

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8639 / December 1, 2005

SECURITIES EXCHANGE ACT OF 1934

Release No. 52863 / December 1, 2005

INVESTMENT ADVISERS ACT OF 1940

Release No. 2453 / December 1, 2005

INVESTMENT COMPANY ACT OF 1940

Release No. 27172 / December 1, 2005

ADMINISTRATIVE PROCEEDING

File No. 3-12116

In the Matter of

**MILLENNIUM PARTNERS, L.P.,
MILLENNIUM MANAGEMENT,
L.L.C., MILLENNIUM
INTERNATIONAL MANAGEMENT,
L.L.C., ISRAEL ENGLANDER,
TERENCE FEENEY, FRED STONE,
AND KOVAN PILLAI,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF
THE SECURITIES ACT OF 1933,
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934,
SECTIONS 203(e) AND 203(f) OF THE
INVESTMENT ADVISERS ACT OF
1940, SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF
1940 AND RULE 102(e) OF THE
COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS,
AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-
DESIST ORDER**

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 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Millennium Partners, L.P.

(“Millennium Partners”), Millennium Management, L.L.C. (“Millennium Management”), Millennium International Management, L.L.C. (“Millennium International Management”) (the three entities collectively, “Millennium”), Israel Englander, Terence Feeney, Fred Stone and Kovan Pillai (collectively with Millennium, “Respondents”); Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Millennium Management and Millennium International Management; Section 203(f) of the Advisers Act against Pillai; Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Englander, Feeney, and Stone; and Rule 102(e)(1)(iii)¹ of the Commission’s Rules of Practice against Stone.

II.

In anticipation of the institution of these proceedings, the Respondents have submitted Offers 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 over the subject matter of these proceedings, the Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, Section 9(b) of the Investment Company Act and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and the Respondents’ Offers, the Commission finds² that:

Respondents

1. **Millennium Management, L.L.C.** is a Delaware limited liability company that is the managing partner of Millennium Partners, L.P. and the general partner of Millennium USA, L.P., the domestic feeder fund of Millennium Partners. Millennium Management also acts as the unregistered investment adviser (under an exemption from registration) to Millennium Partners and Millennium USA. Englander is the managing member of Millennium Management.

¹ Rule 102(e)(1)(iii) provides, in relevant part, that:

The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules or regulations thereunder.

² The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

2. **Millennium International Management, L.L.C.** is a Delaware limited liability company that is the unregistered investment adviser (under an exemption from registration) for Millennium International, Ltd., the international feeder fund of Millennium Partners. Englander is the managing member of Millennium International Management.

3. **Millennium Partners, L.P.**, an exempted limited partnership organized in the Cayman Islands, is a hedge fund that maintains its principal place of business in New York, New York. Englander (Caymans Islands), Ltd. and Millennium Management are co-general partners of Millennium Partners. During the relevant period, Millennium Partners had approximately \$4.0 billion in assets under management. Currently, Millennium Partners has approximately \$5.3 billion in assets under management.

4. **Israel Alexander Englander**, age 57 and a resident of New York, New York, is the managing member of Millennium Management and of Millennium International Management. He is the largest beneficial owner in Millennium Partners. Englander currently holds Series 7 and 24 securities licenses and previously held Series 4, 55 and 63 securities licenses.

5. **Terence William Feeney**, age 48 and a resident of Manhasset, New York, is the Chief Operating Officer (“COO”) and vice chairman of the Millennium entities.

6. **Fred Michael Stone**, age 62 and a resident of Manalapan, New Jersey, is Millennium’s General Counsel and reports to a newly created Chief Legal Officer (“CLO”). During the relevant period, Stone served as Millennium’s General Counsel and was in charge of compliance. In March 2004, after Millennium had ceased the conduct described herein, Millennium hired a new CLO to be responsible for Millennium’s compliance program.

