stable-Value's financial statements pursuant to GAAS necessarily required a thorough and critical examination, evaluation, analysis, and assessment of the nature and value of the collateral securing the loans.

124. E&Y in fact audited the financial statements of Sun Capital for the three (3) fiscal years ended December 31, 2002 through 2004. These audits were performed by personnel from E&Y's South Florida office in Fort Lauderdale, Florida.

125. Prior to 2002, Sun Capital's financial statements were audited by a regional accounting firm.

126. For Sun Capital's 2005 and 2006 fiscal years, E&Y did not audit Sun Capital's financial statements, but rather at E&Y's own recommendation performed certain inadequate AUPs on the Sun Capital assets (receivables) serving as collateral to secure the Stable-Value loans.

127. AUPs are far less stringent and exacting than an audit.

128. E&Y suggested to FPCM, Gunlicks and Sun Capital the switch from audits to AUPs, and FPCM, Gunlicks and Sun Capital accepted E&Y's suggestion.

129. E&Y's Sun Capital audits and AUP work were performed to assist E&Y's audits of Founding Partners' financial statements.

130. As a result of its Sun Capital audits and AUP work, E&Y became intimately familiar with the business operations and activities of Sun Capital, and with the receivables factored by Sun Capital.

131. E&Y knew and understood that Founding Partners was the only source of funding for Sun Capital's business operations.

132. As a result of its audits and AUPs, E&Y knew or should have known that Sun Capital, since 2003, was factoring material amounts of workers' compensation receivables and DSH payments that differed materially in character from the receivables described to investors in Founding Partners' financial statements and offering materials, and that Sun Capital transferred substantial sums of loan proceeds to related parties in the form of unsecured loans or other "advances." In breach of the duties it owed to Founding Partners and to their limited partners, E&Y nonetheless issued unqualified or "clean" audit opinions on Founding Partners' materially misstated financial statements for the fiscal years ended December 31, 2004 and 2005.

XII. STABLE-VALUE'S FINANCIAL STATEMENTS AND OFFERING MATERIALS MISREPRESENTED THAT THE SUN CAPITAL LOANS WERE FULLY COLLATERALIZED BY COLLECTIBLE SHORT-TERM HEALTHCARE RECEIVABLES.

A. Misrepresentations in Stable-Value's 2006 E&Y-Audited Financial Statements.

133. Stable-Value's annual financial statements for the fiscal year ending December 31, 2006, were issued in May 2007. E&Y issued an unqualified audit opinion

on those financial statements dated May 23, 2007. E&Y's unqualified audit opinion was addressed to "The Partners" of Stable-Value.

134. The 2006 financial statements represented the fair value of the loans to Sun Capital to be \$253,967,276.

135. The 2006 Stable-Value financial statements represented that 86% of Stable-Value's total investments consisted of loans to SCHI and 3.44% consisted of loans to SCI. Thus, 89.44% of Stable-Value's total investments consisted of loans to Sun Capital. Those loans constituted approximately 87% of Stable-Value's total reported assets of \$291,840,960.

136. The Notes to Stable-Value's financial statement stated that Stable-Value was formed to obtain an above-average return while preserving capital and "[t]he investment strategy utilizes a healthcare and commercial receivable investment product."

137. With respect to Founding Partners' loans to SCHI, the Notes to the 2006 Stable-Value financial statements, audited by E&Y, represented that:

Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third-party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

This representation was materially false and misleading.

138. E&Y's own workpapers for its audit of Stable-Value's 2006 financial statements document that as of December 31, 2006, \$54,419,862 of the receivables SCHI purchased with Stable-Value investor funds consisted of workers' compensation

receivables, as described above. This amount constituted approximately 22% of the reported value of Stable-Value's loans outstanding to Sun Capital at 31 December 2006. The existence and amount these workers' compensation receivables, the fact that they were ineligible for purchase under the SCHI Agreement, and the high risk associated with their collection were all facts material to Stable-Value's financial statements for the fiscal year ended December 31, 2006, and GAAP required that they be disclosed. But there was no such disclosure of any of these facts in those E&Y-audited financial statements.

139. E&Y knew or should have known that the workers' compensation receivables purchased by Sun Capital with Stable-Value investor funds were substantial and materially riskier and longer in term than the receivables described in Stable-Value's E&Y-audited financial statements.

140. An E&Y-prepared memorandum dated 26 June 2008 and included in E&Y's workpapers describes the workers' compensation receivables as follows:

Workers' Compensation

These receivables typically have a longer collection period that may be a number of years. Workers' compensation collateralized balances totaled approximately \$58 million as of December 31, 2007. Sun Capital typically advances only approximately 50-60% on these receivables to their customers given the longer collection period and risk of non-collection.

141. In addition, Sun Capital used substantial and material amounts of Founding Partners' funds to make advances to related-party factoring clients which were financially distressed or insolvent.

142. E&Y's 2006 workpapers reflect over \$39 million in outstanding and undisclosed advances funded with Founding Partners investors' cash from Sun Capital to Promise Healthcare, which was then owned by the principals of Sun Capital. On a document entitled "Promise Healthcare Client Summary Report, from 1/1/2006 to 12/31/2006" provided by Sun Capital to E&Y, and bearing a fax transmittal date of March 26, 2007, E&Y noted the following with respect to these advances:

Note: This Company is not a real factoring client and was set up for tracking purposes. From time to time throughout the year, Sun Capital advances money to Promise Healthcare entities before there are any receivables available for purchase. Sun Capital does not want to charge factoring fees on this advance since there are no outstanding invoices to track, however they also do not want to lose money on these advances. As a result, Sun Capital charges Promise its costs of capital with Founding Partners on the amount advanced, until receivables are available for purchase. The associated fees are tracked separately as non-factored fees (see Fee section hereon).

E&Y thus understood that these advances were unsecured and were made with funds Sun Capital borrowed from Founding Partners' investors, without any disclosure in Founding Partners' financial statements.

143. The nature, existence, and amount of these advances were material to the financial statements of Stable-Value and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y audited financial statements.

144. The notes to Stable-Value's 2006 financial statements further specifically represented that:

Any underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers.

This representation was false and materially misleading.

145. E&Y's own AUPs with respect to Sun Capital performed in connection with E&Y's audit of Stable-Value's December 31, 2006 financial statements and documented in E&Y's workpapers, demonstrate that at December 31, 2006, at least 27% of the healthcare receivables factored by SCHI were aged beyond 120 days.

146. In addition, E&Y's workpapers further document that as of December 2006, at least \$36 million of the healthcare "receivables" SCHI purchased with Stable-Value investor funds consisted of anticipated DSH payments (purchased primarily from the financially distressed hospitals now owned by the principals of Sun Capital.) As alleged herein, these anticipated DSH payments did not constitute actual "healthcare receivables" as represented in Stable-Value's E&Y-audited financial statements.

147. The existence, nature, and amount of these anticipated DSH payments were material to Stable-Value's financial statements and GAAP required that they be disclosed due to their impact on risk. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

148. E&Y knew or should have known that the anticipated DSH payments purchased by Sun Capital with Stable-Value investor funds were not disclosed in Stable-Value's E&Y-audited financial statements, and that they were of a substantially and materially riskier and longer in term nature than what those financial statements described as the collateral securing Stable-Value's loans to Sun Capital.

149. An E&Y-prepared memorandum dated 26 June 2008 and included in E&Y's workpapers describes the anticipated DSH payments as follows:

DSH

Disproportionate Share Hospital receivables ("DSH") represent receivables from the government for care provided to low income patients under Medicaid and other programs. These amounts typically take up to 3 years to collect however ultimate collection experience has been very good per the CFO of Sun Capital.

150. As alleged above, by their very nature the anticipated DSH payments and the vast majority of the workers' compensation receivables would not be collected (if at all) within 120 days.

151. The fact and amount of the receivables and anticipated DSH payments aged beyond 120-days were material to Stable-Value's financial statements, and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

152. Stable-Value's 2006 E&Y-audited financial statements were also false and materially misleading because they failed to disclose that a substantial and material amount of the receivables serving as collateral for the Founding Partners' loans were purchased by Sun Capital from Promise Healthcare – a related party to Sun Capital. The related-party nature of these purchases was material to Stable-Value's 2006 financial statements, and GAAP required that it be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

153. E&Y knew or should have known that a substantial and material amount of the receivables serving as collateral for the Stable-Value loans were purchased by Sun Capital from a related party, and that the related-party nature of these purchases should have been disclosed in Stable-Value's financial statements.

154. Stable-Value's 2006 financial statements were also grossly and materially false and misleading because they failed to disclose that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that this added substantial and material risk to the loans.

155. E&Y knew or should have known that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that the true nature of the collateral should have been disclosed in those financial statements.

156. Stable-Value's 2006 E&Y-audited financial statements were also grossly and materially false and misleading because they failed to reveal that Sun Capital was misusing material amounts of Founding Partners' funds by purchasing ineligible receivables and by giving related-party hospitals advances that were unsecured, were not recoverable, and would not generate any income.

157. Moreover, the financial statements further represented that: "The General Partner believes that the carrying value of the financing agreements approximates fair value."

158. Stable-Value's 2006 E&Y-audited financial statements grossly and materially overstated the fair value of Stable-Value's loans to Sun Capital. E&Y failed to perform adequate audit procedures to determine whether this representation was false.

159. Due to the substantial (undisclosed) risks associated with the loans to Sun Capital as described herein, GAAP required that Stable-Value establish a substantial reserve or allowance for loan loss to account for the risk of non-collectability and that the reported fair value of the loans be reduced by a like amount. E&Y knew or should have known that such a reserve or allowance was required pursuant to GAAP.

160. However, Stable-Value's loans to Sun Capital were carried on Stable-Value's books and reflected in the financial statements at their face amount without any reduction to reflect any allowance or reserve for credit loss.

161. An appropriate allowance or reserve for loan loss would have substantially and materially reduced the value of the loans to Sun Capital as reported in Stable-Value's E&Y-audited financial statements.

B. Stable-Value's 2004 and 2005 E&Y-Audited Financial Statements Contain Similar Material Misrepresentations.

162. Stable-Value's annual financial statements for the fiscal years ending December 31, 2004 and 2005, contained misrepresentations substantially similar to those in Stable-Value's 2006 E&Y-audited financial statements.

163. E&Y issued an unqualified audit opinion on Stable-Value's 2004 financial statements dated June 6, 2005, and addressed to "Partners" of Stable-Value.

164. E&Y issued an unqualified audit opinion on Stable-Value's 2005 financial statements dated June 23, 2006 and addressed to "The Partners" of Stable-Value.

