

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-12896

In the Matter of

**FOUNDING PARTNERS
CAPITAL MANAGEMENT
COMPANY and
WILLIAM GUNLICKS**

Respondents.

**PROPOSED PLAN OF
DISTRIBUTION**

1. *Purpose and Background.* This Proposed Plan of Distribution (the “Plan”) has been developed pursuant to the Commission’s Corrected Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 and Section 203(e) of the Investment Advisers Act of 1940 (Rel. Nos. SA-8866 and IA-2680), dated December 3, 2007, (the “Order”). Simultaneously with the entry of the Order, the Commission accepted settlement offers from Founding Partners Capital Management Company (“Founding Partners”) and William Gunlicks in which they consented to the entry of the Order without admitting or denying the Order’s findings.

The Order finds, among other things, that Founding Partners, in connection with its operation of two hedge funds, Founding Partners Equity Fund, L.P. (“Equity Fund”) and Founding Partners Stable Value, L.P. (“Stable-Value”), made investments for the hedge funds and engaged in transactions with entities under the common control of Founding Partners that were not consistent with Stable-Value’s and Equity Fund’s offering memoranda. The Order also finds that Founding Partners caused Stable-Value to pay an undisclosed fee from March 2001 through May 2002 to an off-shore entity and that Founding Partners has a pecuniary interest in the fee through its ownership interest in the off-shore entity. As a result of this conduct, the Commission found that Founding Partners willfully violated Section 17(a)(2) of the Securities Act of 1933 and that Gunlicks caused Founding Partners violation. The Order provided that Founding Partners pay disgorgement in the amount of \$169,180 plus prejudgment interest in the amount of \$13,064.

In accordance with the Order, on December 27, 2007, Respondent paid a total of \$182,244 in disgorgement and prejudgment interest to the Commission. Pursuant to the December 3, 2007 Order, a Disgorgement Fund was established for these funds.

The Plan provides for the distribution of the disgorgement and prejudgment interest provided for in the Order to limited partners of Stable-Value that the Commission found paid the undisclosed fee to the off-shore entity owned in part by Founding Partners. In the two instances where the Stable-Value limited partner was another hedge fund advised by Founding Partners and in which Gunlicks, his family members, and/or his business partner were investors, such limited partner's distribution amount, as determined pursuant to paragraph 12, shall be distributed to those other than Gunlicks and his family members and business partner who were investors in the limited partner during the Relevant Period, as defined in paragraph 4, and will be made in proportion to their investment.

This Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

2. *Fund Administrator.* Eric R. Busto, an Assistant Regional Director in the Commission's Division of Enforcement, is proposed to act as the Fund Administrator for the Plan (the "Fund Administrator"). As a Commission employee, the Fund Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Disgorgement Fund. In accordance with Rule 1105(c), no bond is required since the Fund Administrator is a Commission employee.

3. *Procedures for the Receipt of Additional Funds.* The funds for this Disgorgement Fund have been deposited at the U.S. Treasury Bureau of Public Debt for investment in short-term U.S. Treasury securities and obligations. Other than interest from these investments, it is not anticipated that the Disgorgement Fund will receive additional funds.

4. *Specification of Eligible Disgorgement Fund Recipients.* The Fund Administrator shall distribute Plan funds to the limited partners of Stable-Value whose capital accounts were reduced by the undisclosed fee from March 2001 through May 2002 (the "Relevant Period") as the Commission found in the Order (individually, each Eligible Limited Partner," and collectively, the "Eligible Limited Partners"). In the two instances where the Eligible Limited Partner is another hedge fund advised by Founding Partners and in which Gunlicks and his family members and/or business partner were investors, such Eligible Limited Partner's distribution amount, as determined pursuant to paragraph 12, shall be distributed to those other than Gunlicks and his family members and business partner who were invested in the Eligible Limited Partner during the Relevant Period in proportion to their investment.

5. *No Claims-Made Process.* This Disgorgement Fund is not being distributed according to a claims-made process. The Eligible Limited Partners are those who were invested in Stable-Value during the Relevant Period and will be determined from Stable Value's records. The Eligible Limited Partners will not be required to make a claim or submit documentation to establish their eligibility. Each Eligible Limited Partner's distribution amount will be determined in accordance with Paragraph 12 herein.