7. **Kovan Krishnasamy Pillai**, age 46 and a resident of New York, New York, is a trader at Millennium. Pillai holds Series 3, 7, and 63 securities licenses. Pillai is associated with both Millennium Management and Millennium International Management.

Relevant Individual

8. **Steven B. Markovitz**, age 41, is a resident of New York, New York. From 1999 to September 2003, Markovitz was employed as a trader at Millennium. On October 2, 2003, the Commission issued an Order, by consent, finding that Markovitz willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and caused violations of Rule 22c-1 of the Investment Company Act by engaging in late trading of mutual fund shares while employed at Millennium, ordering Markovitz to cease and desist from committing or causing violations and future violations of those provisions of the federal securities laws, barring Markovitz from association with any investment adviser, and prohibiting Markovitz from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter. Also on October 2, 2003, Markovitz pled guilty to a Class E felony under New York’s Martin Act, which prohibits schemes to defraud in connection with the purchase or sale of securities.

Summary

9. From at least 1999 to 2003, Millennium Partners, Millennium Management, and Millennium International Management generated tens of millions of dollars in profits through market timing trades of mutual fund shares, a practice which mutual funds generally discouraged. Englander, Feeney, Stone and Pillai knew that mutual funds sought to detect market timers and frequently blocked Millennium's trades and, therefore, devised and carried out a fraudulent scheme to avoid detection and circumvent restrictions that the mutual funds imposed on market timing. Specifically, Millennium: (1) created approximately 100 legal entities to hide that Millennium was behind the mutual fund trading; (2) used those entities to create in excess of 1,000 accounts; (3) structured its trading to avoid detection by the mutual funds; (4) used omnibus accounts and variable annuities to further hide Millennium's identity; and (5) took advantage of certain "sticky" asset arrangements.

Background

10. Market timing includes: (i) frequent buying and selling of shares of the same mutual fund or (ii) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal per se, can harm other mutual fund shareholders because it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund's investment portfolio and can cause the targeted mutual fund to incur costs to accommodate frequent buying and selling of shares by the market timer. Mutual funds generally frown on market timing and discourage market timers from either investing in a mutual fund or from engaging in timing activity if a timer does invest.

11. Market timers also use variable annuities to engage in market timing. Variable annuities are securities that are insurance contracts that provide for tax-deferred accumulation during the accumulation period and various payout options, including a series of payments to be made to a person named as the "annuitant" in the contract. The payments typically come at the annuitant's retirement. Hedge funds and others that engage in market timing through variable annuities, however, do not purchase the products in order to obtain the retirement income. Rather, they purchase variable annuities to be able to market time the underlying mutual fund portfolios. Assets invested in variable annuities are used to purchase securities, and the size of the payments to the annuitant typically depends on the performance of the underlying securities. Variable annuity products typically offer access to mutual funds. Contract owners are able to invest in a variety of mutual funds at several mutual fund complexes through subaccounts of the insurance company that hold shares of the funds. Funds underlying variable annuity products are offered to insurance company separate accounts and certain tax-qualified retirement plans, but are not sold to the general public. In some cases, the funds are patterned on and managed similarly to corresponding retail funds offered by the fund complex. The variable insurance company and a mutual fund complex enter into participation agreements. In general, the annuity contracts allow the contract owner to place securities orders with the variable insurance company. These orders are then aggregated and transmitted to the mutual fund complex on a net basis. Because issuers of variable annuities aggregate trades in their contracted fund complexes and transmit the trades on a net basis,

trading through variable annuity contracts can hide the identity of timers, facilitating their timing activity.

Facts

A. Millennium's Structure

12. In 1989, Englander formed Millennium Partners, an “alternative investment fund” that engages in multi-strategy proprietary trading through a “master feeder” structure – an arrangement where investors’ money is initially placed into smaller feeder funds and then pooled into one large fund (or master fund), Millennium Partners. The two so-called “feeder” funds are Millennium USA, L.P., which is used to receive investments made by domestic investors, and Millennium International, Ltd., which is used for investments made by international investors. These two feeders then in turn invest substantially all their assets in Millennium Partners. Millennium Management is the managing partner of and investment adviser to Millennium USA and Millennium Partners. Englander is Millennium Management’s managing member. Millennium International Management is the investment adviser to Millennium International, Ltd. Englander is also the managing member of Millennium International Management.