165. The Notes to Stable-Value's 2004 and 2005 E&Y-audited financial statements represented that:

Pursuant to the Credit and Security Agreement with Sun Capital Healthcare, Inc., the borrower will use the proceeds of the loans to purchase healthcare receivables payable by third-party payors such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid from various healthcare providers.

166. The Notes to Stable-Value's 2005 E&Y-audited financial statements further requested that:

The individual underlying healthcare and commercial trade receivables, and additional Borrowers' assets, will serve as collateral for the loans to the Borrowers. ... **Any underlying healthcare receivables that age beyond 120 days are either replaced by future receivables or are reduced from the future fundings to the healthcare providers.**

(Emphasis added.)

167. The foregoing representations in Stable-Value's 2004 and 2005 E&Y-audited financial statements were materially false and misleading. A substantial and material amount of the funds Stable-Value loaned to SCHI as of December 31, 2005 were used for purposes other than those represented in Stable-Value's financial statements.

168. Stable-Value's 2004 and 2005 financial statements were materially false and misleading because, as of December 31, 2004 and 2005, SCHI had used substantial and material amounts of Stable-Value loan proceeds to purchase anticipated DSH

payments as described herein. These anticipated DSH payments totaled at least \$36 million at December 31, 2005, and \$12.7 million at December 31, 2004.

169. The existence, nature and amount of these anticipated DSH payments were material to Stable-Value's financial statements and GAAP required that they be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited 2004 or 2005 financial statements.

170. E&Y knew or should have know of the existence and materiality of the anticipated DSH payments SCHI purchased with Stable-Value loan proceeds, but nonetheless issued unqualified audit opinions on Stable-Value's 2004 and 2005 financial statements without disclosing or requiring disclosure of the existence, nature or amount of these anticipated DSH payments.

171. SCHI had also used a substantial and material amount of the funds Stable-Value loaned to it as of December 31, 2005 to make unsecured loans or advances to related parties, including Promise Healthcare. The nature and amount of these related party loans or advances was material to the financial statements of Stable-Value, but there was no such disclosure in Stable-Value's 2005 financial statements.

172. E&Y knew or should have know of the existence and materiality of SCHI's unsecured loans or advances to related parties described above, but nonetheless issued an unqualified audit opinion on Stable-Value's 2005 financial statements without disclosing or requiring any disclosure of these related party loans or advances.

173. Stable-Value's 2005 E&Y-audited financial statements were also materially false and misleading because they failed to disclose that a substantial and material

amount of the receivables serving as collateral for the Founding Partners' loans were purchased by Sun Capital from Promise Healthcare—a related party to Sun Capital. The related party nature of these purchases was material to Stable-Value's 2005 financial statements, and GAAP required that it be disclosed. But there was no such disclosure in Stable-Value's E&Y-audited financial statements.

174. E&Y knew or should have known that a substantial and material amount of the receivables serving as collateral for the Stable-Value loans were purchased by Sun Capital from a related party, and that the related-party nature of these transactions should have been disclosed in Stable-Value's financial statements. E&Y, however, issued an unqualified audit opinion on Stable-Value's 2005 financial statements without any such disclosure.

175. Stable-Value's 2005 E&Y-audited financial statements were also materially false and misleading because they failed to disclose that as of December 31, 2005, SCHI had used a substantial and material amount of the funds Stable-Value loaned to it to purchase workers compensation receivables, as described herein. The existence, nature and amount of these workers compensation receivables was material to the financial statements of Stable-Value, and GAAP required their disclosure. But there was no such disclosure in Stable-Value's E&Y-audited 2005 financial statements.

176. E&Y knew or should have known of the existence or amount of these workers compensation receivables, which served as collateral for Stable-Value's loans to SCHI, and E&Y knew or should have known that the existence, nature and amount of these workers compensation receivables was material to Stable-Value's 2005 financial

statements. But E&Y issued an unqualified audit opinion on those financial statements without any such disclosure.

177. Stable-Value's 2005 financial statements were also grossly and materially false and misleading because they failed to disclose that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that this added substantial and material risk to the loans.

178. E&Y knew or should have known that the quality and collectability of the collateral securing the Stable-Value loans was substantially and materially less than that associated with the collateral described in Stable-Value's financial statements, and that the true nature of the collateral should have been disclosed in those financial statements.

179. Stable-Value's 2005 E&Y-audited financial statements were also grossly and materially false and misleading because they failed to reveal that Sun Capital was misusing material amounts of Founding Partners' funds by purchasing receivables that were not eligible for purchase pursuant to the SCHI Agreement or SCI Agreement and by giving related-party hospitals advances that were unsecured, were not recoverable, and would not generate any income.

180. Due to the substantial (undisclosed) risks associated with the loans to Sun Capital as described herein, GAAP required that Stable-Value establish a substantial reserve or allowance for loan loss to account for the risk of non-collectability and that the reported fair value of the loans be reduced by a like amount. E&Y knew or should have known that such a reserve or allowance was required pursuant to GAAP.

181. However, Stable-Value's loans to Sun Capital were carried on Stable-Value's books and reflected in the financial statements at their face amount without any reduction to reflect any allowance or reserve for credit loss.

182. An appropriate allowance or reserve for loan loss would have substantially and materially reduced the value of the loans to Sun Capital as reported in Stable-Value's E&Y-audited financial statements.

C. E&Y Aided and Abetted the Dissemination of the False and Fraudulent January 2007 Confidential Offering Memorandum Prepared By Mayer Brown.

183. The January 2007 Confidential Offering Memorandum prepared by Mayer Brown identified E&Y as Stable-Value II's "independent accountants" and "independent auditors."

184. GAAS required that E&Y read and understand the January 2007 Confidential Offering Memorandum in order to gain and maintain an understanding of Founding Partners' business. Indeed E&Y, at some point, placed and maintained a copy of the January 2007 Confidential Offering Memorandum in its audit workpapers and/or permanent file.

185. The January 2007 Confidential Offering Memorandum represented that: "It is anticipated that the primary business of the Partnership will be to make secured loans to the Borrower [Sun Capital]."

186. The January 2007 Confidential Offering Memorandum specifically represented that:

Pursuant to the Credit Agreement, the Borrower agrees to use the proceeds of the Loans to finance the borrower's purchase of receivables arising out of the delivery of medical, surgical, diagnostic, or other healthcare related goods or services (such receivables being referred to collectively as "healthcare receivables" payable by third-parties such as insurance companies, Blue Cross/Blue Shield plans, and government programs such as Medicare and Medicaid ("third-party payors").

Pursuant to the Credit Agreement, loan proceeds that have not been used by the borrower to acquire Healthcare Receivables are to be held in a bank account (the "holding account") until they are used to acquire Healthcare Receivables or to make payments to the partnership.

187. These representations were false and materially misleading. The January 2007 Confidential Offering Memorandum does not mention loan proceeds being used to purchase workers' compensation receivables, anticipated DSH payments, or to make unsecured advances to related-party distressed hospitals, as described above.

188. When the Confidential Offering Memorandum was prepared by Mayer Brown for use by Stable-Value II, Mayer Brown knew that Founding Partners' money was being used to finance unsecured loans, and to make advances to borrowers that were not secured by "healthcare receivables," making the Memorandum materially false and misleading.

189. Mayer Brown knew that the above-quoted representations in the January 2007 Confidential Offering Memorandum were false and materially misleading.

190. E&Y knew that the above-quoted representations in the January 2007 Confidential Offering Memorandum were false and materially misleading.

191. The January 2007 Confidential Offering Memorandum further represented that “[t]he General Partner, officers of the General Partner, and the Partnership have no experience in evaluating, purchasing, billing, collecting or otherwise servicing Healthcare Receivables, and will rely completely on the Borrower.”

192. In light of FPCM’s lack of expertise, E&Y knew that FPCM and innocent decision-makers at FPCM and Founding Partners were relying on E&Y to perform a thorough and professional evaluation of the receivables purchased by Sun Capital.

193. E&Y and Mayer Brown knew that FPCM and Gunlicks would use the January 2007 Confidential Offering Memorandum to communicate the Founding Partners investment strategy and use of funds to Founding Partners limited partners and other innocent decision-makers.

194. The preparation and dissemination of the January 2007 Confidential Offering Memorandum constituted breaches of the fiduciary duties owed to Founding Partners and to their limited partners by FPCM, Gunlicks, and Mayer Brown.

195. E&Y knew that the preparation and dissemination of the January 2007 Confidential Offering Memorandum constituted breaches of the fiduciary duties owed by FPCM, Gunlicks, and Mayer Brown.

196. E&Y provided substantial assistance to the foregoing breaches of fiduciary duties by issuing an unqualified audit opinion on Stable-Value’s 2006 financial statements on May 23, 2007, and by failing to issue an adverse audit opinion and going concern qualification on Stable-Value’s 2007 financial statements despite its professional and contractual duties to do so.

XIII. UNABLE TO REPAY FOUNDING PARTNERS, SUN CAPITAL WENT OUT OF THE FACTORING BUSINESS AND DEFAULTED.

197. Eventually, due to the long delays in collection, outright inability to collect receivables and other misuses of Founding Partners' funds as described herein, Sun Capital was unable to service its debt to Founding Partners by making scheduled interest payments from revenue generated by its factoring operations.

198. In the fall of 2008, FPCM received a flood of redemption requests for Stable-Value, which totaled approximately \$382 million (or 70% of the fund assets) by year-end. As a result of Sun Capital's undisclosed misuses and dissipation of Founding Partners investment, Founding Partners faced severe liquidity problems and could not satisfy the redemptions. As a result, in October 2008, Gunlicks informed Sun Capital that FPCM would not loan additional funds to Sun Capital.

199. In November 2008, Sun Capital told Gunlicks it was exiting the factoring business. Sun Capital's principals and Gunlicks discussed a future plan to raise capital to repay all Sun Capital borrowings from Stable-Value. At that time, Sun Capital's principals told Gunlicks they needed \$8 to \$12 million in working capital from Stable-Value to keep their hospitals operating. Subsequently, in approximately December 2008, Founding Partners provided Sun Capital with approximately \$24 million in additional investor funds.

200. After receiving the approximately \$24 million in additional Founding Partners funds, Sun Capital stopped making interest payments on its loans from Founding Partners, and defaulted.

201. On information and belief, SCI and SCHI are incapable of repaying all or a substantial part of the loans from Founding Partners, and there is insufficient collateral available to cover the amounts due and owing Founding Partners' investors.

202. According to the books and records of Founding Partners, the amount of the loans (principal and interest) outstanding from Founding Partners to SCHI and SCI is in excess of \$550 million.

XIV. DUTIES E&Y AND MAYER BROWN OWED TO FOUNDING PARTNERS AND TO THEIR INVESTORS AND LIMITED PARTNERS.

A. E&Y's Duties Pursuant To Professional Auditing Standards.

203. E&Y is required by law to act as a public watchdog, a duty it breached repeatedly in connection with the Founding Partners audits.

