

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-12116

ADMINISTRATIVE PROCEEDING  
File No. 3-11292

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In the matter of )  
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Millennium Partners, L.P., )  
Millennium Management, L.L.C., )  
Millennium International Management, L.L.C., )  
Israel Englander, Terrence Feeney, )  
Fred Stone, and Kovan Pillai, )  
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Respondents. )  
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In the matter of )  
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Steven B. Markovitz, )  
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Respondent. )  
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**PROPOSED PLAN OF DISTRIBUTION**

## OVERVIEW

This Plan of Distribution (the “Plan”) proposes a methodology for distributing \$180,175,004, plus accumulated interest, paid by Millennium Partners, L.P., Millennium Management, L.L.C., Millennium International Management, L.L.C., Israel Englander, Terrence Feeney, Fred Stone, and Kovan Pillai (“Millennium Respondents”), in settlement of administrative proceedings addressing market-timing transactions conducted by or involving the Millennium Respondents, as well as \$400,001, plus accumulated interest, paid by Steven B. Markovitz (“Markovitz”) in settlement of administrative proceedings addressing late trading transactions conducted by or involving Markovitz, while he was a trader at Millennium Partners, L.P.

On December 1, 2005, Millennium Respondents consented to the entry of an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Millennium Order”), without admitting or denying the Order’s findings. The Millennium Order found, among other matters, that the Millennium Respondents “devised and carried out a fraudulent scheme to avoid detection and circumvent restrictions that mutual funds imposed on market timing.” Millennium Order at ¶ III.9.

The Millennium Order required, among other matters, disgorgements and fines as follows: “(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.” Millennium Order at ¶ IV.J.

The total disgorgement required to be paid by the Millennium Respondents amounts to \$148,000,004. The total civil money penalty required to be paid by the Millennium Respondents amounts to \$32,175,000. The combined disgorgement and civil money penalties required to be paid by the Millennium Respondents amounts to \$180,175,004.

On October 11, 2006, Markovitz consented to the entry of an Order Making Findings and Imposing Disgorgement and Civil Penalties (the “Markovitz Order”). The Markovitz Order requires that Markovitz pay disgorgement and prejudgment interest in the total amount of \$1 and a civil money penalty in the amount of \$400,000. Markovitz Order at ¶ IV.A, IV.B.

The Millennium Order calls for the establishment of a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act to provide for the ultimate distribution of \$180,175,004 in disgorgement and civil money penalties, plus accumulated interest. Millennium Order at ¶¶ IV.J, IV.K. In accordance with the terms of the Millennium Order all amounts required to be paid were timely remitted to the United States Securities and Exchange Commission (the “Commission”).

The Markovitz Order requires that the disgorgement and penalties paid by Markovitz be paid into the Fair Fund established by the Millennium Order. Markovitz Order at ¶ IV.C. In accordance with the terms of the Markovitz Order, all amounts required to be paid were timely remitted to the Commission.

The total disgorgement required to be paid by the Millennium Respondents and Markovitz amounts to \$148,000,005. The total civil money penalty required to be paid by the

Millennium Respondents and Markovitz amounts to \$32,575,000. The combined disgorgement and civil money penalties required to be paid by the Millennium Respondents and Markovitz amounts to \$180,575,005. The funds paid currently reside at the U.S. Treasury Bureau of Public Debt (“BPD”) and will reside at BPD until distributed as set forth in this Plan.

The Millennium Order further required that the Millennium Respondents retain the services of an “Independent Distribution Consultant not unacceptable to the staff of the Commission,” and that the Millennium Respondents “cooperate fully with the Independent Distribution Consultant, including [by] providing access to their files, books, records, and personnel as reasonably requested for the review.” Millennium Order at ¶ III.32.c.i. The Millennium Order also directed that “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.” Id. In addition, “Englander, Millennium Management, or Millennium International Management [have agreed to] 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.”<sup>1</sup> Id.

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<sup>1</sup> In the event that actual or estimated compensation or expenses of the IDC reach \$3.5 million, the IDC shall promptly inform the staff of the Commission of that development, and shall also provide a statement describing the basis upon which the IDC has made that determination. The IDC shall then consult with the staff to determine whether it would then be appropriate to establish a reserve in an amount that is reasonably estimated as sufficient to cover further anticipated IDC compensation or expenses.