13. During the relevant period, Englander controlled Millennium and was the beneficial owner of approximately 10 percent of Millennium Partners, the hedge fund. Feeney, the COO, reported to Englander and was in charge of the day-to-day operations at Millennium. Part of Feeney’s responsibilities included approving the creation of new legal entities and approving the opening of new accounts for Millennium’s traders. From early 2000 until March 2004, Stone was Millennium’s General Counsel and reported to Feeney. Stone’s responsibilities included overseeing Millennium’s compliance function and providing legal advice to Millennium, Englander and Feeney. Pillai was one of Millennium’s 64 traders and one of four traders at Millennium participating in market timing.

B. Millennium's Fraudulent Scheme

14. Mutual funds generally disapprove of market timing and discourage market timers from either investing in a mutual fund or from engaging in timing activity if a timer does invest. In numerous instances, mutual funds blocked Millennium, which was known to engage in market timing trading (among its other strategies) from future purchases when the mutual funds determined that Millennium had engaged in market timing. Englander, Stone, Feeney and Pillai were aware that mutual funds frequently blocked Millennium’s market timing trades. To keep market timing capacity (and the profits that flowed from it) available in the face of hundreds of block letters and notices from mutual fund families, Millennium embarked on a multi-pronged fraudulent scheme to conceal its identity, mislead the mutual funds, and evade the mutual funds’ market timing detection processes. As part of the scheme, Millennium cloned entities and accounts, structured its market timing trades, traded through omnibus accounts, traded mutual funds through variable annuity contracts, and took advantage of certain “sticky” asset arrangements that had been established by certain broker-dealers.

15. In the fall of 1999, Markovitz approached Englander with a market timing trading strategy that consisted of frequent trading of mutual fund shares based upon the percentage rise or fall in the U.S. markets. Specifically, if the U.S. markets closed up more than .5%, Millennium would purchase shares of U.S. mutual funds that invested in foreign securities, hoping that the foreign markets would rally behind a strong day in the U.S. markets. Conversely, if the U.S. markets performed poorly, Millennium would sell any long positions that it maintained in these mutual funds. Englander hired Markovitz, and by the end of 1999, Millennium had developed an active market timing strategy. From 2000 to 2003, Millennium and Englander deployed at times up to 25 percent of Millennium's assets in market timing strategies. During this time period, mutual funds became more vigilant in policing the trading in their funds in an effort to curb market timing trading. As a result, Millennium's market timing traders found it increasingly difficult to trade into and out of the most profitable mutual funds. Undeterred, Millennium and its senior management, including Englander, Feeney, Stone, and its traders, particularly Pillai and Markovitz, devised and implemented a fraudulent scheme to conceal Millennium's identity to mislead the mutual funds.

1. Millennium Cloned Trading Entities and Accounts

16. Millennium's "cloning" strategy was made up of a variety of practices, all designed to hide its identity as a market timer from the targeted mutual fund families. First, Millennium created approximately 100 new legal entities, usually limited liability companies, which generally had unique tax identification numbers to execute mutual fund trades. Millennium created and shelved several new LLCs at a time so that there were always LLCs "in reserve" if Millennium and its traders needed them. When a mutual fund family identified Millennium, or one of Millennium's LLCs, as a market timer and blocked them from trading, Millennium simply took a reserve LLC off its shelf and began timing the mutual fund family through a new account in the name of the new LLC, thereby concealing its identity from the blocking mutual fund family. Using the approximately 100 entities, Millennium opened approximately 1,000 brokerage accounts at approximately 39 different clearing brokers.