204. E&Y owed to Founding Partners and their limited partners the duty to perform its audits in accordance with the Standards promulgated by Public Company Accounting Oversight Board ("PCAOB") and by the American Institute of Certified Public Accountants ("AICPA"). These Standards incorporate and include GAAS.

205. There are ten generally accepted auditing standards originally promulgated by the AICPA: three General Standards, three Standards of Field Work and four Standards of Reporting. Those standards are as follows:

(a) General Standards.

1. The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor.

2. In all matters relating to the assignment, an independence of mental attitude is to be maintained by the auditor or auditors.

3. Due professional care is to be exercised in the performance of the audit and the preparation of the report.

(b) Standards of Field Work.

1. The work is to be adequately planned and assistants, if any, are to be properly supervised.

2. A sufficient understanding of internal control is to be obtained to plan the audit to determine the nature, timing, and extent of tests to be performed.

3. Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.

(c) Standards of Reporting.

1. The report shall state whether the financial statements are presented in accordance with generally accepted accounting principles.

2. The report shall identify those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.

3. Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.

4. The report shall contain either an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated. In all cases where an auditor's name is associated with financial statements, the report should contain a clear-cut indication of the character of the auditor's work, if any, and the degree of responsibility the auditor is taking.

206. E&Y was required by GAAS to plan and perform its audits to obtain reasonable assurance that the financial statements being audited were free of material misstatement.

207. The requirement of independence embodied in the second general standard requires that “[t]o *be* independent, the auditor must be intellectually honest; to be *recognized* as independent, he must be free from any obligation to or interest in the client, its management, or its owners.” AU § 220.03 (emphasis in original). Independence requires that auditors, such as E&Y, must avoid even the appearance or question that they are not wholly independent.

208. Moreover, “due professional care requires the auditor to exercise professional skepticism. ... Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence.” AU § 316.13. Thus, E&Y could not take statements made by FPCM, Gunlicks or the Sun Capital entities at face value.

209. In addition, in conducting an audit in accordance with generally accepted auditing standards, the auditor must recognize that “[m]anagement has a unique ability to perpetrate fraud because it is in a position to directly or indirectly manipulate accounting records and present fraudulent financial information. Fraudulent financial reporting often involves management override of controls that otherwise may appear to be operating effectively.” AU § 316.08.

210. “During the course of the audit, the auditor may become aware of significant transactions that are outside the normal course of business for the entity, or

that otherwise appear to be unusual given the auditor's understanding of the entity and its environment. The auditor should gain an understanding of the business rationale for such transactions and whether that rationale (or the lack thereof) suggests that the transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets." AU § 316.66.

211. GAAS requires that the auditor "be aware of the possible existence of material related party transactions," AU § 334.04, and that the auditor "place emphasis on testing material transactions with parties he knows are related to the reporting entity." AU § 334.07.

212. GAAS requires that the auditor audit material related-party transactions with heightened skepticism because such transactions are presumed not to be arms-length transactions. With respect to related-party transactions, GAAS requires that the auditor apply procedures necessary to obtain satisfaction concerning the purpose, nature and extent of these transactions and their effect on the financial statements. Such procedures "should extend beyond inquiry of management." AU § 334.09.

213. According to GAAS, "[u]ntil the auditor understands the business sense of material transactions, he cannot complete his audit." AU § 334.09 n.6.

214. In its audits of Founding Partners' financial statements, E&Y was obligated by GAAS "to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, not to exceed one year beyond the date of the financial statements being audited" AU § 341.02.

215. E&Y also had a duty to comply with all of the Statements on Auditing Standards (“SAS”), which are issued by the Auditing Standards Board (“ASB”) of the AICPA and incorporated into GAAS.

216. GAAS required that E&Y obtain an understanding of the business organization and operating characteristics of Founding Partners sufficient for E&Y to conduct its audits in accordance with GAAS.

217. As part of its audits, E&Y was thus required to read and become familiar with Founding Partners’ organizational documents, including Founding Partners’ partnership agreements, Offering Memoranda pertaining to the Funds and promotional materials provided to limited partners and investors pertaining to the Funds in order to familiarize itself with the business of Founding Partners. E&Y was also required to read and understand the prior year’s financial statements of Founding Partners and the prior year auditor’s working papers pertaining to the audits of those financial statements. E&Y in fact read all of these materials (and copies of them were maintained in E&Y’s audit workpapers). E&Y thus knew that a key feature of investment in Founding Partners was the safety of the investment based upon FPCM’s and Gunlick’s assurance that the loans to SCHI were fully collateralized by short-term healthcare receivables payable by insurance companies or by the government and that any such receivables aged 120 days or more were either replaced or removed from any future lending base.

218. As a firm of Certified Public Accountants, E&Y was obligated to obtain sufficient evidential material to support its unqualified opinion. The auditors must gain an

understanding of the client's contracts, course of dealing and transactions with third parties. AU § 330.25.

219. E&Y, as an essential part of its audits of Stable-Value's financial statements, was required by GAAS to read and understand the SCHI Agreement and the SCI Agreement.

220. E&Y knew or should have known that SCHI's factoring did not comply with the SCHI Agreement.

221. Explanatory notes to the financial statements are an integral part of the financial statements, AU § 551.02. GAAS thus requires that the auditor implement sufficient audit procedures and obtain sufficient competent evidential matter to give the auditor reasonable assurance of the accuracy of representations and assertions made in the notes to the financial statements. In the case of its audits of the Founding Partners' financial statements, E&Y was thus obligated by GAAS to implement audit procedures and obtain sufficient, competent evidential matter to give E&Y reasonable assurance of the accuracy of, among other representations and assertions, the assertion in the Notes to Stable-Value's financial statements that SCHI would use investor funds loaned by Founding Partners to purchase healthcare receivables payable by third-party payors, such as insurance companies, Blue Cross/Blue Shield Plans and government programs such as Medicare and Medicaid, and that any underlying receivable aged beyond 120 days would be replaced or removed from future fundings.

222. GAAS further required that E&Y evaluate the impact on the Founding Partners financial statements of any failure of Founding Partners to comply with

investment restrictions imposed by contract or by governmental regulation. AICPA Audit and Accounting Guide, Audits of Investment Companies ("AIC") §§ 5.72-.75.

223. As auditors of the financial statements, E&Y was required by GAAS and otherwise to disclose or require disclosure of information material to the fair presentation of the financial position of Founding Partners.

B. Mayer Brown's Professional Duties As Counsel To Founding Partners.

224. Upon information and belief, Mayer Brown began providing legal services and advice to Founding Partners in late 1999, before a written engagement letter was signed.

225. In January 2000, Mayer Brown transmitted an engagement letter addressed to FPCM, including an undertaking to, among other things, provide services relating to lending facilities between Stable-Value's predecessor and Sun Capital Healthcare, Inc. ("SCHP"), which was to borrow monies from Stable-Value. Although Mayer Brown stated for conflict of interest purposes: "it is only [FPCM] who we will represent and not [FPCM's] subsidiaries, partnerships in which [FPCM is] a partner or related companies," Mayer Brown knew and intended that its work was created for use by Stable-Value, as the lender under the facilities. Only FPCM (through Gunlicks) and Mayer Brown executed that and the subsequent engagement letters.

226. In January 2001, Mayer Brown sent a second engagement letter to FPCM, in which Mayer Brown agreed to perform services in connection with a participation agreement between Stable-Value's predecessor and Global Fund. Mayer Brown also agreed to draft supplements to an offering memorandum that were to be used to solicit

investments in Stable-Value. In the January 3, 2001 letter, Mayer Brown stated: “we understand that [FPCM] has a conflict of interest in connection with the Participation Agreement, because [FPCM is] an affiliate of both the seller and the buyer of the participations. That conflict also affects us. You hereby waive any conflict of interest ...” Only Mayer Brown and FPCM executed the engagement letter; none of the Founding Partners executed the engagement letter.

227. In January 2002, Mayer Brown entered into another engagement agreement with FPCM, in which Mayer Brown agreed to provide services concerning a Credit and Security Agreement between Stable-Value and SCI. SCI purchased commercial accounts receivable with funds borrowed from StableValue. Although Mayer Brown stated in the 2002 engagement agreement, concerning conflicts of interest, that: “it is only you who we will represent and not the Stable-Value Fund, your subsidiaries, any partnerships in which you are a partner or any related companies,” Mayer Brown actually provided and intended its legal services for and legal advice on behalf of Founding Partners.

228. Mayer Brown drafted offering memoranda and/or supplements for Stable-Value and Stable-Value II, in which Mayer Brown was identified as the attorneys for Stable-Value and Stable-Value II.

229. In or about February 2008, Mayer Brown transmitted another engagement agreement to FPCM, which FPCM countersigned. In the 2008 engagement agreement, Mayer Brown agreed to “provide legal services to Founding Partners Capital Management Company ... with respect to the you [sic] and the entities listed on Schedule I hereto.” The entities listed by Mayer Brown on Schedule I were Founding Partners.

230. Over a period of many years, Mayer Brown was in fact the primary attorney for Founding Partners. Mayer Brown performed a wide range of services for Founding Partners, including, but not limited to: (a) advising on compliance with SEC regulations; (b) representing FPCM before the SEC; (c) drafting offering memoranda and/or supplements for Stable-Value and Stable-Value II; (d) drafting amendments to the SCHI Agreement that were never finalized; (e) advising and drafting documents for the transaction with Promise Healthcare; (f) advising and drafting documents in connection with the Bossier Land Acquisition Corp. transaction; (g) advising and drafting documents in connection with the HLP Properties and Lagniappe transactions; (h) drafting written amendments to the SCHI Agreement extending the maturity date; (i) negotiating with the Sun Capital Entities to change the terms of the parties' relationship; (j) advising on reorganization and bankruptcy issues; (k) providing tax advice; and (l) providing litigation services. Founding Partners considered Mayer Brown to be their primary counsel.

231. Conflicts of interest existed between FPCM and the Founding Partners because their respective interests diverged and because FPCM owed fiduciary duties to Founding Partners, and to the limited partners and investors. It was in FPCM's interest, but not in the interests of Founding Partners, to maximize the amounts loaned to SCHI and SCI in order to generate ever-increasing management fees paid to it by the Founding Partners, and to fund the increasing loans to SCHI and SCI. Mayer Brown recognized and acknowledged the conflicts of interest but, upon information and belief, Mayer

Brown never received necessary waivers of conflicts of interest from any of the Founding Partners.