In accordance with the Millennium Order, the Millennium Respondents have retained Professor Joseph A. Grundfest, a professor of law at Stanford Law School and a former SEC commissioner, as the Independent Distribution Consultant (“IDC”). This submission constitutes the Plan of Distribution required by the Millennium Order. The Plan is subject to approval by the Commission, and the Commission will retain jurisdiction over the implementation of the Plan.

### **ADMINISTRATION OF THE PLAN**

#### **Appointment of an Administrator for the Fair Fund**

The Commission’s Millennium Order requires that the IDC submit a Plan for the “administration and distribution of disgorgement and penalty funds pursuant to Rule 1101” of the Commission’s Rules on Fair Fund and Disgorgement Plans. Millennium Order at ¶ III.32.c.v. Rule 1105(a) provides that the Commission “shall have discretion to appoint any person ... as administrator of a plan of disgorgement or a Fair Fund plan and to delegate to that person responsibility for administering the plan.” Rule 1105(a) also provides that an administrator may be removed at any time by order of the Commission. The Millennium Respondents have proposed Joseph A. Grundfest, the IDC, to act as the administrator for the Distribution Plan (“the Administrator”). The staff of the Commission has no objection to the selection of the IDC as the Administrator. The IDC will be compensated for his work as Administrator by Respondents under the same terms of the Order that require Respondents to compensate him for his work as IDC.

The Millennium Respondents will indemnify and hold harmless the IDC (both in his capacity as IDC and Administrator) against all losses, claims, damages, liabilities, and expenses (including attorney’s fees and expenses) suffered by or asserted against him in connection with,

arising out of, or in any way based upon or relating to the role of the IDC or Administrator or the design or implementation of this Distribution Plan; provided, however, that the Millennium Respondents' indemnification obligation shall not extend to any loss, damage, liability, action, or claim to the extent the same is determined, in a final judgment by a court having jurisdiction, to have resulted from the willful fault or gross negligence of the IDC. This indemnification obligation shall exist in addition to, and not in place of, any other indemnification obligation that arises pursuant to contractual arrangement between the Millennium Respondents and the IDC.

Because the Administrator is not a Commission employee, Rule 1105(c) requires that he "obtain a bond in the manner prescribed in 11 U.S.C. § 322, in an amount to be approved by the Commission," but allows the Commission to "waive posting of a bond for good cause shown." Respondents request that the bond requirement be waived for the Administrator. The Administrator will not have discretion regarding payments made from the Fair Fund because payment recipients and amounts will be determined and paid in accordance with the process set forth below. Similarly, the Administrator will never have possession of the Fair Fund, which will remain at BPD until distribution.

As required by Rule 1105(f), "[d]uring the first 10 days of each calendar quarter, or as otherwise directed by the Commission . . . , the administrator shall file an accounting [with the Commission] of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any." Because the Fair Fund will be held at BPD until distribution in accordance with the procedures set forth in this Plan, the Respondents request that the Commission direct that the IDC, in his capacity as Administrator, need not file quarterly

accountings but shall submit a final accounting for approval of the Commission as set forth in Step Eleven of this Plan.

### **Control of the Fair Fund**

The Commission has control of the Fair Fund and shall retain control of the assets of the Fair Fund. The Fair Fund is currently deposited at the BPD and will remain there until released in accordance with Steps Seven and Eleven below. In the event that the Fair Fund receives additional funds prior to the completion of Step Six of this Plan, the IDC shall re-compute the calculations described in Steps One through Five of the Plan, including the newly received assets, and then proceed to implement Step Six and all remaining Steps of this Plan in accordance with the procedures set forth in this Plan. The IDC shall use the assets and earnings of the Fair Fund to make the distribution set forth in this Plan and to provide the Tax Administrator (as defined below) with assets to pay tax liabilities and tax compliance fees and costs.

