

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8866 / December 3, 2007

INVESTMENT ADVISERS ACT OF 1940
Release No. 2680 / December 3, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12896

In the Matter of

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

Respondents.

**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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Founding Partners Capital Management Company (“Founding Partners”) and William Gunlicks (“Gunlicks”) (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Section 8A of the Securities Act of 1933 and Section 203(e) of the Investment Advisers Act of 1940 (“Order”) as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

Respondents

1. Gunlicks is the president, chief executive officer and sole shareholder of Founding Partners which is an investment adviser registered with the Commission. Gunlicks, 64 years old, resides in Naples, Florida.

2. Founding Partners, a Florida corporation, operates its principal office in Naples, Florida. Founding Partners is an investment adviser that has been registered with the Commission since August 20, 1999.

Other Relevant Entities

3. Founding Partners manages three hedge funds: Founding Partners Stable-Value, L.P. ("Stable-Value"), Founding Partners Equity Fund, L.P. ("Equity Fund") and Founding Partners Global Fund, Ltd. ("Global Fund") (collectively, the "hedge funds"). Stable-Value and Equity Fund are both limited partnerships based in Naples, Florida. Global Fund is registered as a mutual fund under Cayman Islands law. Founding Partners is the general partner for Equity Fund and Stable-Value and the investment manager of Global Fund.

4. Stewards & Partners Limited ("Stewards"), is a Bermuda-based company established by Gunlicks in December 1999 that further developed and implemented Stable-Value's investment strategy of financing with securitized loans the purchase of discounted healthcare receivables by third-party entities, which pay Stable-Value, monthly interest of 1.5% (18% on an annualized basis). Stewards receives a fee from Stable-Value every month at an annualized 1% of capital invested in Stable-Value. Stewards' chairman is Gunlicks, and one of its shareholders is Founding Partners. Gunlicks indirectly controls Stewards in which he has a pecuniary interest because of Founding Partners' 42.2 % ownership interest in Stewards.

Transactions that Were Not Consistent with the Hedge Funds' Confidential Offering Memoranda

Loans to Stewards

5. From about June 2001 through May 2002 related-party transactions were inconsistent with the terms of the Equity Fund and Stable-Value confidential offering memoranda. In pertinent part, the Equity Fund and Stable-Value offering memoranda provided:

The Partnership will not make loans to and, absent the approval required pursuant to applicable securities laws and regulations, will not engage in principal transactions or other investment transactions with the General Partner or any entity under common control with the General Partner. The Partnership does not currently intend to engage in any transactions with the General

Partner or any entity under common control with the General Partner.

Contrary to the offering memoranda, Founding Partners caused Equity Fund and Stable-Value to make loans with entities under common control with Founding Partners. These loans are discussed more fully below.

6. In July 1999, Equity Fund agreed to invest \$440,000 in an unincorporated entity that was in the process of developing an investment program (the “Developing Entity”) for the purchase and finance of healthcare receivables. The investment was made through an equity-linked loan. The Developing Entity subsequently failed to complete the development of the investment program and defaulted under the equity-linked loan agreement. When it became clear that the Developing Entity could not repay the loan, Stewards, an entity under common control with Founding Partners, agreed to assume the Developing Entity’s obligations for the full equity-linked loan and Stewards completed the development of the investment program.

7. On August 11, 2000, Founding Partners caused Equity Fund to loan Stewards \$60,000, which Stewards mostly used to make the first interest payment to Equity Fund on the promissory note that Stewards had assumed from the Developing Entity.

8. In April 2001, Founding Partners caused Equity Fund to make another loan to Stewards in the amount of \$80,000. Between April 2001 and December 2001, Founding Partners also caused Stable-Value to loan Stewards approximately \$93,000. In return, Equity Fund and Stable-Value received five-year promissory notes that paid interest at an annualized rate of 18%. Stewards used all of these loan proceeds for start-up capital and to pay expenses that included, among other things, a \$5,000 monthly management fee to Founding Partners for services unrelated to the advisory services Founding Partners provided to the hedge funds. From these loan proceeds of \$173,000 Founding Partners received a total of \$125,000 in management fees.

9. After the Commission’s Office of Compliance Inspections and Examination (“OCIE”) staff conducted an examination of Founding Partners, OCIE informed Founding Partners that these loans, which totaled \$233,000, appeared to be inconsistent with the offering memoranda for Equity Fund and Stable-Value. In response, Founding Partners caused Equity Fund to purchase Stable-Value’s loans even though they were inconsistent with the terms of both of their offering memoranda. After OCIE issued its deficiency letter, Founding Partners supplemented Equity Fund’s offering memorandum and wrote Stable-Value’s second offering memorandum supplement in part to disclose loans, respectively to “affiliates of the General Partner” and “affiliated and unaffiliated parties.” These supplements, however, failed to disclose the loans that had already occurred. All of the loans have since been repaid with interest.

