

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA

CASE NO: 10-49061 CACE (19)  
JUDGE: JOHN J. MURPHY, III

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

Plaintiffs,

vs.

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

Defendants.

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**AGREED ORDER REGARDING CASE SCHEDULE & CERTAIN DISCOVERY**

This matter coming for status on April 20, 2017; counsel for Plaintiff 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, LP (hereinafter, "the Receiver"), and for Defendant Mayer Brown LLP ("Mayer Brown") having appeared; and the Court being advised of the agreement by the Receiver and Mayer Brown as to certain case scheduling and discovery matters as set forth herein;

IT IS HEREBY ORDERED THAT:

1. The following schedule is entered based upon the agreement of the Receiver and Mayer Brown. This schedule reflects that proceedings as to Defendant Ernst & Young LLP

(“Ernst & Young”) are stayed under the Court’s May 20, 2016 order compelling arbitration of the Receiver’s claims against Ernst & Young, which order is currently pending review by the Florida District Court of Appeal for the Fourth District. Ernst & Young has not participated in the negotiation of the schedule set forth in this Order. The Receiver and Mayer Brown (sometimes referred to herein as the “Parties”) recognize that, if it is later determined that claims against Ernst & Young are to proceed or be tried in this Court, then adjustments to the schedule set forth in this Order may be appropriate.

2. **Document Production.** The Receiver and Mayer Brown shall substantially complete their respective productions of documents responsive to the Parties’ respective First Sets of Requests for Production on or before June 30, 2017. The Parties agree that if either of those document productions are not substantially complete by June 30, 2017, it will be necessary to extend the dates in this Order. (It is contemplated that the Receiver and Mayer Brown may serve additional requests for document production; this paragraph pertains only to their respective First Requests for Production.) For further clarification:

a. As to the Receiver, substantial completion of the response to Mayer Brown’s First Request for Production shall include: (a) production to Mayer Brown of responsive documents currently being withheld from production solely on the basis of the Receiver’s need to obtain certain orders addressing confidentiality from the U.S. District Court for the Middle District of Florida in the matters captioned *Securities & Exchange Commission v. Founding Partners Capital Management Company*, Case No. 2:09-cv-229, and *Daniel S. Newman, as Receiver v. Sun Capital, Inc.*, Case No. 2:09-cv-445; and (b) resolution of the issues raised by letter dated March 22, 2017 from Mayer Brown’s counsel to the Receiver’s counsel.

b. As to both Parties, substantial completion of responses to the other's First Request for Production on or before June 30, 2017 shall not require the production of privilege logs on or before that date, and/or the production of any documents subject to redaction for privilege or other reasons on or before that date. Such redacted documents and any associated privilege logs shall be produced on or before July 31, 2017.

3. **Amendment of Pleadings.** The Receiver may seek leave to amend his Third Amended Complaint no later than November 30, 2017. After that date, no further motion for leave to amend the Third Amended Complaint shall be permitted, absent a showing of good cause for extending this deadline. The deadline for Mayer Brown to amend its Answer shall be as follows:

a. The Receiver has informed Mayer Brown that, following certain discovery, he may seek leave to amend his Third Amended Complaint to add a request for punitive damages against Mayer Brown, but that, at this time, he does not contemplate other amendments to the Third Amended Complaint. (Mayer Brown has advised the Receiver that it would oppose a motion to amend to add a request for punitive damages). In the event the Receiver's motion to amend is limited to seeking leave to add a request for punitive damages against Mayer Brown, and in the event that such a motion is granted, then Mayer Brown shall answer such amended complaint within 15 days of any decision granting leave to amend. In that event, after the later of December 15, 2017 or 15 days after the Court grants such leave to amend, no further amendment to Mayer Brown's answer shall be permitted absent a showing of good cause for extending this deadline.

b. Alternatively, if, on or before November 30, 2017, the Receiver seeks and is granted leave to file an amended complaint where the amendment is not limited to adding a

request for punitive damages against Mayer Brown, then Mayer Brown may answer such amended complaint on or before the later of 15 days after such motion is granted or January 15, 2018, after which no further amendment to Mayer Brown's answer shall be permitted absent a showing of good cause for extending this deadline.

c. In all events, the final date for Mayer Brown to identify potential non-parties at fault pursuant to FLA. STAT. § 768.81(3) and *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993) shall be the last date on which its amended answer is due under either subparagraph (a) or (b) of this paragraph. In the event that the Receiver does not seek or is not granted leave to amend his Third Amended Complaint, then the final date for Mayer Brown to identify potential non-parties at fault shall be the later of December 15, 2017 or 15 days after the date on which such motion to amend is denied.

