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8 International Management, L.L.C.

9 **U.S. SECURITIES AND EXCHANGE COMMISSION**

10 In the Matter of

File No. 3-12116

11 MILLENNIUM PARTNERS, L.P.,  
12 MILLENNIUM MANAGEMENT,  
13 L.L.C., MILLENNIUM INTERNATIONAL  
14 MANAGEMENT, L.L.C., et al.

**MOTION TO MODIFY  
ADMINISTRATIVE PROCEEDING  
SANCTIONS**

Petitioners.

15 Millennium Partners, L.P. ("MP"), Millennium Management, L.L.C. ("MM"), and  
16 Millennium International Management, L.L.C. ("MIM," and together with MP and MM,  
17 "Millennium") hereby move for an order to modify the ongoing sanction in connection with  
18 Administrative Proceeding File No. 3-12116, dated December 1, 2005 ("Order").

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21 In 2005, the Commission issued the Order premised upon an offer of settlement. The  
22 Order, *inter alia*, imposed continuing requirements on Millennium. Those requirements have  
23 now been in effect for over ten years, and Millennium continues to be burdened by one ongoing  
24 obligation under the Order – namely, the obligation to maintain a Compliance, Legal and Ethics  
25 Oversight Committee ("Committee") in accordance with paragraph III.B.32(a) of the Order. For  
26 the reasons outlined below, including substantial Commission precedent related to the inclusion  
27 of sunset provisions in other similar administrative proceedings and the elimination of similar  
28

1 undertakings in other administrative proceedings related to market timing and other actions, and  
2 MM's current status as a registered adviser with the Commission, Millennium seeks an order  
3 relieving it of this continuing obligation.  
4

#### 5 The Commission Order

6 On December 1, 2005, Millennium and the Commission agreed to a settlement stemming  
7 from allegations that Millennium engaged in market timing trades of mutual fund shares and  
8 carried out a scheme to avoid detection and to circumvent restrictions that the mutual funds  
9 imposed on market timing. Without admitting or denying the findings contained in the Order,  
10 Millennium agreed to the following provisions, among others:  
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- 12 • disgorgement of profits from the trading in question and the hiring of an independent  
13 distribution consultant to develop and implement a plan for distributing the disgorged  
14 amount among the various funds with respect to which MP had engaged in the trading;
- 15 • retention of an independent compliance consultant to conduct a review of Millennium's  
16 operations and its legal, compliance, and ethics structure and recommend any additional  
17 policies reasonably designed to ensure future compliance with federal and state securities  
18 laws; and
- 19 • creation of the Committee with responsibility for formulating, implementing, and  
20 enforcing compliance, legal and ethics rules, policies and procedures.  
21

#### 22 Compliance, Legal and Ethics Oversight Committee

23 Under the terms of the Order, the Committee must be composed of Millennium's Chief  
24 Legal Officer ("CLO"), Chief Compliance Officer ("CCO"), and a third person chosen by the  
25 CLO and the CCO together. As noted, the Committee is responsible for formulating  
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1 Millennium's compliance, legal and ethics rules, policies and procedures and ensuring that these  
2 rules, policies and procedures are appropriately implemented and enforced. As specified in the  
3 Order, the Committee's responsibilities include, at a minimum:  
4

- 5 i. Creating a formal code of ethics and providing ethics training to Millennium's  
6 professional employees;
- 7 ii. Reviewing compliance, legal, and ethics issues throughout Millennium's business  
8 as they arise; reporting the results of any such reviews and any responsive  
9 measures to the Chairman and Managing Partner, and if necessary and  
10 appropriate, recommending additional responsive measures;
- 11 iii. Investigating possible breaches of compliance, legal or ethical duties, rules,  
12 policies or procedures; reporting the results of any such investigations and any  
13 responsive measures to the Chairman and Managing Partner, and if necessary and  
14 appropriate, recommending additional responsive measures;
- 15 iv. Maintaining a record of the Committee's activities and affairs;
- 16 v. Holding at least quarterly in-person meetings; and
- 17 vi. Holding at least quarterly in-person meetings with Millennium's Chairman and  
18 Managing Partner.  
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21 Relief Sought

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23 There is no dispute that Millennium has completely discharged all of the obligations  
24 under the Order that can be discharged and has continued to satisfy its obligations related to the  
25 Committee since the entry of the Order. However, the Order, by its terms, does not permit  
26 Millennium to alter or change ongoing aspects of the way in which it conducts its business, such  
27 as, for example, adjusting the size or the composition of the Committee. Millennium  
28

1 respectfully requests that the Commission grant it relief from the continuing obligations under  
2 the Order.

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4 Discussion

5 Substantial precedent supports this motion. The Commission has frequently included  
6 sunset provisions in other similar administrative proceedings which suggests that the  
7 Commission does not generally perceive a need for such undertakings to be permanent.<sup>1</sup> More  
8 importantly, the Commission has routinely agreed to eliminate similar undertakings in other  
9 administrative proceedings related to market timing and other actions, such as:

- 10  
11
- 12 • *In the Matter of Putnam Investment Management, LLC*, Administrative Proceeding No.  
13 3-11317, May 3, 2013 - modifying compliance obligations imposed in 2003 related to  
14 market timing, including terminating the requirement to maintain an Internal Compliance  
15 Controls Committee and terminating the requirement to conduct a periodic compliance  
16 review every other year;
  - 17  
18 • *In the Matter of Massachusetts Financial Services Company, et al.*, Administrative  
19 Proceeding No. 3-11393, Nov. 9, 2011 - modifying compliance obligations imposed in  
20 2004 related to market timing, including terminating the requirement to designate an  
21 independent compliance officer reporting to the board of trustees, terminating the  
22
- 23

24  
25 <sup>1</sup> See *In the Matter of Evergreen Investment Management Company, LLC*, Administrative  
26 Proceeding File No. 3-12805, Sept. 19, 2007 (market timing settlement limiting to five years the  
27 firm's obligation to maintain a Code of Ethics Oversight Committee). See also *In the Matter of*  
28 *Axa Rosenberg Group LLC*, Administrative Proceeding File No. 3-14224, Feb. 3, 2011  
(institutional money manager sanctioned for concealing code error that cost \$216,806 864 in  
losses required to maintain a Global Compliance and Ethics Oversight Committee for less than  
five years).