17. Englander, Feeney and Stone all were involved in and approved the creation of these legal entities and knew that their primary purpose was to allow the traders, including Pillai and Markovitz, to deceive the mutual funds by evading market timing restrictions. In June 2002, Pillai wrote an e-mail to Englander stating the necessity of trading through entities that had unique tax identification numbers in order to "shield [Millennium] from [mutual] fund crackdowns." Additionally, Englander personally signed nearly all of the applications for new tax identification numbers. Feeney supervised Stone, who with another Millennium employee (the "Millennium Employee"), formed the new legal entities and opened new accounts, which Feeney approved by signing nearly all of the operating agreements for the LLCs. In one instance, the Millennium Employee specifically relayed to Feeney that the creation of new LLCs with unique tax identification numbers, which Feeney approved, was necessary to "hide" Millennium's market timing activity. Stone chose names for the LLCs that were specifically intended to hide Millennium's relationship to the LLCs. In some instances, Stone strung together the names of various Millennium employees to avoid name association with Millennium. When the Millennium Employee began working at Millennium in 2001, Stone instructed the employee to choose names

that hid Millennium's relationship to the LLC, and Stone approved the use of the names that the Millennium Employee chose.

2. Millennium Traded Through Variable Annuities

18. As another part of its fraudulent scheme, Millennium, through its market timing traders, including Markovitz and Pillai, engaged in market timing trading through variable annuity contracts, employing a number of deceptive practices to avoid detection by mutual funds that had already identified and blocked Millennium (or one of its LLCs) as a market timer. Variable annuities were an attractive vehicle for Millennium to gain market timing capacity because issuers of variable annuities aggregate trades in their contracted fund complexes and transmit the trades on a net basis. Thus, trading through variable annuity contracts can hide the identity of timers, facilitating their timing activity. In December 2001, Pillai informed Feeney of this feature in connection with a variable annuity trading strategy and stated that his market timing trades would therefore "be disguised." Indeed, the primary purpose for purchasing certain annuities was to market time in funds that were known to be hostile to timers.

19. Like many mutual fund families, certain annuity issuers knew of and were opposed to timers using the annuity contracts to engage in market timing and took steps to limit the timers' activities. Millennium and Englander were aware of this issue, and were also aware that getting "booted" by annuity issuers impeded Millennium's timing activities and thus its profits. In an August 2002 communication that Feeney and Englander received, Markovitz proclaimed that he was "kicked [out] of fistfuls of annuity companies by the week." Further, the mutual funds underlying certain annuity contracts were also hostile to market timers and disclosed in the prospectuses provided to annuitants that they may cancel or refuse trades from market timers.

20. Millennium therefore employed deceptive devices to market time through annuities where the annuity issuer was not facilitating timing activities and was not aware of Millennium's conduct. For example, Millennium purchased multiple annuity contracts, naming its own employees as annuitants, but Millennium funded the contracts and all profits from the trading were for Millennium's benefit. In certain applications for annuity contracts, Millennium employees misleadingly represented that the annuity was suitable for the employees' long term investment strategy or for their retirement investment plans. Additionally, Millennium used the home address of certain employees, including Stone and Englander, on the annuity documents to hide Millennium's relationship to the annuitant. Englander, Feeney and Stone were aware of and participated in these deceptive practices. Furthermore, Englander, Feeney and Stone were annuitants on contracts that Millennium used to market time. Englander was an annuitant on at least one contract. Feeney was the annuitant on 27 contracts. Stone was the annuitant in approximately 28 contracts. Together, Feeney and Stone's annuity contracts enabled Millennium to make over 2,000 market timing round-trip purchases of mutual fund shares.