Payments from Stable-Value to Stewards

10. From March 2001 through May 2002, Stable-Value paid \$169,180 in undisclosed fees to Stewards, which it characterized as a royalty fee in exchange for using the investment program it had developed for Stable-Value. The fees were paid to Stewards out of Stable-

Value's assets in addition to the management fees Stable-Value paid to Founding Partners. Stable-Value's supplemented offering memorandum omitted the fee and Founding Partners' pecuniary interest in the fee, through its ownership interest in Stewards.

11. After OCIE questioned the fee in its deficiency letter, Founding Partners disclosed the fee and its ownership interest in Stable-Value's and Equity Fund's financial statements for year-end December 31, 2001, released on May 23, 2002. In addition, Founding Partners added the following disclosure to Stable-Value's second offering memorandum supplement dated May 2002:

Expenses

The Partnership will pay a fee (the "Royalty Fee") to Stewards & Partners Limited, an affiliate of the General Partner. The fee will be charged against the capital accounts of the Partnership each month at an annualized rate of 1%. The Royalty Fee is being paid to Stewards & Partners for its having borne the expenses and risks of developing the Partnership's investment strategy with respect to healthcare receivables. The costs and expenses of Stewards & Partners to acquire and develop the healthcare receivables investment concept totaled approximately \$812,000 all of which was funded by Stewards & Partners. The payment of any fee by the Partnership was deferred until the systems, operations and procedures could be tested over a full collections cycle.

12. This disclosure was incomplete in that it did not disclose that Stewards borrowed \$233,000 of the \$812,000 from Equity Fund and Stable-Value to fund its capital outlays in connection with developing Stable-Value's healthcare receivables investment strategy. In addition, the supplement did not disclose that Stewards had also assumed the \$440,000 loan from the Equity Fund. The supplement also did not explain that a majority of the costs and expenses to acquire and develop the investment strategy were funded with loans from Stable-Value and the Equity Fund. Furthermore, the disclosure did not state that Stable-Value and the Equity Fund loans would be paid off with the cash flow from the royalty fee.

Equity Fund's Investment in Stable-Value

13. By March 31, 2002, Equity Fund had invested at least \$1.6 million in Stable-Value. This investment was not consistent with the disclosed investment strategy set forth in Equity Fund's offering memorandum at that time. Equity Fund's offering memorandum stated that its 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" and, further stated:

The Partnership intends to accomplish this objective by allocating the Partnership's assets among a select group of unaffiliated, experienced portfolio managers ("Portfolio Managers") that invest primarily in the U.S. equity markets. Each selected Portfolio Manager has been successful in a specific, highly focused equity style that has resulted in above-average

to superior investment histories. The Partnership may also invest its assets directly pursuant to investment advisory agreements granting the Portfolio Managers discretionary trading authority on a managed account basis. The utilization of this multi-manager, multi-equity strategy investment style is intended to result in a diversified portfolio of securities with overall volatility lower than the markets to which Partnership is exposed.

14. Equity Fund's investment in Stable-Value was not an investment with an unaffiliated portfolio manager that had been successful in a specific, highly focused equity style because Stable-Value was not invested in equities and it was operated by Founding Partners. Founding Partners profited from this arrangement because it earned two layers of management fees - from both Equity Fund and Stable-Value - on the same underlying assets. As a shareholder of Stewards, Founding Partners benefited from the fee Stable-Value paid to Stewards when Stable-Value's assets expanded by virtue of the investment from Equity Fund.

15. During the course of OCIE's exam, Founding Partners stopped collecting the two layered management fees and returned the fees it had collected from Equity Fund. In response to OCIE's deficiency letter, Founding Partners supplemented Equity Fund's offering memorandum in May 2002 to disclose Equity Fund's investment in Stable-Value and disclosed the investments intended to achieve its stated investment objective, as follows:

In addition to investing in the U.S. equity markets, the Partnership and its Portfolio Managers may invest in a wide range of instruments and markets, including, but not limited to, domestic and foreign equities and equity-related instruments, fixed income and other debt-related instruments and asset backed instruments. The Partnership may invest in loans secured by healthcare, commercial and trade receivables and may also make loans, including loans to affiliates of the General Partner.

The amended disclosure, however, neglected to disclose that Equity Fund had already invested in Stable-Value. On September 20, 2002, Founding Partners disclosed in Equity Fund's 2001 financial statement that Equity Fund had invested in Stable-Value prior to May 2002.

