

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT,  
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP,  
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,  
FOUNDING PARTNERS GLOBAL FUND, LTD., and  
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

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**RECEIVER'S THIRTEENTH STATUS REPORT**

Daniel S. Newman, as Court-appointed receiver (the "Receiver") for Defendant Founding Partners Capital Management Company ("FPCMC") and the Relief Defendants Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (collectively, the "Receivership Entities"), respectfully files his Thirteenth Status Report (the "Thirteenth Report"). This Thirteenth Report addresses information and issues that occurred from approximately May 1, 2022 through March 21, 2023 (the "Reporting Period").

## **I. INTRODUCTION**

On April 20, 2009, the United States Securities and Exchange Commission filed its complaint (“SEC Action”) against FPCMC and William L. Gunlicks (“Gunlicks”), alleging that FPCMC and Gunlicks had engaged, and were engaging, in a scheme to defraud investors and violate the federal securities laws. [D.E. 1]. In the Complaint, the SEC sought, among other relief, entry of a temporary restraining order and a preliminary injunction. After reviewing the SEC’s submission, on April 20, 2009 the Court entered an Order Freezing Assets of Founding Partners and Gunlicks (the “Asset Freeze Order”). The Asset Freeze Order also applies to Founding Partners Stable-Value Fund, L.P., (“Stable-Value”), Founding Partners Stable-Value Fund II, L.P. (“Stable-Value II”), Founding Partners Global Fund, Ltd., (“Global Fund”) and Founding Partners Hybrid-Value Fund, L.P. (“Hybrid-Value”) (collectively, “Founding Partners Funds”).

On April 20, 2009, the Court also entered an order (the “Initial Receivership Order”) appointing a receiver (the “Initial Receiver”) for Founding Partners and the Founding Partners Funds (collectively, the “Receivership Entities”). [D.E. 9]. The Initial Receiver was subsequently removed by Court Order on May 13, 2009. [D.E. 70]. Daniel S. Newman, Esq. (the “Receiver”) was appointed Replacement Receiver by Court Order on May 20, 2009 (the “Receivership Order”), which Order superseded the Initial Receivership Order. [D.E. 73]. The Receivership Order provides that the Receiver shall, among other things:

- (a) Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Founding Partners Relief Defendants, whatsoever and wheresoever located, including but not limited to all offices maintained by Founding Partners and the Founding Partners Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and the Founding Partners Relief Defendants wherever situated, and to

administer such assets as is required in order to comply with the directions contained in this Order... ; and

- (b) Investigate the manner in which the affairs of Founding Partners and the Founding Partners Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of Founding Partners or the Founding Partners Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants ...

## **II. UPDATE CONCERNING SPECIAL COUNSEL**

As previously reported, on August 18, 2010, the Receiver obtained Court approval to retain Beus Gilbert McGroder PLLC (“Beus Gilbert”) and Grossman Roth Yaffa Cohen (“G&R”) as special counsel to handle the Receiver’s lawsuit against the Receivership Entities’ former auditor Ernst & Young (“E&Y”), and the Receivership Entities’ former counsel Mayer Brown LLP (“Mayer Brown”). The lawsuit was filed in the Seventeenth Judicial Circuit in and for Broward County, Florida (the “Broward Litigation”).

Renowned litigator Leo Beus was one of the primary lawyers for special counsel. Unfortunately, Mr. Beus passed away on November 14, 2022. Mr. Beus achieved tremendous results for the Receivership Estate and leaves behind a team of lawyers at Beus Gilbert who, working with G&R, are exceptional and will continue to represent the Receiver through the conclusion of the Broward Litigation and the related arbitrations. Richard Williams will serve as lead counsel from the Beus Gilbert firm. Mr. Williams is a seasoned trial lawyer who has a long history of jointly litigating complex cases with Mr. Beus, including those against accounting firms.

During this Reporting Period, the Receiver and special counsel in the Broward Litigation held an investor conference call on January 17, 2023, to provide an update on the status of the

litigation to investors. Among other things, Mr. Williams introduced himself to investors and answered related questions.

### **III. LITIGATION UPDATE**

#### **A. The Broward Litigation**

##### **i. Term Sheet Concerning Settlement of E&Y Action**

As reported in the Receiver's Ninth Status Report [D.E. 478, pp. 5-6], on July 5, 2017, the Florida Fourth District Court of Appeals ("Fourth DCA") affirmed the trial court's Order compelling arbitration for the Founding Partners Funds' claims against E&Y. On July 27, 2017, the Receiver filed a Motion for Clarification and Rehearing with the Fourth DCA. By Order dated October 11, 2017, the Fourth DCA reversed in part and affirmed in part the Order compelling arbitration for all claims against E&Y, as described in the Receiver's previous Status Report. To summarize and as previously reported, due to the nine engagement agreements with E&Y, the Founding Partners Funds' claims are currently in arbitration, while the Assignees' claims against E&Y, which were assigned for the benefit of the estate, are still pending (though currently stayed) in the Florida state court action.