232. Among the services Mayer Brown performed for Founding Partners was the drafting of the “Confidential Offering Memorandum” dated January 2007 for Stable-Value II. The January 2007 Confidential Offering Memorandum grossly and materially misrepresented: (a) the nature of the collateral used to secure Founding Partners’ loans to Sun Capital; (b) Sun Capital’s use of the loan proceeds; and (c) the risks associated with investment in Founding Partners.

233. Mayer Brown owed fiduciary duties to Founding Partners and to the limited partners and other innocent decision-makers, including the duties of due care, loyalty, and full disclosure of material facts. Founding Partners and the limited partners and other innocent decision-makers reposed trust and confidence in Mayer Brown and reasonably relied upon Mayer Brown’s expertise and advice.

XV. MAYER BROWN BREACHED ITS PROFESSIONAL OBLIGATIONS TO FOUNDING PARTNERS.

234. Commencing in 2002, the SEC began investigating FPCM for violations of various federal securities laws. Mayer Brown represented FPCM before the SEC and facilitated the production of documents by FPCM to the SEC. Mayer Brown also negotiated with the SEC on FPCM’s behalf.

235. On or about December 3, 2007, FPCM and the SEC settled the allegations against FPCM resulting in the issuance of a Cease-and-Desist Order. FPCM was required to cease-and-desist violating Section 17(a) (2) of the Securities Act of 1933

which proscribes obtaining investments through the use of untrue statements of material fact.

236. In the Commission Action, the SEC alleged that FPCM had violated the terms of the December 3, 2007 Cease-and-Desist Order. Mayer Brown failed to advise Founding Partners' limited partners and other innocent decision-makers that the offering memoranda prepared by Mayer Brown included representations that Mayer Brown knew to be inaccurate, and failed to advise that the continued use of those offering memoranda violated, among other things, the Cease-and-Desist Order.

237. By the Fall of 2008, Mayer Brown knew that Founding Partners was faced with severe liquidity problems. In the Fall of 2008, Founding Partners received redemption requests of approximately \$382 million. Mayer Brown knew about the redemption requests and knew that Founding Partners was unable to fully fund redemption requests. Mayer Brown advised FPCM that it need not fully honor investors' redemption requests.

238. Mayer Brown also advised FPCM not to waive its management fee in October 2008 despite the overwhelming rush of redemption requests; this illustrated the patent conflict of interest between Mayer Brown's representation of FPCM and its representation and provision of legal services to the Founding Partners.

239. Mayer Brown drafted a communication to be transmitted to Founding Partners' limited partners stating that Founding Partners does "not anticipate fully meeting the existing December 31, 2008 withdrawal requests." Mayer Brown knew this

statement was misleading because it knew at best Founding Partners was only going to pay a small fraction of each investor's redemption request.

240. Mayer Brown also wrote in the communication to limited partners that Founding Partners was "not currently experiencing abnormal illiquidity." Upon information and belief, Mayer Brown knew this statement was false and misleading.

241. Mayer Brown failed to properly disclose material negative information in the offering memoranda and/or supplements and other communications it prepared for Stable-Value and Stable-Value II.

242. In the offering memoranda and/or supplements drafted by Mayer Brown it was represented that Founding Partners would only lend for purchase of short-term accounts receivable defined to mean those accounts receivable expected to be collected or replaced within 150 days.

243. The offering memoranda and/or supplements drafted by Mayer Brown represented that the loans to SCHI were fully secured by healthcare accounts receivable. Mayer Brown knew that was not true when the offering memoranda and/or supplements were prepared by Mayer Brown, and knew that was not true when it knew that the offering memoranda and/or supplements were provided to limited partners and other innocent decision-makers.

244. Mayer Brown violated its duties to Founding Partners by:

(a) representing all of the Founding Partners entities despite having an unwaivable conflict of interest between representing FPCM and representing the Founding Partners which caused it to breach its duties of loyalty to all of its clients

and caused it to provide advice that was counter to the interests of the Founding Partners;

(b) failing to adequately advise limited partners and other innocent decision-makers concerning risks in offering memoranda and/or supplements prepared or reviewed by Mayer Brown;

(c) failing to advise limited partners and other innocent decision-makers about known deviations from and breaches of contract, and about the Founding Partners' inadequate protections against default by the factoring companies; and

(d) participating in and drafting limited partner communications that materially misrepresented and concealed the conflicts of interest, known deviations and from and breaches of contract, and other risks described above.

XVI. E&Y PERFORMED GROSSLY DEFICIENT AUDITS OF STABLE-VALUE'S 2006 AND 2007 FINANCIAL STATEMENTS.

A. 2006 Financial Statements.

245. In breach of the duties it owed to Founding Partners, E&Y performed grossly deficient audits of Stable-Value's 2006 financial statements. E&Y deviated in numerous respects from applicable professional standards referenced herein.

246. E&Y's Fort Lauderdale, Florida office performed AUP's on Sun Capital's portfolio of accounts receivable at December 31, 2006. These procedures were performed by E&Y as a critical and essential part of the audit of Stable-Value's 2006 financial statements.

247. E&Y failed to plan or implement appropriate audit procedures to evaluate the ability of Sun Capital or the related entities to repay the Founding Partners' loans. This was a gross deviation from GAAS because the collectability of these receivables was a significant risk.

248. E&Y's workpapers do not indicate that E&Y even undertook an analysis of the need for an allowance or reserve for loan loss to account for the risk of non-collectability of the loans to Sun Capital. This was a gross deviation from GAAS and GAAP, especially in light of E&Y's actual knowledge of Sun Capital's activities and the substantially deteriorated quality of the collateral used to secure Founding Partners' loans to Sun Capital.

249. E&Y failed to plan or implement appropriate audit procedures to evaluate the collectability and value of the Sun Capital receivables, which served as collateral for the loans from Founding Partners. Indeed, E&Y inexplicably failed to identify collectability of the receivables as even being a significant risk. These were gross violations of GAAS.

250. E&Y failed to give appropriate planning consideration to the nature and concentration of receivables at Sun Capital. This was a gross deviation from GAAS because, as discussed above, the receivables were of vastly different natures and the collectability and timing of collectability of these receivables varied widely depending upon the type.

251. E&Y failed to plan its audit to determine the mix or nature of the receivables that collateralized the loans. Given that workers' compensation receivables

and DSH payments were substantially different from typical healthcare receivables, as discussed above, E&Y's audit planning should have, but did not, take into consideration the differences in these receivables and the risks related to the character of these receivables.

252. E&Y failed to plan or implement any "subsequent events" procedures to evaluate the materially false and misleading January 2007 Confidential Offering Memorandum or its use to fraudulently maintain investments in Founding Partners and to deceive innocent Founding Partners' decision-makers by concealing the use of Founding Partners' loan proceeds and the true nature and value of the collateral securing those loans.

253. E&Y did nothing to evaluate the impact of the extremely high-risk advances from Sun Capital to Promise Healthcare hospitals or the collectability of the funds lent to Sun Capital by Founding Partners' investors or transferred to related parties as unsecured loans or "advances." E&Y issued a clean audit opinion and did not require disclosure of this highly inappropriate use of Founding Partners' funds, and did not require any allowance/reserve for loan loss to account for the probability that the Founding Partners' loans to Sun Capital were uncollectible in whole or in material part.

254. E&Y failed to appropriately evaluate Founding Partners' ability to continue in operation as a going concern for a reasonable period of time as required by GAAS. An appropriate going concern analysis was critical in light of the rapidly deteriorating quality of the receivables factored by Sun Capital and Sun Capital's outright misuse of Founding Partners' funds.

1. **E&Y Failed to Plan and Implement Audit Procedures Taking Into Account Material Weaknesses In Internal Control.**

255. A company's internal controls are processes implemented by a company's management to provide reasonable assurances regarding reaching goals in operations, accuracy of financial reports and compliance with applicable laws and regulations. The SEC defines internal controls as: "a specific set of policies, procedures, and activities designed to meet an objective ... Controls have unique characteristics – for example, they can be: automated or manual; reconciliations; segregation of duties; review and approval authorizations; safeguarding and accountability of assets; preventing or detecting error or fraud."

256. It is critical for auditors to understand and analyze a company's internal controls for purposes of planning the audits, assessing risks with various audit procedures and in performing the audits.

257. E&Y knew or should have known that there existed numerous material weaknesses in FPCM's and Founding Partners' internal controls, including but not limited to:

- (a) inability to properly value the collateral for Founding Partners' loans to Sun Capital;
- (b) inadequate staffing of Founding Partners' detailed accounting and financial reporting function, which was being performed by one person;
- (c) inadequate documentation of material transactions; and

(d) inadequate oversight or review of Sun Capital's use of Founding Partners' loan proceeds.

E&Y nonetheless did not properly notify Founding Partners of these material weaknesses as required by GAAS, and did not properly tailor or enhance its audit procedures to take into account these material weaknesses.

2. E&Y Violated GAAS Standards of Field Work in Numerous Ways.

258. In violation of GAAS, E&Y failed to maintain independence in mental attitude during the course of its audit due to its long and close relationship with Gunlicks, as described herein, and because of its relationship with Sun Capital and its desire to acquire new business from affiliates or entities related to Sun Capital as described herein.

259. In violation of GAAS, E&Y failed to implement any substantive audit procedures to test or evaluate the collectability of Stable-Value's loans to Sun Capital. E&Y merely confirmed the amount of the loans, and in violation of GAAS, merely assumed that the full amount was collectable.

260. In violation of GAAS, E&Y failed to implement any substantive audit procedures to test or evaluate the collectability of the receivables purchased by Sun Capital with Founding Partners' loan proceeds.

261. E&Y breached its professional duties in connection with the AUPs it performed on the receivables Sun Capital purchased by: (a) failing to advise Founding Partners that the procedures were grossly inadequate and were not useful for its audits; (b) negligently performing the procedures; and (c) negligently failing to integrate the

procedures into the audit process. Indeed, E&Y adopted the procedures as its own and assumed full responsibility for them when it added to and deviated from the AUPs without executing new agreements.

262. In violation of GAAS, E&Y failed to design the AUPs it performed on the receivables Sun Capital purchased with Stable-Value loan proceeds to determine or evaluate the actual collectability and value of those receivables.

263. In its AUPs on the receivables Sun Capital purchased with Stable-Value's loan proceeds, E&Y merely confirmed on a sample basis the amount of the receivable and the fact that the amount was owed. But, E&Y did no analysis of the actual collectability of these receivables, in violation of GAAS.

264. In violation of GAAS, E&Y failed to plan or implement proper audit procedures to evaluate receivables Sun Capital purchased from Promise Healthcare or Success, both related parties, and failed to evaluate those transactions with heightened skepticism as required by GAAS.