1 requirement to establish an Internal Compliance Control Committee, and terminating the  
2 requirement to conduct a periodic compliance review;

- 3
- 4 • *In the Matter of RS Investment Management, Inc., et al.*, Administrative Proceeding No.  
5 3-11696, Jan. 13, 2012 - modifying compliance obligations imposed in 2004 related to  
6 market timing, including terminating the requirement to establish a Compliance Systems  
7 Committee and terminating the requirement to perform a periodic compliance review;  
8
  - 9 • *In the Matter of Janus Capital Management, LLC*, Administrative Proceeding No. 3-  
10 11590, Aug. 5, 2010 - modifying compliance obligations imposed in 2004 related to  
11 market timing, including terminating the requirement to establish an Internal Compliance  
12 Controls Committee; and
  - 13 • *M.D.C. Holdings, Inc.*, Administrative Proceeding File No. 3-7251, Jan. 9, 1998 -  
14 substituting a more general compliance requirement for original sanction.  
15

16 Moreover, in contrast to its status when the Order was entered, MM is now a registered  
17 adviser with the Commission and is therefore subject to the full panoply of investment adviser  
18 laws and rules as well as Commission examination. The Commission can readily obtain, upon  
19 request, information relating to Millennium's finances, operations, and business in general. In  
20 fact, MM was examined by the Commission's Office of Compliance, Inspection and  
21 Examinations ("OCIE") during 2014-2015, and OCIE issued a closing letter that did not identify  
22 significant concerns with the manner in which MM conducts its business. Furthermore, in its 25-  
23 year history, Millennium has not had any significant disciplinary issues other than those  
24 addressed by the Order, and has not had any such issues in the more than 10 years since the  
25 Order.  
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1           Additionally, since the date of the Order, Millennium has established a Regulatory and  
2 Compliance Advisory Council (“Council”) to assist it and its executives in their ongoing efforts  
3 to maintain a fully effective compliance structure, and to meet their ever-changing and  
4 expanding global compliance responsibilities. Millennium believes it is the first alternative  
5 investment fund to create such a body, although at least two other funds have since adopted the  
6 practice. The current members of the Council are:  
7

- 8           • Peter Clapman, former Chief Investment Council to TIAA-CREF;
- 9           • Sir Howard Davies, former Executive Chairman of the Financial Services Authority of  
10           the United Kingdom and former Director of the London School of Economics and  
11           Political Science;
- 12           • Louis Freeh, former Federal District Court Judge and Former Director of the FBI;
- 13           • Joseph Grundfest, former Commissioner of the SEC and Professor at Stanford University  
14           School of Law;
- 15           • Aulana Peters, former Commissioner of the SEC and retired Partner of Gibson, Dunn &  
16           Crutcher;
- 17           • Harvey Pitt, former Chairman of the SEC; and
- 18           • Stanley Sporkin, former Director of the SEC Division of Enforcement, former General  
19           Counsel of the CIA and former Federal District Court Judge.  
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22           Nonetheless, its continuing obligations under the Order put Millennium at a competitive  
23 disadvantage with its peer firms because Millennium is required to abide by increased (and  
24 unchangeable) obligations that its peers/competitors are not required to follow.  
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26           While the function of the Committee has been useful for Millennium, and while  
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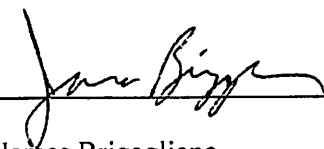
1 Millennium has no current intention to alter the functions of the Committee, the specific  
2 requirements regarding the composition of the Committee constrain Millennium from structuring  
3 the Committee and its functions in ways that could be more productive for Millennium. For  
4 example, the Committee is required to have three members, but Millennium would like to add  
5 one or more additional members to include key staff (e.g., the Chief Operating Officer).  
6

7 Conclusion

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9 Millennium has been subject to the continuing obligations in the Order for over ten years;  
10 however, over that period of time Millennium has been unable to change certain aspects of its  
11 business due to the continuing obligations. Consistent with Commission precedent regarding  
12 affirmative undertakings, Millennium respectfully requests that the Commission modify the  
13 Order to relieve Millennium of its obligations, as of the date of the modified order, to create and  
14 maintain the Committee in accordance with paragraph III.B.32(a) of the Order.  
15

16 Dated: June 10, 2016

17  
18 SIDLEY AUSTIN LLP

19 By:  \_\_\_\_\_

20 James Brigagliano

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22 Attorney for Millennium Partners, L.P.,

23 Millennium Management, L.L.C., and

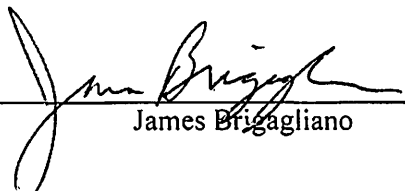
24 Millennium International Management,

25 L.L.C.  
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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2016, I caused true and correct copies of the foregoing  
MOTION TO MODIFY ADMINISTRATIVE PROCEEDING SANCTIONS to be served by  
Courier upon: U.S. Securities and Exchange Commission Office of the Secretary, 100 F Street NE,  
Washington, DC 20549.

  
James Brigagliano