#### 4. **Fact Discovery Deadlines.**

a. The period for fact discovery, including written fact discovery, oral fact discovery, and non-party discovery, shall end on May 11, 2018. To ensure timely completion of fact discovery, any such discovery shall be propounded no later than April 11, 2018, and each Party shall work in good faith so as to avoid burdening the other with an unreasonably disproportionate and burdensome volume of discovery near the end of the discovery period.

b. Notwithstanding the May 11, 2018 deadline set forth above, the Parties agree that the period for fact discovery may be extended until May 31, 2018, solely to allow for additional time to complete any oral discovery as to non-parties that the Parties agree is not necessary for either of them to complete their initial expert disclosures. To the extent the Parties cannot agree, such discovery shall be completed on or before May 11, 2018.

5. **Expert Disclosures & Expert Discovery.**

a. Expert disclosures addressing subject matters on which the disclosing party bears the burden of proof shall be served on or before May 24, 2018.

b. Responsive expert disclosures by the other party shall be served on or before June 28, 2018.

c. The period for expert discovery, including oral expert discovery, shall end on August 3, 2018. As with fact discovery, the Parties shall cooperate in good faith in scheduling expert discovery so as to avoid an unreasonable burden on either party in the final weeks of this discovery period.

6. **Summary Judgment Motions.** The final date to file motions for summary judgment or partial summary judgment shall be August 30, 2018. The Parties agree that one or more motions for summary judgment or partial summary judgment may be filed in advance of that date, and that either party may file such motions on more than one occasion. Motions filed in advance of August 2018 shall be briefed and heard as agreed upon by the Parties or as ordered by the Court. For any motion for summary judgment filed in August 2018, (i) responses in opposition shall be filed on or before October 4, 2018, and (ii) reply briefs in support of such motion shall be filed on or before October 25, 2018. As to any such motions, the Parties agree to consult with the Court to schedule a date for oral argument on such motions and will request a date in November 2018 that affords the Court sufficient time to review the motions and briefing in advance of the hearing.

7. **Pretrial Scheduling Matters.** The Parties anticipate conferring about other pretrial scheduling matters, including deadlines for filing witness and exhibit lists, motions to exclude experts or to preclude expert testimony, motions *in limine*, deposition designations,

stipulations of fact, and jury instructions. The Parties expect to agree upon a proposed schedule for the same and to submit an agreed proposed schedule to the Court in or about September 2018. It is the intent of the Parties that the proposed schedule afford the Court a sufficient opportunity to rule on motions to exclude experts or preclude expert testimony and motions *in limine* sufficiently in advance of trial so as to afford the Parties a reasonable opportunity to prepare for trial with the benefit of those rulings.

8. **Trial Date.** The Parties agree that the goal of the foregoing case schedule is to lead to a trial date, assuming the case cannot be resolved fully by dispositive motion, in the first quarter of 2019, and agree to request such a trial date from the Court during their appearance on April 20, 2017.

9. **Number of Interrogatories and Requests to Admit.** The Parties agree that there shall be no limit on the number of Requests to Admit that each may serve upon the other, although both Parties reserve the right to seek a protective order if they determine that the number or nature of Requests to Admit is unreasonably burdensome. The Parties further agree that each may serve up to 75 written interrogatories upon the other, without leave of Court to do so.

10. **Modification of this Order.** The Receiver and Mayer Brown may modify any of the deadlines or other provisions of this Order by agreement, or they may seek leave of Court to do so based upon a showing of good cause.

SO ORDERED.

Dated this 20 day of April, 2017.

  
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