### **Tax Obligations Of The Fair Fund**

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

The Commission has appointed Damasco & Associates as the Tax Administrator of the Fair Fund (“Tax Administrator”). See Order Appointing Tax Administrator, Exchange Act Release No. 53452, March 8, 2006. The IDC and the Millennium Respondents 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. Pursuant to Rule 1105(e) of the Commission’s Rules of Practice, the Tax Administrator shall be

compensated first from the interest earned on the corpus of the Fair Fund and, if the interest is not sufficient, then from the corpus.

The IDC, the Millennium Respondents, and Markovitz will not provide tax advice to any investors receiving distributions from the Fair Fund. In the event that the Internal Revenue Service issues guidance regarding the distribution, access to that guidance will be provided along with the other information to investors described in Step Six below.

### **DISTRIBUTION PLAN AND PROCEDURES**

The Millennium Order requires that “the Independent Distribution Consultant ... 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.”

Millennium Order at ¶ III.32.c.i

In considering the structure of the Distribution Plan required pursuant to the Millennium Order, the threshold question presented is whether the distribution should occur (a) at the fund level, meaning that the Fair Funds would be contributed to the mutual funds or annuities in which the Millennium Respondents’ conduct caused the Millennium Respondents to earn profits, with the distribution resulting in an increase in the net asset value of those collective asset vehicles; or (b) at the individual investor level, meaning that the distribution process would attempt to “look through” the ownership structure at the mutual fund and annuity level to identify the individual fund shareholders or annuity holders who may have been harmed as a consequence of the Millennium Respondents’ transactions.

In the view of the IDC, and as a result of empirical analysis of the transactions at issue in this proceeding and of the funds affected by those transactions, as well as a result of the analysis

of relevant legal precedent, a fund level distribution is the appropriate mechanism for the distribution of the Fair Funds here at issue. This conclusion is specific to the facts of this case and does not suggest that a fund level distribution is necessarily appropriate in any other proceeding. This conclusion is based on the observations that, among other factors:

- (a) The amounts likely to be paid to the large majority of individual fund shareholders would be so small as to be de minimis under standards accepted by the Commission and by the courts;
- (b) Any effort to implement an individual level distribution would result in significant expense and delay;
- (c) Serious implementation issues call into the question the ability successfully to implement an individual level distribution plan at many affected funds. For example, the Millennium Respondents and the IDC in the instant proceedings lack the ability to compel disclosure by the various funds (not to mention the various brokers, advisors and other intermediaries) of the daily purchases and redemptions of funds by individuals that would be essential to any determination of which shareholders of the funds held fund shares, and how many shares they held, and how many shares were outstanding, on the various days on which the Respondents engaged in purchases and redemptions of shares of those same funds; and
- (d) Analogous legal precedent supports the application of a fund level distribution on the facts and circumstances of this particular proceeding.

Accordingly, this Plan provides for a fund level distribution process to be implemented on the basis of records obtained from the Millennium Respondents and proposes to implement

that plan through a mechanism that does not require that any fund submit a claim in order to receive compensation pursuant to the terms of this Plan.

In the view of the IDC, the method and mechanism for distribution of the Fair Fund described in this plan constitutes a fair and reasonable allocation of the Fair Fund.

The analysis in this Plan applies only to the specific facts of this case. Nothing herein should be construed as expressing any view regarding any other set of facts or any other matter that might come before the Commission. The process of calculating the distributions to be made and of actually causing those distributions to occur will be implemented through a multi-step process. In order to accelerate the implementation of this Plan, the IDC and Respondents will attempt to execute Step Five (the construction of the Address Database) simultaneously with the execution of Steps One through Four (the calculation of the Final Distribution Amounts).

**Step One.** Operating with the data provided by the Millennium Respondents to the Commission and to the New York State Attorney General, Respondent Millennium Partners, L.P. (“Partners”), acting through its Compliance, Legal, and Ethics Oversight Committee established pursuant to ¶32.a of the Millennium Order (the “CLEO Committee”), and under the direction of the IDC, will construct a measure of disgorgement that reasonably approximates the total \$148,000,005 in disgorgement that was contributed to the Fair Fund in this proceeding. Initial indications are that these calculations lead to an estimated disgorgement amount of \$147,667,566. The approximation suggested by the IDC thus appears to replicate with 99.78% accuracy a disgorgement measure that supports the disgorgement described in the Order.