265. In violation of GAAS, E&Y, in its evaluation of the receivables serving as collateral for the Founding Partners' loans, failed to make any distinction between the types of receivables factored by Sun Capital in the audit procedures that E&Y implemented. As a result, E&Y applied the same procedures to workers' compensation receivables as it did to DSH payments and to other healthcare receivables. This is a gross deviation from GAAS because these types of receivables are very different, as described above, both in the timing of their collectability and in the ability to collect the receivable, period.

266. E&Y failed to plan or implement appropriate audit procedures to determine whether Sun Capital's purchase of workers' compensation receivables and anticipated DSH payments was a violation of the SCHI Agreement and, if so, whether these material facts were properly disclosed in Stable-Value's financial statements.

267. E&Y failed to plan or implement proper audit procedures to determine whether Sun Capital's loans to related parties, funded with Founding Partners' loan proceeds, were in violation of the SCHI Agreement or the SCI Agreement, and, if so, whether these material facts were properly disclosed in Stable-Value's financial statements.

268. E&Y's AUP's on the receivables purchased by Sun Capital were inadequate because they failed to sample a sufficient number of receivables to obtain a reasonably accurate portrayal of the character and composition of Sun Capital's receivables portfolio.

B. The Never-Completed 2007 Audit and Continuing Concealment of Sun Capital's Misuse of Founding Partners' Funds.

1. E&Y initially resigned as Founding Partners' auditor due to the extreme risk associated with the audit, but then decided to continue as auditor in order to attract business from Sun Capital-related companies.

269. In June 2007, shortly after the issuance of its unqualified audit opinion on Stable-Value's 2006 financial statements, E&Y decided to resign from its audit relationship with Founding Partners.

270. According to E&Y's workpapers, its decision to resign as Founding Partners' auditor was based upon at least the following risk factors:

I. Lack of audited financial statements for Sun Capital to help support the validity and valuation of the loans from the Stable-Value fund to Sun Capital in connection with the audit of the Stable-Value fund.

II. Credit risk of the loans to Sun Capital which represent 88% of the assets of the Stable-Value fund at December 31, 2006.

III. Concern regarding the adequacy of the procedures and controls over the valuation of investments in private companies which represent 52% of the investments held by the Equity Fund as of December 31, 2006.

IV. An ongoing SEC investigation of Founding Partners and William Gunlicks which was initiated in 2000, resulted in the issuance of a "Wells Notice" in December 2003, and was still ongoing at the time of our decision to resign.

271. E&Y's decision to resign was also motivated by, on information and belief, the unacceptable risks posed by the concentration of Founding Partners' assets at Sun Capital and Sun Capital's misuse of those assets as described herein.

272. E&Y did not at any time inform Founding Partners of the true and material reasons for its decision to resign, including the reasons set forth in the preceding paragraphs.

273. E&Y apparently did not inform Gunlicks and FPCM of its decision to resign until November 2007.

274. Nonetheless, in early 2008, Paul Sallwasser, the E&Y partner in E&Y's Fort Lauderdale, Florida, office who had performed and led E&Y's audits and AUP's at Sun Capital, successfully lobbied partners in E&Y's professional practice group to allow

E&Y, through its South Florida offices, to continue to audit the financial statements of Founding Partners, for fiscal year 2007.

275. Accordingly, E&Y was engaged to audit Stable-Value's financial statements for the year ended December 31, 2007.

276. E&Y's decision to continue auditing Stable-Value's financial statements for 2007 was motivated by its desire to foster and improve its relationship with and attract business from Sun Capital-related and affiliated entities.

277. Indeed, Sallwasser, in an E&Y memorandum dated January 3, 2008, in which he attempted to justify E&Y's continuance of its audit relationship with Founding Partners, argued that the engagement would be profitable and specifically observed that "it is not likely that we would be appointed as the auditor of Promise [Healthcare] if we are not the auditor of the Funds and Sun Capital."

278. E&Y's motivation to attract business from Sun Capital-related parties seriously compromised E&Y's independence in the course of its audit of Founding Partners' financial statements, in violation of GAAS.

279. On or about February 5, 2008, FPCM and E&Y entered into an agreement pursuant to which the performance of the audits for the year ended December 31, 2007 were to be conducted.

280. Days later, on February 12, 2008, E&Y attempted to include a limitation on liability, which further seriously compromised E&Y's independence in violation of GAAS. Founding Partners' records do not reflect a counter-signed copy of the February 12, 2008 letter and, even if signed, the limitation of liability is unenforceable.

2. **E&Y's audit of Founding Partners 2007 financial statements was grossly deficient and intentionally prolonged so as to avoid issuance of an adverse audit opinion and restatement of Stable-Value's 2006 financial statements as required by GAAS and GAAP.**

281. E&Y's audit of Stable-Value's financial statements for the fiscal year ended December 31, 2007 was conducted by E&Y's Fort Lauderdale, Florida office, and AUPs on Sun Capital's portfolio of factored receivables in connection with that audit were likewise conducted by E&Y's Fort Lauderdale office.

282. E&Y's audit of Stable-Value's financial statements for the fiscal year ended December 31, 2007 dragged on for well over a year until Gunlicks fired E&Y in 2009, shortly before Founding Partners was placed in the current receivership.

283. E&Y delayed its audit work in order to avoid issuing an opinion on Stable-Value's financial statements as of December 31, 2007. It knew or should have known that Stable-Value's financial statements did not comport with GAAP.

(a) **Stable-Value's 2007 Financial Statements Continued the Concealment of Sun Capital's Misuses of Stable-Value's Investors' Funds.**

284. Drafts of Stable-Value's financial statements for the fiscal year ended December 31, 2007 are included in E&Y's workpapers.

285. The 2007 Stable-Value financial statements audited by E&Y contained similar misrepresentations, and were materially false and misleading for essentially the same reasons as the 2006 financial statements.

286. Stable-Value's 2007 financial statements audited by E&Y failed to reveal that substantially material amounts of the receivables factored by SCHI using Stable-

Value funds consisted of DSH payments, workers' compensation receivables and receivables aged beyond 120 days, and those financial statements likewise failed to reveal substantial and material unsecured loans or "advances" from Sun Capital to related-party hospitals using Founding Partners' funds.

287. Unlike prior years' financial statements, certain of the draft 2007 Stable-Value financial statements do contain vague reference to workers' compensation receivables and the longer collection period for those receivables. However, the financial statements contain no disclosure of the material amount of workers' compensation receivables being factored by Sun Capital or their ineligible nature.

288. The draft 2007 financial statements of Stable-Value also contain a disclosure that "[a]pproximately \$218 million of the collateral is healthcare receivables that Sun Capital purchased from a group of twelve hospitals which are controlled by the owners of Sun Capital." Stable-Value's prior E&Y-audited financial statements contained no reference to Sun Capital's substantial and material purchases of healthcare receivables from related-party hospitals.

289. The draft 2007 financial statements of Stable-Value also contain no allowance or reserve for loan loss to reflect the risk of non-collectability of the Stable-Value loans to Sun Capital.

(b) **E&Y Intentionally Prolonged its Audit of Stable-Value's 2007 Financial Statements in Order to Conceal E&Y's Own Misconduct.**

290. E&Y did not issue a report or opinion on Stable-Value's 2007 financial statements.

291. E&Y prolonged its audit of Stable-Value's 2007 financial statements by requesting ever-increasing numbers of receivables to sample.

292. During its audit of Stable-Value's 2007 financial statements, E&Y again purported to perform AUPs on the collateral supposedly securing Stable-Value's loans to Sun Capital. E&Y issued an AUP report dated June 25, 2008, but without having performed procedures necessary to properly evaluate the collateral.

293. E&Y later insisted on increasing the sample size of receivables it sampled. E&Y did so ostensibly to get a more accurate picture of Sun Capital's portfolio of factored receivables. But this was merely a pretext in order to enable E&Y to significantly prolong the audit and delay issuance of an audit report and opinion. E&Y knew or should have known that the sample it initially requested from Sun Capital was grossly inadequate to enable E&Y to perform a GAAS audit of Stable-Value's financial statements or gain an accurate understanding of Sun Capital's portfolio of receivables.

294. E&Y was obligated by professional standards to issue a report and adverse opinion on Stable-Value's 2007 financial statements within a reasonable period of time.

295. E&Y's failure to issue an adverse audit opinion or disclaimer of an opinion, together with a going concern qualification, on Stable-Value's 2007 financial statements aided and gave substantial assistance to the continuing misconduct by Gunlicks, FPCM, and others.

296. E&Y knew that it was obligated by GAAS to issue an adverse opinion on Stable-Value's 2007 financial statements and to disclose all material facts that had been omitted from those financial statements. E&Y also knew that it was required by GAAS

to issue a going-concern qualification on its audit opinion in which it revealed that substantial doubt existed as to Founding Partners' ability to continue in operation for a reasonable period of time.

297. E&Y also knew, during the course of its audit, or purported audit, of Stable-Value's 2007 financial statements, Stable-Value's E&Y-audited 2006 financial statements were grossly and materially misstated and misleading, and that GAAP and GAAS required an immediate restatement of those financial statements. Yet in breach of the duties it owed to Founding Partners, E&Y required no such restatement and failed to disclose the need for any such restatement.

298. E&Y's failure and refusal to issue an audit report and opinion on Stable-Value's 2007 financial statements was motivated purely by E&Y's own pecuniary interests at the expense of Founding Partners. E&Y knew that its issuance of an adverse or qualified audit opinion on Stable-Value's 2007 financial statements would serve, at least in part, to highlight the false and misleading nature of Stable-Value's 2006 financial statements and E&Y's deficient audit of those financial statements, and would underscore the need to restate those financial statements. All of this would at least expose E&Y's grossly deficient audit of Stable-Value's 2006 financial statements.

299. In addition, E&Y was required, and had a continuing obligation pursuant to GAAS, to follow the procedures set forth in AU § 561, including insistence that FPCM and Gunlicks make appropriate disclosure of the facts demonstrating that the 2006 financial statements were materially misstated and misleading and should not be relied

upon. If FPCM and Gunlicks refused to make such disclosures, AU § 561.08 required that E&Y:

- (a) notify the client that E&Y's audit report must no longer be associated with the 2006 financial statements;

- (b) notify regulatory agencies that E&Y's audit report on the 2006 financial statements should no longer be relied upon; and

- (c) notify each person known to the auditor to be relying on the financial statements that his report should no longer be relied upon.

But E&Y failed to follow any of these procedures.

300. E&Y was thus willing to allow the loss of hundreds of millions of dollars of Founding Partners' investors' funds in order to avoid revealing its own audit failures and misrepresentations.

301. During the course of its audit work on Stable-Value's draft 2007 financial statement, E&Y knew that the quality of Stable-Value's portfolio of receivables continued to deteriorate.

