

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82046 / November 9, 2017

ADMINISTRATIVE PROCEEDING
FILE No. 3-12116

ADMINISTRATIVE PROCEEDING
FILE No. 3-11292

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 AUTHORIZING THE
TRANSFER TO THE U.S.
TREASURY OF THE REMAINING
FUNDS AND ANY FUNDS
RETURNED TO THE FAIR FUND IN
THE FUTURE, DISCHARGING THE
FUND ADMINISTRATOR, AND
TERMINATING THE FAIR FUND

In the Matter of

STEVEN B. MARKOVITZ,

Respondent.

On October 2, 2003, the United States Securities and Exchange Commission (“Commission”) issued an Order Instituting Public 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, Section 203(f) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings and Imposing Remedial Sanctions¹ against Steven B. Markovitz (“Markovitz”), finding that, from 1999 through 2003, Markovitz, a hedge fund trader at Millennium Partners, engaged in late trading of mutual fund

¹ Securities Act Rel. No. 8298 (Oct. 2, 2003).

shares. The Commission ordered Markovitz to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and from causing any violations and any future violations of Rule 22c-1(a) under the Investment Company Act of 1940; and imposed bars on Markovitz pursuant to Section 203(f) of the Advisers Act of 1940 and Section 9(b) of the Investment Company Act.

On December 1, 2005, the Commission issued an 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, Imposing Remedial Sanctions and Cease and Desist Order (the "Millennium Order")² against Millennium Partners, L.P. ("Millennium Partners"), Millennium Management, L.L.C ("Millennium Management"), Millennium International Management, L.L.C. ("International Management"), Israel Englander ("Englander"), Terence Feeney ("Feeney"), Fred Stone ("Stone"), and Kovan Pillai ("Pillai"). In the Order the Commission found that, from at least 1999 to 2003, Millennium Partners, Millennium Management, and International Management (collectively, "Millennium"), through Englander, Feeney, Stone, and Pillai, generated tens of millions of dollars in profits through deceptive market timing trades of mutual fund shares. The Commission ordered Millennium (collectively) to disgorge \$148 million; Millennium Management and International Management to forgo their incentive allocation based upon the \$148 million disgorged; and Englander, Feeney, Stone, and Pillai to each disgorge \$1 and pay civil money penalties of \$30 million, \$2 million, \$25,000, and \$150,000, respectively. The Millennium Order established a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the disgorgement and civil penalties (the "Fair Fund"). The Millennium Order further required Millennium to retain an Independent Distribution Consultant (the "IDC") to distribute the Fair Fund to investors harmed by the illegal market timing, and to pay up to \$5 million of the compensation and expenses of the IDC. Millennium retained Professor Joseph A. Grundfest, a professor of law at Stanford Law School and a former commissioner, as the IDC.

On October 11, 2006, the Commission issued an Order Making Findings and Imposing Disgorgement and Civil Penalties Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940³ against Markovitz, requiring Markovitz to pay disgorgement and prejudgment interest of \$1 and a civil penalty of \$400,000 to the Fair Fund.

On May 31, 2007, the Commission published a Notice of Proposed Distribution Plan and Opportunity to Comment.⁴ Receiving no substantive comments on the Plan as proposed, on August 3, 2007, the Commission approved the Plan, appointed Professor Grundfest as the Plan

² Securities Act Rel. No. 8639 (Dec. 1, 2005).

³ Securities Act Rel. No. 8748 (Oct. 11, 2006).

⁴ Exchange Act Rel. No. 55841 (May 31, 2007).

Administrator, and waived the bond requirement.⁵ Under the Plan, the IDC proposed to distribute the Fair Fund to the Affected Funds. Each Affected Fund's share of the Fair Fund was calculated as the ratio of net profits earned by Millennium through market timing in that particular fund to the total net profits earned by Millennium in all of the Affected Funds.

The IDC identified 1422 Affected Funds and corresponded with each to ascertain payment information. Of the 1422 Affected Funds, 86, due approximately \$7 million under the Plan, had been liquidated; and another 17, due approximately \$516,000 under the Plan, failed to provide the requested information. On June 5, 2009, August 31, 2009, May 12, 2010, December 6, 2010, and July 26, 2012, the Commission issued orders directing the disbursement of an aggregate of (approximately) \$185.6 million from the Fair Fund for distribution by the Plan Administrator to the remaining 1319 Affected Funds (the "Disbursed Amount").⁶ Ultimately, approximately \$185.4 million, or 99.9 % of the Disbursed Amount, was distributed to Affected Funds.

The Fair Fund earned approximately \$19.5 million in interest, paid taxes of approximately \$6.8 million, and paid investment and tax administration expenses of approximately \$42,300. The Fair Fund currently holds approximately \$7.8 million, largely comprised of monies allocated to previously liquidated Affected Funds and/or Affected Funds that failed to provide to the IDC requested documentation, with the remainder comprised of returned funds, uncashed checks, and accrued interest.

The Plan provides that the Fair Fund shall terminate no later than 60 days after the final accounting by the IDC has been submitted and approved by the Commission and that, upon termination of the Fair Fund 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. A final accounting, which was submitted to the Commission for approval as required by Rule 1105(f) of the Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, is now approved. The staff has verified that all taxes, fees, and expenses have been paid, and the Commission is in possession of the remaining funds.

⁵ See Order Approving Distribution Plan, Appointing an Administrator, and Waiving Bond, Exchange Act Rel. No. 56196 (Aug. 3, 2007).

⁶ Corrected Order Directing Disbursement of Fair Fund, Exchange Act Rel. Nos. 60056A (June 5, 2009) and 62057 (May 12, 2010); Order Directing Disbursement of Fair Fund, Exchange Act Rel. Nos. 60593 (Aug. 31, 2009), 63445 (Dec. 6, 2010), 67513 (Jul. 26, 2012).

Accordingly, it is ORDERED that:

- A. The remaining Fair Fund balance of \$7,840,040.03 and any funds returned to the Fair Fund in the future, shall be transferred to the U.S. Treasury;
- B. The Plan Administrator, Joseph A. Grundfest, is discharged; and
- C. The Fair Fund is terminated.

By the Commission.

Brent J. Fields
Secretary