**Step Two.** Under the IDC’s direction, Partners, acting through the CLEO Committee and under the direction of the IDC, will identify all mutual funds and annuity accounts (“Investment Vehicles”) in which the Millennium Respondents earned a gross profit through

market timing transactions as calculated by the measure of disgorgement applied in Step One. Partners, acting through the CLEO Committee, will then, subject to the IDC's direction and in a manner consistent with the measure of disgorgement referred to in Step One, calculate the gross profits earned as a result of market timing transactions in each individual Investment Vehicle as well as the total gross profits earned by the Millennium Respondents as a result of such market timing transactions in all of those Investment Vehicles. Under the IDC's direction, Partners, acting through its CLEO Committee, will then, for each individual Investment Vehicle, calculate the ratio of (a) the gross profits earned as a result of market timing transactions in that Investment Vehicle to (b) the gross profits earned as a result of market timing transactions in all Investment Vehicles in which the Millennium Respondents earned a gross profit as a consequence of market timing, all in a manner consistent with the calculations applied in Step One. Those ratios, which will sum to 1.00, shall constitute the "Allocation Ratios" to be applied in Step Three of this Distribution Plan.

**Step Three.** The Provisional Distribution to each Investment Vehicle shall be calculated by multiplying (a) the corpus of the Fair Fund as of a date as close as possible to the expected date of distribution, which amount shall then be composed of the original \$180,575,005 plus accrued interest, less a reserve that, subject to the approval of the Tax Administrator, shall be adequate to cover any anticipated tax liability of the Fair Fund and related costs of tax compliance, by (b) that Investment Vehicle's Allocation Ratio as computed in Step Two.

**Step Four.** Partners, through its CLEO Committee and operating under the supervision of the IDC, will then identify all Provisional Distributions of less than \$1,000 and then shall repeat Steps Two and Three excluding from all computations all Investment Vehicles with

Provisional Distributions of less than \$1,000. The resulting calculation shall define the Final Allocation Ratios and Distribution Amounts.<sup>2</sup>

**Step Five.** Partners, through its CLEO Committee or third parties to be designated with the approval of the IDC, shall, under the supervision of the IDC, construct an Address Database that, for each Investment Vehicle identified as the recipient of a Final Distribution pursuant to Step Four, identifies the location to which a communication regarding the Fair Funds distribution is most reasonably forwarded.<sup>3</sup> In the course of constructing this Address Database, attention will also be paid to the identification of Investment Vehicles that may have been merged into other entities. Prior to the implementation of Step Six, the steps of the distribution required for implementation, including the calculations performed in accordance with Steps One through Four, shall be verified by a third party entity independent of the Millennium Respondents, the CLEO Committee, and the IDC and not unacceptable to the staff of the Commission. Such verification shall be performed by a method and to standards not unacceptable to the staff of the Commission; the independent third party shall report to, and provide a copy of the verification results to the staff.

**Step Six.** Promptly upon completion of the Address Database, Partners, through its CLEO Committee and under the supervision of the IDC, will forward to each Investment Vehicle identified as the recipient of a Final Distribution pursuant to Step Four a letter:

(a) explaining that the Investment Vehicle should be expecting a Fair Fund payment as a result of

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<sup>2</sup> The \$1,000 amount is used as a reasonable measure of “de minimis” distribution in the context of an Investment Vehicle, which would then divide that amount by the number of shares it had outstanding in order to determine the per-share amount. Few, if any, Investment Vehicles would have so few shares outstanding as to make this amount as much as 1 cent per share.

<sup>3</sup> Where possible, this letter will be forwarded to each Investment Vehicle’s general counsel’s office.