302. Sun Capital's financial statements show that by February 2009, it held approximately \$53 million of workers' compensation receivables. At recent rates of collection, these workers' compensation accounts receivable will not be fully collected for over 18 years (or until 2028), if ever.

303. As of February 2009, Sun Capital had at least \$63 million in related-party unsecured loans to Promise Healthcare hospitals funded by assets received from Stable-Value. In addition, Sun Capital had outstanding a \$450,000 unsecured loan, likewise

funded with Stable-Value investor funds, to Sun Capital's CFO for the purchase of a house. These unsecured loans to related parties, and many others like them, constituted a substantial and material portion of the collateral securing Stable-Value's loans to Sun Capital.

304. As of February 2009, Sun Capital held approximately \$158 million in DSH payments.

305. Moreover, Sun Capital's collateral report for December 31, 2008 indicates that approximately \$136 million of Sun Capital's receivables, including workers' compensation and DSH payments, had been outstanding for more than 150 days, but were not replaced with "fresh" receivables. Furthermore, Sun Capital had approximately \$40 million in additional workers' compensation receivables and anticipated DSH payments less than 120 days old, most of which by their very nature Sun Capital could not and would not likely collect within 150 days.

3. **E&Y Performed a Grossly Deficient Audit of Stable-Value's 2007 Financial Statements.**

306. During the course of its audit of Stable-Value's 2007 financial statements, E&Y knew or should have known that Sun Capital was incapable of servicing its debt to Stable-Value and was incapable of repaying the principal balances of Founding Partners' loans to Sun Capital. E&Y thus knew that Stable-Value's loans to Sun Capital were at extreme risk.

307. During the course of its audit of Founding Partners' 2007 financial statements, E&Y knew that the risk of Sun Capital defaulting on the Stable-Value loans was extreme.

308. During the course of its prolonged audit of Stable-Value's 2007 financial statements, E&Y also knew that there was and had been no disclosure of the substantial risks to which Founding Partners' funds were exposed due to the substantial deterioration of the quality of receivables being factored by Sun Capital and because of Sun Capital's outright misuse of Founding Partners' funds.

309. Indeed, all the while that E&Y conducted, or purported to conduct, its audit of Stable-Value's 2007 financial statements, E&Y knew that there was no disclosure by Gunlicks, FPCM, or anyone else for that matter, that Stable-Value's 2006 financial statements were substantially and materially false and misleading.

310. Moreover, all the while that E&Y conducted, or purported to conduct, its audit of Stable-Value's 2007 financial statements, E&Y knew that Gunlicks and FPCM were using the January 2007 Confidential Offering Memorandum, with its grossly and materially false and misleading representations, and with its use of E&Y's name to add credibility to the document, to conceal Sun Capital's actual uses of Founding Partners' loan proceeds.

311. E&Y failed to properly tailor, enhance, or add audit procedures to take into account serious and material weaknesses in FPCM's and Founding Partners' internal controls, including at least the following:

(a) inability to properly value the collateral for Founding Partners' loans to Sun Capital;

(b) inadequate staffing of Founding Partners' detailed accounting and financial reporting function, which was being performed by one person;

(c) inadequate documentation of material transactions; and

(d) inadequate oversight or review of Sun Capital's use of Founding Partners' loan proceeds.

312. Upon information and belief, E&Y failed to emphasize or critically analyze anticipated DSH payments in its analysis of the factored receivables and credit risk.

313. As in prior years, E&Y violated GAAS by failing to properly plan and implement audit procedures to evaluate the collectability of Stable-Value's loans to Sun Capital.

314. As in prior years, E&Y violated GAAS by failing to properly evaluate Stable-Value's need for an allowance or reserve for loan loss.

315. As in prior years, E&Y failed to adequately plan and perform its audit to properly evaluate and understand the value, including an analysis of collectability, of the collateral securing Stable-Value's loans to Sun Capital.

316. As in prior years, E&Y's procedures applied to receivables factored by Sun Capital at December 31, 2007 were inadequate to enable E&Y to evaluate the collectability of the receivables. This was in violation of GAAS.

317. As in prior years, E&Y failed to properly take into consideration the fact that material amounts of the receivables factored by Sun Capital with Stable-Value loan proceeds were receivables Sun Capital purchased from entities related to Sun Capital.

318. E&Y abandoned its professional skepticism and failed to properly plan and implement audit procedures to evaluate the collectability of DSH and workers compensation receivables.

319. E&Y failed to design or perform tests to focus specifically on the workers' compensation receivables or anticipated DSH payments. E&Y personnel were not versed with the unique and risky nature of workers' compensation receivables and DSH payments.

320. In its AUPs, performed in connection with the December 31, 2007 audit, E&Y erroneously double-counted accrued fees as collateral. E&Y advised Founding Partners of its error only after it learned the SEC was investigating Founding Partners in early 2009.

321. E&Y failed to properly take into consideration the fact that the hospitals that factored accounts receivable with SCHI were financially distressed or insolvent and thus collectability of certain receivables was significantly impaired.

322. E&Y failed to gain an understanding of Sun Capital's methods of valuing or monitoring the factored accounts receivable.

323. E&Y improperly relied upon accounts receivable confirmations from parties related to SCHI.

324. E&Y failed to properly evaluate and determine whether Sun Capital was using the proceeds of the loans from Stable-Value in ways and for purposes not permitted by the SCHI Agreement and the SCI Agreement, and inconsistent with what was represented to investors in Stable-Value's financial statements and Stable-Value and Stable-Value II's Confidential Offering Memoranda and monthly performance reports.

325. E&Y failed to disclose that the Sun Capital entities were using loan proceeds from Stable-Value in ways and for purposes not permitted by the SCHI Agreement and SCI Agreement, and inconsistent with what was presented to investors in Stable-Value's financial statements and Stable-Value and Stable-Value II's confidential offering memoranda and monthly performance reports.

326. As in prior years, E&Y violated GAAS by failing to properly evaluate Stable-Value's ability to continue in operation as a going concern for a reasonable period of time.

327. After E&Y was finally terminated in February 2009, it required Founding Partners to agree that its new auditor could only review the audit workpapers for use in preparing its 2007 and 2008 audits and that the new auditor could not serve as an expert witness against E&Y.

XVII. E&Y AND MAYER BROWN MADE AFFIRMATIVE MISREPRESENTATIONS TO FOUNDING PARTNERS' LIMITED PARTNERS AND OTHER INNOCENT DECISION-MAKERS.

328. The "Agreement of Limited Partnership" of Stable-Value, which as alleged above, E&Y was required to read and understand pursuant to GAAS, specifically provided that the limited partners would be provided financial statements "audited by the

partnership's independent certified public accountants" written one hundred twenty (120) days after the end of each fiscal year. Stable-Value's confidential offering memoranda similarly represented that investors would be provided audited financial statements within one hundred twenty (120) days of the end of each fiscal year. E&Y and Mayer Brown thus knew that Founding Partners audit opinions were being supplied to the limited partners and other innocent decision-makers of Founding Partners.

329. E&Y and Mayer Brown were aware that the majority of Founding Partners' collective assets were inextricably tied to the factoring of accounts receivable by the Sun Capital entities.

330. E&Y's report on Stable-Value's 2006 financial statements is dated May 23, 2007, and is addressed to "The Partners" of Stable-Value. In its audit report, E&Y made numerous misrepresentations.

331. E&Y's reports on Stable-Value's 2004 and 2005 financial statements are dated June 6, 2005, and June 23, 2006, respectively, and are addressed to "The Partners" of Stable-Value. In its audit reports, E&Y also made numerous misrepresentations substantially similar to those in its report on Stable-Value's 2006 financial statements.

332. In its audit reports, E&Y represented that it was an "independent" auditor of the financial statements. This representation was false and materially misleading.

333. In fact, E&Y was not independent and had compromised its independence in numerous ways, including at least the following: (a) E&Y's professional skepticism and independence were compromised by its long relationship with Sun Capital and, as alleged below, its desire to attract business from Sun Capital and related and affiliated

entities; and (b) E&Y had a long personal relationship with Gunlicks, having provided at least tax services to him and his family for nearly 25 years.

334. In its reports, E&Y represented that “[w]e conducted our audit in accordance with auditing standards generally accepted in the United States.” This representation was false and materially misleading.

335. As alleged herein, E&Y did not conduct GAAS audits of Stable-Value’s financial statements. Indeed, as alleged herein, E&Y was guilty of gross deviations from basic GAAS.

336. E&Y further specifically represented that “[w]e believe that our audit provides a reasonable basis for our opinion.” This representation was false and materially misleading. E&Y’s audits were so deficient and so substantially deviated from the requirements of professional auditing standards that no reasonable auditor could believe that the audit provided any reasonable basis for an opinion on the financial statements of Stable-Value.

337. In fact, as alleged above, E&Y documented in its own workpapers its actual knowledge that the financial statements of Stable-Value were grossly and materially misstated and misleading. E&Y thus had no basis for issuing unqualified audit opinions on those financial statements.

338. E&Y further represented in its audit report on Stable-Value’s 2006 financial statements that:

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Founding Partners Stable-Value Fund, L.P. at December 31,

2006 and the results of its operations, the changes in its partners' capital, and its cashflows for the year then ended in conformity with U.S. generally accepted accounting principles.

E&Y's audit reports on Stable-Value's 2004 and 2005 financial statements contain a substantially similar representation that in E&Y's opinion, the financial statements conformed with U.S. GAAP. These representations were false and materially misleading. As alleged above, Stable-Value's 2004, 2005, and 2006 financial statements were grossly and materially misstated and misleading in numerous respects.

339. As documented in E&Y's workpapers, E&Y's calculated "Planning Materiality" for its audit of Stable-Value's 2006 financial statements was \$2,867,000, with "Tolerable Error" of \$1,433,000. The amount of Founding Partners' funds which Sun Capital improperly used to purchase workers' compensation receivables, DSH payments and to make unsecured loans or advances to entities related to Sun Capital, exceeds this materiality threshold by many magnitudes. In fact, E&Y knew that Sun Capital had improperly used at least \$129.4 million (over 45 times E&Y's Planning Materiality) of the funds loaned to Sun Capital for these purposes. This amount was over half the purported \$253.9 million fund value of the loans to Sun Capital outstanding at 31 December 2006 as reported in Stable-Value's 2006 E&Y-audited financial statements.

340. As discussed above, E&Y actually knew and understood that Stable-Value's 2006 financial statements were grossly and materially misleading.

341. In the alternative, E&Y acted recklessly and consciously avoided knowing that Stable-Value's 2006 financial statements were materially misleading and misstated.