As to the arbitrable claims, and as previously reported, the American Arbitration Association ("AAA") panel ruled that some of the Founding Partners Funds' claims would stay before the AAA panel while others would be arbitrated by the International Institute for Conflict Prevention & Resolution ("CPR") under CPR rules.

The final hearing before the AAA panel was scheduled to commence on April 3, 2023, and continue through April 25, 2023, with arbitration before the CPR panel to follow thereafter. In advance of the AAA final hearing, the parties agreed to attend voluntary mediation on March 16, 2023. At the mediation, the parties agreed to a term sheet concerning a settlement of all the above

litigations between the Receiver and E&Y, including all claims in arbitration and all claims stayed in the Florida state court action. The agreement in principle will need to be reduced to a formal agreement and requires Court approval. The Receiver will provide further information on the settlement in upcoming reports and court filings.

ii. Mayer Brown litigation

As previously reported to the Court in various filings, in or about July 2020, the Receiver and Mayer Brown agreed to a settlement in principle. After months of negotiation and briefing in various courts, the settlement was fully approved. [D.E. 527]. Pursuant to the Court-approved settlement, the Receiver obtained \$390 million for the benefit of the Receivership estate.

**III. MISCELLANEOUS**

**A. Requests to Recognize Transfers of Interests**

From time to time, the Receiver receives requests from investors to recognize transfers of their interests, in whole or in part, on the Receivership book and records. These are transfers the Receiver is not involved with, other than to update his books and records to reflect their occurrence. The Receiver files motions to recognize transfers of claims. [*See, e.g.*, D.E. 539, 548]. Currently, the Receiver's office is reviewing additional requests for transfers and preparing another motion for approval to recognize same on its books and records.

**B. Promise Bankruptcy Claims**

On or about January 13, 2023, the Receiver was served with the Notice of Tenth Omnibus Objection of the Liquidating Trustee to Certain Shareholder Claims ("Notice") filed by Robert N. Michaelson, the liquidating trustee for Promise Healthcare Group Liquidating Trust ("Promisee Trustee"), in the Promise Healthcare Group, LLC bankruptcy proceeding pending in the Delaware

Bankruptcy Court, Case No. 18-12491 (“Promise Bankruptcy”). The Receiver has previously reported on the Promise Bankruptcy.

In the Notice, the Promise Trustee formally objected to all equity claims in the Promise Bankruptcy, including the equity claims submitted by FPCMC. The Receiver and his professionals reviewed FPCMC’s claims, as well as the Court-approved bankruptcy plan in the Promise Bankruptcy, and determined there was no viable legal challenge to the Notice.

**C. Promise Bankruptcy Lawsuit**

On or about April 16, 2021, the Promise Trustee filed an Amended Complaint in the District of Delaware, Case No. 21-21543 (“Promise Civil Suit”), against the former officers and directors of Promise Healthcare, Inc. (“Promise”) and Success Healthcare, Inc. (“Success”), among others. In summary, the Promise Trustee alleges that the named defendants breached their fiduciary duties to Promise and Success, and caused or received fraudulent transfers in violation of federal and state law. The Receiver was served with subpoenas in this case for document production and was recently notified that the parties will seek to take his deposition in the Promise Civil Suit.

**D. Hybrid Value Update**

On or about September 8, 2022, the Receivership Estate received its third distribution, totaling \$72,084.18, in connection with Founding Partners Hybrid-Value Fund, L.P.’s investment in RCP I-35/Loop 288, Ltd.

**V. FEE APPLICATION**

The Receiver filed a Sixteenth Application for Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals, which was approved by the Court on November 3,

2022. [D.E. 591; D.E. 592]. The Sixteenth Application for Fees and Expenses covered a portion of the Reporting Period.

**CONCLUSION**

The Receiver will be filing additional reports with the Court to advise the Court of the status of the Receivership.

Dated: March 30, 2023.

Respectfully submitted,

**NELSON MULLINS RILEY & SCARBOROUGH**

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By: /s/ Christopher Cavallo

Jonathan Etra, Esq.  
Florida Bar No. 0686905  
Christopher Cavallo, Esq.  
Florida Bar No. 0092305

**CERTIFICATE OF SERVICE**

I hereby certify that on March 30, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive Notices of Electronic Filing.

By: /s/ Christopher Cavallo

Christopher Cavallo, Esq.

**SERVICE LIST**

<p><b>Teresa Verges, Esq.</b> Securities and Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 vergest@sec.gov <i>Counsel for U.S. Securities and Exchange Commission</i> <u>Service via CM/ECF</u></p>	<p><b>Gabrielle D'Alemberte, Esq.</b> The D'Alemberte Trial Firm, P.A. 1749 N.E. Miami Ct. Suite 301 Miami, FL 33132 gabrielle@dalemberte.com <i>Counsel for William &amp; Pamela Gunlicks</i> <u>Service via CM/ECF</u></p>
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