6. *Qualified Settlement Fund.* The Disgorgement Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B9g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5.

7. *Control of Disgorgement Fund.* The assets of the Disgorgement Fund are subject to the continuing jurisdiction and control of the Commission and the Commission shall retain control of the assets of the Disgorgement Fund until distribution to the Eligible Limited Partners. The Disgorgement Fund is currently deposited at the United States Treasury Bureau of Public Debt. The Disgorgement Fund will be distributed by the Financial Management Service, United States Treasury. The Fund Administrator will ensure that all required information shall be made available to the Tax Administrator. The Fund Administrator shall use the assets and earnings of the Disgorgement Fund to provide payments to Eligible Limited Partners and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs.

8. *Tax Administrator.* The Commission staff will seek the appointment of Damasco & Associates as the Tax Administrator of the Disgorgement Fund. The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling, and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by the Disgorgement Fund.

9. *Expenses of Administration.* Fees and other expenses of administering the Plan shall be paid first from the interest earned on the funds, and, if the interest is not sufficient, then from the corpus.

10. *Assistance by Respondent.* Founding Partners will assist the Fund Administrator by providing requested information necessary for the administration and implementation of the Plan. Founding Partners will bear all of its own costs and expenses that it may incur to assist the Fund Administrator.

11. *Intentions of Distribution.* The method of calculation of each Eligible Limited Partner’s share of the Disgorgement Fund is intended to result in a payment to each Eligible Limited Partner that repays the undisclosed fees paid out of each Eligible Limited Partner’s capital account from March 2001 through May 2002. The method of calculation is intended by the Commission to calculate fairly the amount of the undisclosed fees that reduced the value of each Eligible Limited Partner’s capital account and make a payment in that amount.

12. *Methodology for Determining Distribution Amounts.* The Fund Administrator will determine the amount to be distributed to each Eligible Limited Partner in the following manner. Step 1: The Fund Administrator will determine the dollar amount of royalty fees attributable to each Eligible Limited Partner during the Relevant Period on a monthly basis. This will be computed by multiplying each Eligible Limited Partner’s percentage ownership interest in Stable-Value at the end of each month during the Relevant Period by the amount of the royalty fees Stable-Value paid Stewards & Partners, Limited during that month. The Fund Administrator will sum the monthly amounts to determine a total dollar amount of royalty fees

attributable to each Eligible Limited Partner. Step 2: The Fund Administrator will then determine what percentage each Eligible Limited Partner's total amount of royalty fees attributable to them represents compared to the total amount of royalty fees Stable-Value paid during the Relevant Period. Step 3: The Fund Administrator will determine the Eligible Limited Partner's distribution amounts by multiplying each Eligible Limited Partner's percentage by the total amount of disgorgement and prejudgment interest listed in paragraph 1, above, plus any interest accrued in the Disgorgement Fund, and less any taxes, fees, reserves, or other expenses of administering the plan.

13. *Procedures for Locating and Notifying Eligible Limited Partners.* The Fund Administrator will identify the persons and entities that are Eligible Limited Partners or their successors. Within 180 days of the approval of this Plan, the Fund Administrator will send each Eligible Limited Partner and successor a notice by United States Postal Service regarding the Commission's approval of the Plan, a statement characterizing the distribution, a description of the tax information reporting and other related tax matters, and the procedure for distribution. The Fund Administrator will request from each Eligible Limited Partner and successor information sufficient to accomplish the distribution, including, where necessary, a tax identification or social security number, whether the Eligible Limited Partner or successor is a domestic or foreign entity for tax purposes, payment address and contact information.

If an Eligible Limited Partner or successor fails to respond within 45 days from the mailing of the notice, the Fund Administrator shall then make no fewer than two (2) attempts to contact the Eligible Limited Partner or successor telephonically. The second attempt shall in no event take place more than 90 days from the mailing of the notice.