342. GAAS required E&Y to include in its audit reports a “going concern” qualification indicating that substantial doubt existed as to Founding Partners’ ability to continue in operation for a reasonable amount of time. But E&Y failed to include any such qualification in its audit reports, thus further concealing Sun Capital’s misuse of Founding Partners’ funds and the undisclosed substantial risks to which those funds were exposed.

343. By failing to disclose or require disclosure of the material facts of the dramatic deterioration in the quality of the collateral used to secure loans to SCHI and Sun Capital’s outright misuse of Founding Partners’ investor funds exposed investor funds to substantial and material risk of loss, E&Y and Mayer Brown concealed the breaches of duty of FPCM, Gunlick, Sun Capital, and others; Mayer Brown failed to act when required to do so by virtue of its professional obligations to Founding Partners; E&Y failed to act when required to do so by virtue of its audit engagement and by virtue of the provisions of GAAS and GAAP.

**XVIII. INNOCENT DECISION-MAKERS OF FOUNDING PARTNERS
REASONABLY RELIED ON THE MATERIAL
MISREPRESENTATIONS AND OMISSIONS MADE TO THEM,
INCLUDING E&Y’S UNQUALIFIED AUDIT OPINIONS, AND E&Y’S
AND MAYER BROWN’S SILENCE IN THE FACE OF AN
AFFIRMATIVE DUTY TO SPEAK.**

344. Investors and limited partners of Founding Partners, including the Assignors, reasonably relied on the representations and omissions contained in the offering materials, including without limitation the Offering Memoranda and financial statements, and based their decisions to invest and to continue their investments on those

representations and omissions. The materials relied upon by the investors and limited partners reflected the current materials available at the time of their respective investments in Founding Partners. The investors and limited partners were unaware that representations and omissions in the materials and information provided to them at the time were materially false and misleading.

345. Limited partners of Founding Partners and innocent decision-makers of FPCM and Founding Partners relied on E&Y's unqualified audit opinions on Founding Partners' financial statements in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital as described herein. Such reliance was reasonable.

346. Limited partners of Founding Partners and innocent decision-makers of FPCM and Founding Partners also relied on E&Y's and Mayer Brown's silence when E&Y and Mayer Brown were affirmatively obligated, as described above, to inform those innocent decision-makers that Founding Partners' financial statements were materially false and misleading; that E&Y's audit opinions should not be relied upon, and of the true facts regarding Sun Capital's use of Founding Partners' funds, including but not limited to the true character and composition of Sun Capital's portfolio of receivables serving as collateral for Founding Partners' loans. In reliance upon such silence, the innocent decision-makers refrained from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital as described herein. Such reliance was reasonable.

347. It was reasonably foreseeable to E&Y and Mayer Brown that limited partners of Founding Partners and innocent decision-makers of FPCM and Founding

Partners would rely upon E&Y and Mayer Brown in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital, and that as a result of such reliance, Founding Partners' assets would be lost.

COUNT I
PROFESSIONAL MALPRACTICE (E&Y)

348. Plaintiff realleges and incorporates the allegations above as though fully set forth herein.

349. As alleged in detail above, E&Y breached its professional duties to Founding Partners and acted negligently in numerous ways by, among other things: (a) failing to properly plan its audits of Founding Partners' financial statements; (b) failing to gain a necessary understanding of the unique aspects of the Founding Partners' business, course of dealing and industry; (c) failing to properly perform GAAS audits; (d) failing to exercise professional skepticism during the audits and in performing certain Agreed-Upon Procedures; (e) failing to remain independent of Gunlicks and the Sun Capital entities; (f) failing to design adequate and necessary Agreed-Upon Procedures; (g) failing to evaluate the collectability of receivables serving as collateral for Stable-Value's loans; (h) failing to evaluate the collectability of Sun Capital's loans to related parties; (i) failing to evaluate whether Sun Capital's use of Founding Partners' loan proceeds was consistent with the SCHI Agreement, the SCI Agreement, or with what was being represented to the limited partners and other innocent decision-makers of Founding Partners; (j) failing to properly perform Agreed-Upon Procedures; (k) failing to properly staff its attest engagements; (l) failing to recognize and/or disclose and

communicate material weaknesses in internal controls; (m) failing to evaluate the need for and to require or appropriate allowance or reserve for loan loss; and (n) issuing unqualified audit opinions on financial statements which E&Y knew or should have known were materially misstated and misleading.

350. As alleged in detail above, E&Y ignored numerous GAAS red flags, including, but not limited to: (a) Founding Partners' lack of or inadequate internal controls; (b) lack of any qualified personnel to value the receivables serving as collateral for the Founding Partners' loans; (c) extensive transactions with related parties by the Sun Capital entities; (d) the Sun Capital entities' lack of audited financial statements; (e) Sun Capital's use of Stable-Value loan proceeds in manners inconsistent with what was represented in Stable-Value's financial statements; and (f) deviations from the SCI and SCHI Agreements.

351. E&Y also breached its duty of care because it was not independent based upon its years of providing tax accounting to Gunlicks and his family and its desire to obtain business from Sun Capital.

352. As the direct and proximate result of E&Y's breaches of duty, Founding Partners was damaged in an amount to be proven at trial.

COUNT II
NEGLIGENT MISREPRESENTATION (E&Y)

353. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

354. E&Y made affirmative misrepresentations to limited partners and other innocent decision-makers of Founding Partners in its audit reports on Stable-Value's 2004, 2005, and 2006 financial statements.

355. E&Y also misrepresented to Founding Partners the true reasons why it originally resigned from the 2007 audit.

356. E&Y also repeatedly misrepresented to Founding Partners that it would timely complete the 2007 audit.

357. E&Y made these representations negligently and without a reasonable basis to believe their truth.

358. E&Y knew or should have known that E&Y's representations were false.

359. E&Y was obligated to disclose to Founding Partners the material information it failed to disclose as alleged herein.

360. E&Y reasonably foresaw and expected that limited partners and other innocent decision-makers would rely on E&Y's misrepresentations.

361. Limited partners and other innocent decision-makers of Founding Partners in fact relied upon E&Y's misrepresentations in refraining from taking appropriate and timely action to protect Founding Partners' assets at Sun Capital. Such reliance was reasonable.

362. Founding Partners' reliance on E&Y's misrepresentations was reasonable and justifiable.

363. As a direct and proximate result of Founding Partners' reasonable reliance on E&Y's misrepresentations, Founding Partners (and the Assignors) sustained damages in an amount to be proven at trial.

COUNT III
FRAUD (E&Y)

364. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

365. E&Y made affirmative misrepresentations to limited partners and other innocent decision-makers of Founding Partners in its audit reports on Stable-Value's 2004, 2005, and 2006 financial statements.

366. E&Y either knew at the time it made those misrepresentations that they were false or E&Y acted with reckless disregard for their truth or falsity.

367. E&Y reasonably foresaw, expected and intended that the limited partners and other innocent decision-makers at Founding Partners would rely on E&Y's representations contained in its audit report.

368. The limited partners and innocent decision-makers of Founding Partners in fact relied on E&Y's misrepresentations in refraining from taking action to protect Founding Partners' assets at Sun Capital despite Sun Capital's use of those assets in a manner inconsistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners. Such reliance was reasonable and justifiable.

369. As alleged in detail above, E&Y concealed the truth regarding Sun Capital's use of Founding Partners' loan proceeds despite its knowledge of those facts, and despite its affirmative professional obligation to reveal those facts to the limited partners and other innocent decision-makers of Founding Partners and to advise them that they should not rely on Founding Partners' financial statements.

370. The limited partners and other innocent decision-makers of Founding Partners relied upon E&Y's silence in the face of its affirmative duty to speak in believing that Founding Partners' assets at Sun Capital were being used in a manner consistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners. Such reliance was reasonable and justifiable.

371. The limited partners and other innocent decision-makers of Founding Partners reasonably relied upon E&Y's silence in the face of a duty to speak in refraining from taking action to protect Founding Partners' assets at Sun Capital despite the fact that those assets were, unbeknownst to them, in fact being used in manners inconsistent with what was being represented to the limited partners and other innocent decision-makers of Founding Partners and that those assets were being exposed to extraordinary risk of loss. Such reliance was reasonable and justifiable.

372. As a direct and proximate result of E&Y's fraud, Founding Partners and the Assignors were damaged in an amount to be proven at trial.

373. E&Y's conduct was willful, extreme and outrageous, with reckless disregard for the rights and interests of others, thus meriting an award of punitive damages.

COUNT IV
BREACH OF FIDUCIARY DUTY (E&Y)

374. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

375. As explained above, the facts alleged herein establish that E&Y owed fiduciary duties to Founding Partners (and the Assignors), including the duties of due care, loyalty, and full disclosure of all material facts.

376. E&Y breached its fiduciary duties that it owed to Founding Partners (and the Assignors) by, among other things, issuing unqualified audit opinions on Founding Partners' false and fraudulent financial statements, by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds, and by failing to reveal to Founding Partners the true reasons for its decision to resign from the Founding Partners' audit engagement as set forth herein.

377. E&Y further breached its fiduciary duties to Founding Partners (and the Assignors) by failing to disclose that the value of the collateral securing Stable-Value's loans to Sun Capital was inadequate to cover any, or at most only a small portion, of the amount of the loans.

378. Founding Partners' (and the Assignors') damages were directly and proximately caused by E&Y's breaches of the fiduciary duties it owed to Founding Partners (and the Assignors).

COUNT V
AIDING AND ABETTING FRAUD (E&Y)

379. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

380. As alleged in greater detail above, FPCM and Gunlicks made affirmative misrepresentations to investors including the Assignors and Founding Partners through Founding Partners' financial statements and confidential offering memoranda, including the representations that Founding Partners' loans to SCHI were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced.

381. FPCM and Gunlicks either knew that these representations were false or they consciously avoided knowing that they were false at the time they were made.

382. FPCM and Gunlicks intended for the limited partners and other innocent decision-makers of Founding Partners to rely upon the misrepresentations and Founding Partners' financial statements and confidential offering memoranda.

383. The limited partners and other innocent decision-makers of Founding Partners in fact relied upon these misrepresentations in believing that Sun Capital was using Founding Partners' loan proceeds in a manner consistent with that represented to the investors and other innocent decision-makers, and in refraining from taking action to protect Founding Partners' assets from use by Sun Capital in a manner inconsistent with what was being represented to them. Such reliance was reasonable.

384. E&Y had actual knowledge that FPCM and Gunlicks were committing fraud as described above.

385. E&Y gave substantial assistance to FPCM and Gunlicks' fraud by, among other things, issuing unqualified audit opinions on Founding Partners' false and fraudulent financial statements, and by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds despite having an affirmative professional duty to disclose such facts to the limited partners and other innocent decision-makers of Founding Partners.