the Millennium Order in the approximate amount of the Final Distribution identified in Step Four, and that the payment will be made by electronic transfer; (b) emphasizing that the distribution is to be added to the corpus of the Investment Vehicle in the same manner that a recovery of a class action securities fraud claim would be added to the corpus of the Investment Vehicle; (c) stating that if the recipient does not intend to contribute those funds to the corpus of the Investment Vehicle, or for any other reasons wishes to decline the receipt of those funds, then the recipient should promptly inform the IDC of that decision, and if an electronic transfer is made, that the funds should be returned to the United States Securities and Exchange Commission, Office of Financial Management, 6432 General Green Way, Alexandria, VA 22312; (d) requesting that potential recipients provide a completed Form W-9 or Form W-8 BEN within 45 calendar days of the date of the letter, and explaining the withholding tax implications of any failure to provide such information;<sup>4</sup> (e) requesting that the potential recipients also provide information sufficient for the IDC to make payment of any distribution by electronic transfer; (f) offering the name and address, including email addresses, of persons that can be contacted in the event the recipient has any questions regarding the distribution; and (g) providing any other additional information that the IDC deems appropriate and that is not expected to be included with the electronic transfer to be made in accordance with Step Seven

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<sup>4</sup> In the event a potential recipient fails to provide the necessary tax information and/or electronic transfer information on a timely basis, the IDC will cause a second mailing to the non-respondents, again requesting the necessary tax and/or electronic transfer information, and providing a second 45-day period within which to respond. Withholding will be applied only to prospective recipients who fail to respond to both inquiries. If the IDC does not obtain a completed Form W-9 indicating the non-reporting status of a domestic entity, then any payments to that entity will be subject to backup withholding at the rate of 28%. Foreign domiciled prospective recipients, if any, will be subject to automatic withholding. If the IDC does not obtain electronic transfer information for any Investment Vehicle, the IDC will, in consultation with Commission staff, arrange for payment of the distribution amount to be paid to such Investment Vehicle through other means, with appropriate safeguards and communications to accompany the payment.

below. A model of this letter will be submitted to the staff of the Commission for staff review and approval prior to transmission.

**Step Seven.** The Fair Fund distribution to the Investment Vehicles will be implemented by the Financial Management Service, United States Department of Treasury (“FMS”), which will make electronic transfers to the Investment Vehicles (net of any withholdings or other deductions, which shall be disbursed as appropriate) pursuant to the procedures contained in this Distribution Plan. Partners, acting through its CLEO Committee (or the IDC), shall provide the Tax Administrator with a spreadsheet showing the distribution amount for each Investment Vehicle, showing the status of Form W-9 or W-8BEN and the resulting withholding status, if any. The Tax Administrator shall verify the tax withholding amounts and shall inform the IDC of any corrections required prior to Partners finalizing the information that will be sent to the Commission’s Office of Financial Management (“OFM”). Prior to the submission of the electronic file to OFM, the Tax Administrator shall request funds necessary for non-resident alien and backup withholding tax deposits. FMS will provide the IDC and the Millennium Respondents with its proprietary software for the submission, in “Agency Input Format,” of the information necessary to make electronic transfers to the Investment Vehicles. Partners, through its CLEO Committee and under the supervision of the IDC, shall compile this information into an electronic file in the Agency Input Format and submit this electronic file to OFM and assigned staff from the Division of Enforcement. Partners, acting through its CLEO Committee, and under the supervision of the IDC, shall also forward to the OFM and assigned staff from the Division of Enforcement explanatory text to accompany the electronic transfers to the identified Investment Vehicles. Any such text shall be subject to the approval of the Commission staff. The IDC will validate the information contained in the electronic file in Agency Input Format,

which validation will state that the electronic file was compiled in accordance with the Distribution Plan and provides all the information necessary for FMS to make disbursement by electronic transfer. The validated electronic payment file will be a condition precedent for the Commission staff to obtain from the Commission an Order to disburse funds to the Investment Vehicles pursuant to this Plan. The Commission shall, after review and approval of the file and of the proposed text, if any, and after issuance of the Order to disburse, forward the file and the related text to FMS with directions to cause electronic transfer of funds in the identified amounts to the designated recipients. Within two business days of receipt by FMS, the electronic transfers will be made to the Investment Vehicles.

**Step Eight.** Electronic transfers that are undeliverable will be credited back to the account existing in respect of the settlement at the United States Treasury. Information identifying all returned electronic transfers will be routed from FMS to the Commission's OFM, which will promptly notify the IDC of all such returned electronic transfers. Partners, through its CLEO Committee and under the direction of the IDC, will then exercise commercially reasonable efforts to identify information to allow the funds to be electronically transferred again. This information, in the same format and validated as described in Step Seven, shall then be promptly forwarded to the Commission's OFM and assigned staff from the Division of Enforcement, and the Commission shall then convey that information to FMS in a manner calculated to cause an electronic transfer of funds in the same Final Distribution Amount as was originally made.