3. Millennium Used Other Deceptive Devices to Augment its Scheme

21. Because mutual funds also identified market timers by tracking registered representative numbers and account numbers, certain registered representatives at various brokerage firms that Millennium used in its scheme engaged in cloning practices, such as

alternating registered representative and account numbers to execute trades in mutual funds, thereby circumventing the funds' timing-detection mechanisms. In fact, Millennium specifically made use of new registered representative numbers in order to evade certain mutual funds' market timing restrictions. For example, in December 2001, the Millennium Employee told Feeney that the purpose of getting a new registered representative number was to "enable [Pillai] to re-enter funds that he had been restricted from." Each cloning practice was intended to evade various detection processes that mutual funds used to identify and track market timers, and Millennium used its cloning strategy specifically to mislead the mutual funds into believing that its market timing purchases were coming from different customers or brokers.

22. As an added layer of deception, Millennium, with Feeney's knowledge, similarly employed structured trading strategies to further disguise its timing activities from mutual funds. Some mutual funds detected timers by monitoring trades with high dollar value, and Millennium, therefore, tried to fly "under the fund managers' radar" by breaking up large trades into several smaller trades to hide its timing activity. Further, because mutual funds looked more closely at full redemptions, Millennium often left small positions when trading out of a mutual fund to avoid raising the mutual fund's suspicions. Millennium also selected clearing brokers who aggregated trades in omnibus accounts that concealed the identities of the individual entities making the trades. In June 2003, Pillai informed Feeney (who informed Englander) of Pillai's request to use omnibus accounts to keep Millennium's market timing transactions "relatively inconspicuous." These structured trading and omnibus account trading strategies were specifically intended to hide Millennium's market timing activities from mutual funds, and Millennium used them to augment and supplement its cloning strategies.

23. In certain instances, Millennium, with Englander and Feeney's knowledge and approval, deployed "sticky" assets, through broker-dealers, in order to obtain timing capacity that the brokers had "negotiated" with the mutual funds. In an email in early 2003, Pillai informed Englander that Millennium had "40 million deployed as domestic sticky money." Pillai also described one further sticky asset arrangement, for which Feeney arranged funding, in which Millennium obtained \$15 million of market timing capacity through the deployment of \$30 million of "sticky" money. Additionally, in early 2003, Markovitz characterized sticky money to Englander as "bribe money" necessary to gain market timing capacity.

24. The lengths to which Millennium went to disguise its association with market timing included renting two post office boxes from a private mail service for use when opening new brokerage accounts. Millennium used these addresses in account opening documents in lieu of Millennium's office address because Millennium knew that mutual funds and others were tracking its market timing activities by street address.

4. Pillai's Market Timing

25. Pillai, a trader at Millennium, was an active market timer. Pillai knew that mutual funds or compliance departments frequently blocked or kicked out his trades if they were too frequent or numerous. Therefore, Pillai used a variety of deceptive practices, described above, to evade the mutual funds' market timing restrictions, including using structured trading, using the different LLCs Millennium created to make it appear the trades were coming from different

customers not affiliated with Millennium, and taking advantage of certain “sticky” asset arrangements that had been established by certain broker-dealers.

C. Recent Events

26. After the commencement of the Commission’s investigation concerning Millennium’s fraudulent market timing scheme, Millennium Partners, Millennium Management, and Millennium International Management:

- a. created the position of CLO and retained a senior, experienced professional to fill that position;
- b. created the position of Chief Compliance Officer (“CCO”) and retained an experienced professional to fill that position;
- c. established, under the CLO’s supervision, an internal audit function to (i) evaluate operational, compliance and reputational risks, (ii) formulate appropriate policies and procedures in response to these risks, and (iii) test the efficacy and adequacy of the policies and procedures; and
- d. retained an independent consultant, who conducted a review of Millennium Partners, Millennium Management, and Millennium International Management’s operations and the compliance and control functions related to them and made numerous recommendations that Millennium Partners, Millennium Management, and Millennium International Management have adopted and are currently implementing.