If an Eligible Limited Partner or successor fails to respond to the Fund Administrator's contact attempts as described in this paragraph, its allocated distribution amount shall be considered an undistributed asset and placed in a residual account within the Disgorgement Fund. When all undelivered distributions and uncashed checks, if any, have been reconciled, the residual amount will be remitted to the United States Treasury.

14. *Financial Management Service; Validation and Approval of Disbursing the Distribution Funds.* Unless otherwise directed by the Commission, the Fund Administrator will develop a list of payees and amounts and obtain an order directing disbursement for the distribution based upon this payee list. The distribution to Eligible Limited Partners and successors will be implemented by the Financial Management Service, United States Treasury ("FMS"), which will cut checks or electronically transfer funds to each payee as instructed by the Fund Administrator.

The Fund Administrator will review any returned items due to non-delivery, insufficient addresses, and/or other deficiencies, research and reconcile all errors that result in non-delivery. The Fund Administrator shall submit supplemental information for payment of the returned items.

The Fund Administrator also is responsible for accounting for all payments. Checks cut by FMS will state on the face of the check that it is void after one (1) year. FMS will notify the

Commission, which in turn, will notify the Fund Administrator, of all uncashed checks and will credit the SEC account for the Disgorgement Fund for the amount of all uncashed checks.

15. *Information mailing to Accompany Payments.* All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting, if any, and other related tax matters; (c) a statement that checks will be void after one (1) year; and (d) the names of the Fund Administrator and the appropriate Commission staff to contact, to be used in the event of any questions regarding the distribution. All distributions, either on their face or in an accompanying mailing, will clearly indicate that the money is being distributed from a SEC Disgorgement Fund.

16. *Notice of Proposed Plan and Opportunity for Comment.* Notice of this Plan shall be published in the SEC Docket, and on the Commission website [<http://www.sec.gov>]. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty (30) days of the date of the notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (ii) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (iii) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-12896) in the subject line. Comments received will be available to the public. Commenters should only submit information that they wish to make publicly available.

17. *Order Approving the Proposed Plan and Order of Disbursement.* At the end of the 30-day publication period, the staff of the Commission will seek an order approving the proposed Plan. Within 360 days of Plan approval, the staff will seek an order directing disbursement of the disgorgement funds.

18. *Accountings.* The Fund Administrator will submit a final accounting for approval of the Commission prior to termination of the Disgorgement Fund and discharge of the Fund Administrator. As the funds are being held at the U.S. Treasury Bureau of Public Debt, and the Commission Staff will seek the appointment of a Tax Administrator, no interim accountings will be conducted.

19. *Amendment.* The Fund Administrator will inform the staff of nonmaterial changes before implementation, but will obtain approval from the Commission prior to the implementation of any material changes in the Plan. If material changes are required, this Plan may be amended upon the motion of the Fund Administrator or upon the Commission's own motion. For good cause, the Fund Administrator may extend the procedural deadlines of the Plan.

20. *Termination of the Disgorgement Fund and Disposition of Undistributed Amounts.* Upon the completion of the distribution of the funds, and after resolution of all distributions in the form of a paper check, the Fund Administrator shall make arrangement for the final payment of taxes and Tax Administrator fees and shall submit a final accounting to the

Commission. The Disgorgement Fund shall be eligible for termination after all of the following have occurred: (1) the Final Accounting by the Fund Administrator has been submitted and approved by the Commission; (2) all taxes and fees have been paid; and (3) all remaining funds in the residual account have been transferred to the U.S. Treasury. Staff shall seek an order from the Commission to: (1) approve the Final Accounting; (2) approve sending the remaining residual funds to the U.S. Treasury after all expenses and the final tax payment have been made; and (3) authorize the Secretary of the Commission, upon receipt of notice from the Fund Administrator that all funds have been expended, to discharge the Fund Administrator.

21. *Distribution Timing.* The Fund Administrator will use his best efforts to start distribution within 270 days of the entry of the Commission's order approving the Plan and to complete distribution within 360 days of the distribution start date.

Submitted on: 03/03/08

By: Eric N. Busto
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