**Step Nine.** In the event that an electronic transfer is, after the procedure described in Step Eight, again returned as undeliverable, Partners, through its CLEO Committee and under the direction of the IDC, shall repeat Step Eight in an effort to identify valid information to allow

the funds to be electronically transferred again. In the event that an electronic transfer is returned as undeliverable for a third time, the process shall cease and the amount represented by the electronic transfer shall be remitted to the United States Treasury in accordance with Step Ten.<sup>5</sup>

**Step Ten.** Any sums remaining in the Fair Funds account upon the completion of the procedures described in Step Nine, which funds should represent (a) interest accumulated during the distribution procedure described herein, (b) funds that have been formally declined pursuant to Step Six, (c) the balance of tax reserves remaining after all tax payments have been made, and (d) funds for which valid electronic transfer information was not identified after three attempts in accordance with the foregoing, shall be remitted to the United States Treasury upon termination of the Fair Fund as described in Step Eleven.

**Step Eleven.** Upon completion of Step Ten, the IDC will declare that the distribution is concluded. Under the supervision of the IDC, Partners, through its CLEO Committee, will submit within 60 days of the completion of Step Ten, a final accounting with the Commission as required by Rule 1105(f). The Fair Fund shall terminate by July 31, 2007, or no later than 60 days after the final accounting by the IDC and Respondents has been submitted to and approved by the Commission, whichever date is later. Prior to termination of the Fair Fund, the IDC shall cooperate with the Tax Administrator to make adequate reserves for tax liability and for the cost of tax compliance. Upon termination of the Fair Fund as defined in this paragraph, all undistributed assets remaining in the Fair Fund, minus any reserves for tax liability and tax compliance costs, shall be remitted to the United States Treasury. The Qualified Settlement Fund

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<sup>5</sup> The IDC will not seek a refund of any withholding taxes paid pursuant to Step Seven in respect of accounts that shall be remitted to the United States Treasury because these sums would then simply be paid back to the Treasury in accordance with Step Ten.

shall also terminate upon termination of the Fair Fund, inasmuch as there would then be no assets remaining in either the Fair Fund or in the Qualified Settlement Fund.

For good cause shown, the Commission's staff may extend any of the procedural deadlines set forth in this Plan.

The IDC will inform the Commission staff of any material changes in the Plan, and will obtain approval from the Commission prior to their implementation. If material changes are required, this Plan may be amended upon the motion of the Millennium Respondents, the IDC, or upon the Commission's own motion.

The Millennium Respondents will cooperate fully with the IDC and with all other parties referenced in this Plan in an effort to ensure the appropriate distribution of funds pursuant to the Plan. To the extent that the Plan requires the participation of the Millennium Respondents, either directly or through the Partners' CLEO Committee, the Millennium Respondents shall bear the costs and expenses of such participation.

#### **NOTICE OF PROPOSED FAIR FUND DISTRIBUTION PLAN**

In accordance with 17 C.F.R. 201.1103 of the Rules on Fair Fund and Disgorgement Plans, notice of this Plan shall be published in the *SEC Docket*, on the Commission website, and in such other publications as the Commission may require. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty days of the date of the notice of the plan:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090;

2. by using the Commission's Internet comment form ([www.sec.gov/litigation/admin.shtml](http://www.sec.gov/litigation/admin.shtml)); or

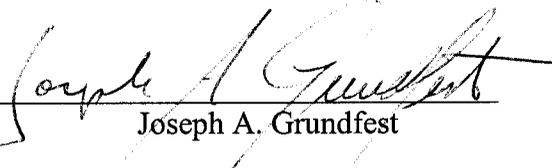
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-12116) on the subject line.

Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

Submitted on May 23 2007

By:

  
Joseph A. Grundfest

IDC for Millennium Partners, L.P.,  
Millennium Management, L.L.C.,  
Millennium International Management,  
L.L.C., Israel Englander, Terrence Feeney,  
Fred Stone, and Kovan Pillai

IDC for Steven B. Markovitz