**Other Transactions That Were Not Consistent
With Stable-Value's Offering Memorandum**

16. Stable-Value's offering memorandum supplement stated that the fund's investment objective was "to achieve above-average rates of return, while preserving capital and its purchasing power in the short-term" and that its investment program was "designed to accomplish this objective through the implementation of a stable value investment strategy that has no correlation to the equity and bond markets." Stable-Value's supplement further stated that its investment program was limited to making loans to a third party which agreed to use the loan proceeds to only purchase healthcare receivables. Inconsistent with that disclosure, Founding Partners caused Stable-Value, from January 2002 through May 2002, to extend loans of approximately \$11.7 million to a third-party entity to finance its purchases of commercial receivables.

17. Although the commercial receivables program operated in the same manner as the healthcare receivables investment program, use of Stable-Value funds to make loans to a third-

party to purchase commercial receivables was a material deviation from Stable-Value's offering memorandum because there are differences between healthcare and commercial receivables. For example, health care receivables are primarily payment obligations of well-known federal and state government agencies and insurance companies (third-party payers) that have high credit ratings from nationally recognized credit rating agencies. In contrast, the commercial receivables securing Stable-Value's loans came from a variety of small businesses (e.g. auto body shops, an employment agency, a direct mail advertising firm and a wine importer) that do not generate receivables of the same nature because many of these businesses have a higher risk of bankruptcy and fraud than third-party payers of healthcare receivables, like Medicare.

18. In further response to OCIE's concerns with respect to Stable-Value's investments in commercial receivables, Founding Partners revised Stable-Value's supplement to disclose investments in commercial receivables.

Violations

19. As a result of the conduct described above, Founding Partners willfully¹ violated Section 17(a)(2) of the Securities Act, which proscribes obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in the offer or sale of securities. Specifically, among other things, Founding Partners caused Stable-Value to pay an undisclosed fee to Stewards and caused Equity Fund and Stable-Value to engage in transactions that were not consistent with their offering memoranda including transactions with entities under common control with Founding Partners.

20. As a result of the conduct described above, Gunlicks caused Founding Partners' violations of Section 17(a)(2) of the Securities Act, which proscribes obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in the offer or sale of securities. Specifically, among other things, Gunlicks caused Founding Partners to have Stable-Value pay an undisclosed fee to Stewards and had Equity Fund and Stable-Value engage in transactions that were not consistent with their offering memoranda including transactions with entities under common control with Founding Partners.

Founding Partners and Gunlicks' Cooperation

In determining to accept the Offers, the Commission considered cooperation afforded the Commission staff.

Undertakings

21. Founding Partners shall send a copy of this Order and a cover letter in a form acceptable to the staff of the Commission by certified mail, return receipt requested to all current and prospective clients as well as any investors and any potential investors in any Founding

¹ "Willfully" as used in this Order means intentionally committing the act, which constitutes the violation. Cf. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

Partners-advised hedge funds for a period of one year after the date of the Order. In addition, Gunlicks will execute an affidavit on behalf of Founding Partners that it has complied with this undertaking in accordance with the terms of this Order and deliver the executed affidavit to the Commission's staff within five (5) days after the completion of this undertaking.

22. Respondent Founding Partners undertakes to cooperate and assist the Commission staff with their development of a plan pursuant to Rule 1101 of the Commission's Rules on Fair Fund and Disgorgement Plans [17 C.F.R. § 201.1101] to distribute the disgorgement and prejudgment interest and any interest thereon (the "disgorgement funds") ("Distribution Plan"). Within 30 days of the entry of this Order, the proposed Distribution Plan will be published for comment and thereafter submitted to the Commission for final approval in accordance with Rule 1103 [17 C.F.R. § 201.1103]. Following a Commission order approving the Distribution Plan, as provided in Rule 1104 [17 C.F.R. § 201.1104], Respondent Founding Partners shall take all necessary and appropriate steps to continue to assist the Commission's staff administer the final Distribution Plan. Respondent Founding Partners agrees to bear all of its own costs and expenses that it may incur to assist the staff with the development and implementation of the final Distribution Plan.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers. Accordingly, pursuant to Section 8A of the Securities Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent Founding Partners is censured.
- B. Respondent Founding Partners cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.
- C. Respondent Gunlicks cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.
- D. IT IS FURTHER ORDERED that Founding Partners shall, within 30 days of the entry of this Order, pay disgorgement of \$169,180 and prejudgment interest of \$13,064 for a total amount of \$182,244 to the Securities and Exchange Commission. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under a separate cover letter that respectively identifies Founding Partners as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Southeast Regional Office, 801 Brickell Avenue, 18th Floor, Miami, Florida 33131.

E. IT IS FURTHER ORDERED that Founding Partners shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the United States Treasury. Such payments shall be: (A) made by United States postal money orders, certified checks, bank cashier's checks or bank money orders; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Founding Partners as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Southeast Regional Office, 801 Brickell Avenue, 18th Floor, Miami, Florida 33131.

F. Founding Partners shall comply with the undertakings enumerated in Section III above.

By the Commission.

Nancy M. Morris
Secretary