Violations

27. As a result of the conduct described above, Millennium Partners, Millennium Management, Millennium International Management, Englander, Feeney, Stone, and Pillai willfully violated Section 17(a) of the Securities Act in that they, by the use of the means of instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, in the offer or sale of securities, employed devices, schemes or artifices to defraud; obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers of such securities, as described above.

28. As a result of the conduct described above, Millennium Partners, Millennium Management, Millennium International Management, Englander, Feeney, Stone, and Pillai willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that they, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made,

not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit, as described above.

Respondents' Remedial Efforts

29. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by the Respondents and cooperation afforded the Commission staff.

Undertakings

30. Millennium Partners, Millennium Management, and Millennium International Management shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Millennium has undertaken:

a. to produce promptly, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff in Millennium's possession and control, including privileged material that is (i) within the scope of an appropriate confidentiality agreement and (ii) generated in connection with the conduct described herein;

b. to use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the Commission's staff reasonably may request; and

c. to use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as the Commission's staff reasonably may request; and that in connection with any testimony of Millennium to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Millennium

i. agrees that any such notice or subpoena for Millennium's appearance and testimony may be served by regular mail on their attorney:

Schulte Roth & Zabel LLP
Attn: Martin L. Perschetz, Esq.
Harry S. Davis, Esq.
919 Third Avenue
New York, NY 10022; and

ii. agrees that any such notice or subpoena for Millennium's appearance and testimony in an action pending in a United State District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

31. Englander, Feeney, Stone and Pillai shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters

described in the Order. In connection with such cooperation, Englander, Feeney, Stone and Pillai each has undertaken:

a. to produce promptly, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff in his possession and control, including privileged material that is (i) within the scope of an appropriate confidentiality agreement and (ii) generated in connection with the conduct described herein;

b. to use his best efforts to be interviewed by the Commission's staff at such times as the Commission's staff reasonably may request; and

c. to use his best efforts to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as the Commission's staff may reasonably request; and that in connection with any testimony to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Englander, Feeney, Stone and Pillai each

i. agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his respective attorney, as follows:

For Englander:
Dechert LLP
Andrew J. Levander, Esq.
30 Rockefeller Plaza
New York, NY 10112

For Feeney:
Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C.
Barry A. Bohrer, Esq.
565 Fifth Avenue
New York, NY 10017

For Stone:
Latham & Watkins LLP
David M. Brodsky, Esq.
885 Third Avenue, Suite 1000
New York, NY 10022

For Pillai:
Sadis & Goldberg LLC
Ron S. Geffner, Esq.
551 Fifth Avenue, 21st Floor
New York, NY 10176; and

ii. agrees that any such notice or subpoena for his appearance and testimony in an action pending in a United State District Court may be served,

and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

32. Millennium Partners, Millennium Management, and Millennium International Management shall comply with the following undertakings:

a. *Compliance, Legal and Ethics Oversight Committee:* Within 30 days of the date of this Order, Millennium shall create a Compliance, Legal and Ethics Oversight Committee (the “Oversight Committee”) made up of Millennium’s CLO, Millennium’s CCO and a third person within Millennium’s senior management to be chosen by the CLO and the CCO together. The Oversight Committee shall be responsible for formulating Millennium’s compliance, legal and ethics rules, policies and procedures and ensuring that these rules, policies and procedures are appropriately implemented and enforced. The Oversight Committee’s responsibilities shall include, at a minimum:

i. Creating a formal code of ethics, administered either by the Oversight Committee or by an ethics officer designated by the Oversight Committee, and providing semiannual ethics training to Millennium’s professional employees;

ii. Reviewing compliance, legal, and ethics issues throughout Millennium’s business as they arise; reporting to Millennium’s chairman and managing partner the results of any such reviews; reporting to Millennium’s chairman and managing partner the responsive measures theretofore taken by the Oversight Committee and, if and to the extent necessary and appropriate, recommending to Millennium’s chairman and managing partner additional responsive measures;