386. Founding Partners' (and the Assignors') damages were directly and proximately caused by the fraud of FPCM and Gunlicks as alleged above.

COUNT VI
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (E&Y)

387. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

388. FPCM owed Founding Partners and the Assignors fiduciary duties by virtue of its role as general partner of Founding Partners.

389. Gunlicks owed fiduciary duties to Founding Partners and the Assignors by virtue of his position as an officer and/or agent of FPCM and by virtue of his relationship of trust and confidence with the limited partners of the Funds.

390. As alleged above, Mayer Brown owed fiduciary duties to Founding Partners (and the Assignors) by virtue of the legal services it provided to Founding Partners.

391. As alleged in greater detail above, FPCM and Gunlicks breached their fiduciary duties by, among other things, issuing financial statements on behalf of Founding Partners that falsely represented that SCHI was using Founding Partners' loan proceeds to purchase healthcare receivables and that any healthcare receivables aged beyond 120-days were either removed or replaced.

392. As alleged in greater detail above, Gunlicks and Mayer Brown breached the fiduciary duties they owed to Founding Partners by, among other things, preparing and issuing confidential offering memoranda and other marketing materials that falsely represented to limited partners and investors that Founding Partners' loans to SCHI were fully secured with healthcare receivables and that any such healthcare receivables aged beyond 120-days were either removed or replaced.

393. By virtue of the knowledge gained by E&Y as auditor of Founding Partners, E&Y knew that FPCM and Gunlicks' authorization and/or approval of Sun Capital's use of Founding Partners' funds constituted breaches of the fiduciary duties that FPCM and Gunlicks owed to Founding Partners (and the Assignors).

394. By virtue of the knowledge gained by E&Y as auditor of Founding Partners, E&Y was aware of and understood that the misrepresentations in Founding Partners' financial statements and offering materials that Founding Partners' loans were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced constituted breaches of fiduciary duties owed to Founding Partners (and the Assignors) by FPCM, Gunlicks and Mayer Brown.

395. As alleged in greater detail above, E&Y substantially assisted in FPCM's and Mayer Brown's breaches of fiduciary duty by issuing unqualified audit opinions on Founding Partners' financial statements and by failing to disclose Sun Capital's use of Founding Partners' funds in a manner inconsistent with what was being represented to investors despite having a duty to do so pursuant to professional standards.

396. The damages suffered by Founding Partners (and the Assignors) were directly and proximately caused by the breaches of fiduciary duty described above.

COUNT VII
PROFESSIONAL MALPRACTICE (MAYER BROWN)

397. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

398. Mayer Brown is a law firm and, thus qualifies as a professional under Florida law.

399. As counsel to Founding Partners, Mayer Brown owed Founding Partners a duty to advise and counsel them with the skill, knowledge, and experience of similarly situated counsel.

400. Mayer Brown also had the duty to comply with all professional regulations, including those rules regulating Florida, Illinois, and New York attorneys.

401. Mayer Brown breached its duties of loyalty and of due care to Founding Partners.

402. Mayer Brown's breach proximately caused damages to Founding Partners.

COUNT VIII
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(MAYER BROWN)

403. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

404. FPCM and Gunlicks owed fiduciary duties to the Founding Partners and the Assignors, including duties of due care, loyalty, and full disclosure of material facts.

405. The Founding Partners and the Assignors reposed their trust and confidence in FPCM and Gunlicks, and FPCM and Gunlicks accepted their trust and confidence.

406. Pursuant to their fiduciary duties, FPCM and Gunlicks owed the Founding Partners and the Assignors the duties to: (a) act loyally to and in the best interests of each of the Founding Partners; and (b) refrain from misrepresenting and/or omitting material facts.

407. FPCM and Gunlicks breached their fiduciary duties to the Founding Partners and the Assignors by, *inter alia*, failing to preserve assets, allowing events of default to occur without responding appropriately to protect the Founding Partners' interests, misrepresenting and omitting material facts to limited partners, and failing to respond appropriately to protect the Founding Partners' interests in response to deviations from agreements and investment strategies represented to the Founding Partners and their limited partners and investors.

408. The misconduct of FPCM and Gunlicks alleged herein was completely and totally adverse to the interests of the Founding Partners, and the Founding Partners in no way benefitted therefrom. Indeed, the misconduct of FPCM and Gunlicks alleged herein

only resulted in the depletion and loss of the Founding Partners' assets, and exposure of those assets to an extreme and undisclosed risk of loss.

409. Mayer Brown knew of FPCM's misconduct and of Gunlicks' misconduct, and knew that their misconduct constituted breaches of fiduciary duty to the Founding Partners.

410. Mayer Brown provided substantial assistance and/or encouragement to FPCM and to Gunlicks to act in breach of their duties to Founding Partners by:

- (a) knowingly drafting false statements in offering memoranda and/or supplements;
- (b) dissuading FPCM and Gunlicks from declaring defaults or exercising remedies; and
- (c) advising FPCM and Gunlicks to continue conduct that Mayer Brown knew to be breaches of their fiduciary duties to Founding Partners.

411. Mayer Brown's misconduct also constituted a breach of their duties to non-clients under applicable law.

412. Mayer Brown was aware of its role as part of the tortious activity at the time it was providing substantial assistance to FPCM and to Gunlicks.

413. Mayer Brown knowingly and substantially assisted the principal violations being committed by FPCM and Gunlicks.

414. FPCM's and Gunlicks' wrongful acts proximately caused injury to Founding Partners.

415. Mayer Brown's conduct also proximately caused Founding Partners and the Assignors damages.

COUNT IX
AIDING AND ABETTING FRAUD (MAYER BROWN)

416. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

417. As alleged in greater detail above, FPCM and Gunlicks made affirmative misrepresentations to investors, including the Assignors and Founding Partners through Founding Partners' financial statements and confidential offering memoranda, including the representations that Founding Partners' loans to SCHI were secured by healthcare receivables and that any such receivables aged beyond 120-days were either removed or replaced.

418. FPCM and Gunlicks either knew that these representations were false or they consciously avoided knowing that they were false at the time they were made.

419. FPCM and Gunlicks intended for the limited partners and other innocent decision-makers of Founding Partners to rely upon the misrepresentations and Founding Partners' financial statements and confidential offering memoranda.

420. The limited partners and other innocent decision-makers of Founding Partners in fact relied upon these misrepresentations in believing that Sun Capital was using Founding Partners' loan proceeds in a manner consistent with that represented to the investors and other innocent decision-makers, and in refraining from taking action to protect Founding Partners' assets from use by Sun Capital in a manner inconsistent with what was being represented to them. Such reliance was reasonable.

421. Mayer Brown had actual knowledge that FPCM and Gunlicks were committing fraud as described above.

422. Mayer Brown gave substantial assistance to FPCM and Gunlicks' fraud as alleged above with respect to the substantial assistance in breaches of fiduciary duty, both by preparing offering memoranda and/or supplements that affirmatively misrepresented material facts to the limited partners and other innocent decision-makers, and by failing to disclose Sun Capital's actual use of Founding Partners' loan proceeds despite having an affirmative professional duty to disclose such facts to the limited partners and other innocent decision-makers of Founding Partners.

423. Founding Partners' and the Assignors' damages were directly and proximately caused by the fraud of FPCM and Gunlicks as alleged above.

COUNT X
**AIDING AND ABETTING BREACHES OF STATUTORY DUTIES (E&Y
AND MAYER BROWN)**

424. Plaintiff realleges and incorporates by reference the allegations above as though fully set forth herein.

425. By their conduct as alleged above, E&Y and Mayer Brown directly and indirectly, and with knowledge and intent to deceive or with reckless disregard for the truth, joined or materially aided in the solicitation, offer, and sale of limited partnership interests to Assignors by means of untrue statements of material fact, or omissions to state material facts necessary in order to make the statements made not misleading, in violation of the laws of the various states in which Assignors received and relied upon the untrue statements and omissions to their injury.

426. The Assignors relied on the misrepresentations and omissions in making their investment decisions, and in refraining from taking action to protect their investments and Founding Partners' assets. Such reliance was reasonable and justifiable.

427. As a direct and proximate result of the misrepresentations and omissions and of E&Y's and Mayer Brown's violations of the law, the Assignors were damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff demands entry of judgment against E&Y and Mayer Brown, awarding Plaintiff compensatory and punitive damages, prejudgment interest, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues triable as of right.

DATED this 25th day of April, 2011.

Respectfully submitted,

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EXHIBIT “A”

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

DANIEL S. NEWMAN, as RECEIVER
for FOUNDING PARTNERS STABLE
VALUE FUND, LP; FOUNDING
PARTNERS STABLE VALUE FUND
II, LP; FOUNDING PARTNERS
GLOBAL FUND, LTD.; and
FOUNDING PARTNERS HYBRID-
VALUE FUND, L.P.,

Plaintiff,

vs.

ERNST & YOUNG, LLP, a Delaware
Limited Liability Partnership; and
MAYER BROWN LLP, an Illinois
Limited Liability Partnership,

Defendants.

Case No. 10-49061

MOTION FOR LEAVE TO AMEND

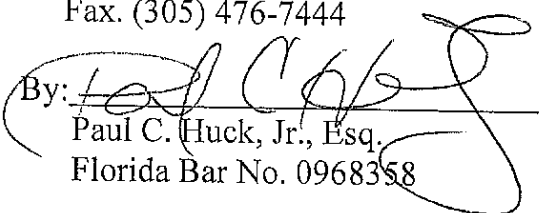
Plaintiff DANIEL S. NEWMAN solely in his capacity as court-appointed Receiver for Founding Partners Stable Value Fund, LP ("Stable Value"); Founding Partners Stable Value Fund II, LP ("Stable Value II"); Founding Partners Global Fund, Ltd. ("Global Fund"); and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid-Value Fund") (collectively, "Founding Partners"), and pursuant to Fla. R. Civ. P. 1.190(a), respectfully requests leave to amend his Complaint against Defendants Ernst & Young, LLP ("E&Y") and Mayer Brown LLP ("Mayer Brown"), in the form attached as Exhibit A to this Motion.

Defendants have been served with process (Ernst & Young has accepted service of process through its counsel and Mayer Brown LLP was served with process in Illinois), but have not yet appeared in the action. The Receiver has received assignments of claims from certain investors in the Founding Partners funds, and the amendments add assigned claims received from investors (listed in paragraph 1). The amendments also add allegations concerning material misrepresentations in the 2004 and 2005 audited financial statements, like those previously alleged with respect to the 2006 audited financial statements (paragraphs 162-182), in addition to other minor conforming and clarifying edits.

DATED this 25th day of April, 2011.

Respectfully submitted,

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