iii. Investigating, or causing to be investigated, possible breaches of compliance, legal or ethical duties, rules, policies or procedures committed by any Millennium officer, employee, agent or person acting on Millennium’s behalf; reporting to Millennium’s chairman and managing partner the results of any such investigations; reporting to Millennium’s chairman and managing partner the responsive measures theretofore taken by the Oversight Committee and, if and to the extent necessary and appropriate, recommending to Millennium’s chairman and managing partner additional responsive measures;

iv. Maintaining records of the Oversight Committee’s activities and affairs and making those records available to the independent compliance consultant referenced in Paragraph III.32.b. below;

v. Holding at least quarterly in-person meetings to carry out the responsibilities of the Oversight Committee; and

vi. Holding at least quarterly in-person meetings with Millennium’s chairman and managing partner to report on the activities of the Oversight Committee and make any recommendations.

b. *Independent Compliance Consultant:*

i. Within 120 days of the date of this Order, Millennium shall retain an independent compliance consultant (“Independent Compliance Consultant”), not unacceptable to the staff of the Commission, to: (i) conduct a review of Millennium’s operations and its legal, compliance, and ethics structure, (ii) recommend any additional policies and procedures which, on the basis of its review, the consultant believes are reasonably designed to ensure that Millennium complies with federal and state securities laws, and (iii) submit to the Commission staff, within 30 days of the completion of the review, a report outlining the results of the Independent Compliance Consultant’s review, and what recommendations, if any, the Independent Compliance Consultant made.

ii. Millennium shall adopt the recommendations of the Independent Compliance Consultant; provided, however, that within 60 days of the completion of the review, Millennium shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendations that it considers to be unnecessary or inappropriate, Millennium need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which Millennium and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 90 days of the completion of the review. In the event that Millennium and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, Millennium will abide by the determinations of the Independent Compliance Consultant.

iii. After 18 months from the date of this Order, Millennium shall require the Independent Compliance Consultant (i) to conduct an additional review to determine whether Millennium adopted the above recommendations and whether Millennium’s policies and procedures are reasonably effective in maintaining Millennium’s compliance with federal and state securities laws, and (ii) submit to the Commission’s staff, within 30 days of the review, a report outlining the results of the review.

iv. The Independent Compliance Consultant’s compensation and expenses shall be borne exclusively by Englander, Millennium Management, or Millennium International Management and shall not be paid or deducted from any amounts of disgorgement or penalty paid by the Respondents under the Order. The Respondents shall cooperate fully with the Independent Compliance Consultant with access to their files, books, records, and personnel as reasonably requested for the reviews.

v. Millennium shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from

completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Millennium, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Millennium shall require that any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Millennium, or any of Millennium's present or former affiliates, directors, officers, employees, or agents acting in the capacity as such for the period of the engagement and for a period of two years after the engagement.

c. *Independent Distribution Consultant:*

i. Millennium shall retain, within 30 days of the entry of the Order, the services of an independent distribution consultant ("Independent Distribution Consultant") not unacceptable to the staff of the Commission. Englander, Millennium Management, or Millennium International Management shall pay up to \$5 million of the compensation and expenses of the Independent Distribution Consultant. Thereafter, the Independent Distribution Consultant's compensation or expenses shall be deducted from any amounts of disgorgement or penalty paid by the Respondents pursuant to this Order and any investment returns or interest earned thereon. The Respondents shall cooperate fully with the Independent Distribution Consultant, including providing access to their files, books, records, and personnel as reasonably requested for the review. Millennium shall require the Independent Distribution Consultant to develop a Distribution Plan for the distribution of the total disgorgement and penalty ordered in Paragraph IV.J. of this Order, and any interest or earnings thereon, according to a methodology developed in consultation with Millennium and acceptable to the staff of the Commission.

ii. Millennium shall require the Independent Distribution Consultant to submit to Millennium and the staff of the Commission the Distribution Plan no more than 150 days after the entry of the Order.

iii. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 210 days after the date of the entry of the Order, Millennium or the staff of the Commission, advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.

iv. With respect to any calculation with which Millennium or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 240 days of the date of the entry of the Order. In the event that Millennium and the staff of the Commission are unable to agree on an alternative

determination or calculation, the determinations of the Independent Distribution Consultant shall be binding.

v. Within 255 days of the date of entry of this Order, Millennium shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F. R. § 201.1101] of the Commission's Rules of Practice. Following a Commission order approving a final plan of distribution, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules of Practice, Millennium shall require that the Independent Distribution Consultant, with Millennium, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

vi. Millennium shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Millennium, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Millennium shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Millennium, or any of Millennium's present or former affiliates, directors, officers, employees, or agents acting in the capacity as such for the period of the engagement and for a period of two years after the engagement.

33. Pillai shall provide to the Commission, within 30 days after the end of the 12 month suspension period ordered in Paragraph IV.G., an affidavit that he has complied fully with the sanctions ordered against him herein.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e) and 203(f) of the Advisers Act, Section 9(b) of the Investment Company Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondents Millennium Partners, Millennium Management, Millennium International Management, Englander, Feeney, Stone, and Pillai shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Englander be, and hereby is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of three years from the date of the entry of this Order.

C. Feeney be, and hereby is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of three years from the date of the entry of this Order.

D. Stone be, and hereby is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of three years from the date of the entry of this Order.

E. Stone is denied the privilege of appearing or practicing before the Commission as an attorney for six months from the date of the entry of this Order.

F. Before appearing and resuming practice before the Commission, Stone will submit an affidavit to the Commission's Office of the General Counsel truthfully stating, under penalty of perjury, that he has complied with the Commission's orders, that he is not subject to any suspension or disbarment as an attorney by a court of the United States or of any state, territory, district, commonwealth, or possession, and that he has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice.

G. Pillai be, and hereby is suspended from association with any investment adviser for a period of 12 months from the date of the entry of this Order.

H. Millennium Partners, Millennium Management, and Millennium International Management shall comply with their undertakings as enumerated in Paragraph III.32. above.

I. Pillai shall comply with his undertaking as enumerated in Paragraph III.33. above.

Disgorgement, Penalties and Fair Fund

J. IT IS FURTHER ORDERED that the Respondents shall pay the following disgorgement and civil money penalties within 30 days of the entry of this Order: (1) Millennium — \$148 million in disgorgement, of which (a) Millennium Partners, L.P and its feeder funds. (*i.e.*, their investors, in respect of their capital accounts as of December 31, 2003) shall pay \$121.4 million, and (b) Millennium Management and Millennium International Management, jointly and severally, shall pay \$26.6 million (foregoing their incentive allocation based upon the \$148 million in profits disgorged pursuant to this Paragraph); (2) Englander — \$1 in disgorgement and a \$30 million civil money penalty; (3) Feeney — \$1 in disgorgement and a \$2 million civil money penalty; (4) Stone — \$1 in disgorgement and a \$25,000 civil money penalty; and (5) Pillai — \$1 in

disgorgement and a \$150,000 civil money penalty. Such payments shall be: (A) made by wire transfer, 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) wired, hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Millennium Partners, Millennium Management, Millennium International Management, Englander, Feeney, Stone, and Pillai as Respondents in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Helene Glotzer, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281-1022.

K. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in Paragraph IV.J. ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Englander, Feeney, Stone and Pillai agree that they shall not, after offset or reduction in any Related Investor Action based on their payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by offset or reduction of any part of their payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Englander, Feeney, Stone and Pillai agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this Paragraph, a "Related Investor Action" means a private damages action brought against Englander, Feeney, Stone and Pillai by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

L. For good cause shown, the staff of the Commission may alter any of the procedural deadlines set forth above.

By the Commission.

Jonathan G. Katz
Secretary