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March 9, 2006

FRIED FRANK

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: ***In the Matter of Certain Mutual Fund Trading Practices (NY – 07220)***

Dear Mr. Scheidt:

We submit this letter on behalf of our client, Millennium Partners, L.P., in connection with a settlement arising out of an investigation by the Securities and Exchange Commission ("Commission") into certain mutual fund trading practices.

Millennium Partners, L.P. seeks the assurance of the staff of the Division of Investment Management ("Staff") that it would not recommend any enforcement action to the Commission under Section 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act"), or Rule 206(4)-3 thereunder (the "Rule"), if an investment adviser pays Millennium Partners, L.P., Millennium Management, L.L.C., Millennium International Management, L.L.C. (collectively, "Millennium"), Israel Englander, Terence Feeney, or Fred Stone (such individuals collectively, the "Millennium Persons") or any other associated person of Millennium a cash payment for the solicitation of advisory clients, notwithstanding the existence of the Final Order (as defined below).

BACKGROUND

Millennium, the Millennium Persons and Kovan Pillai[1] have entered into a settlement with the Commission in connection with the above-referenced investigation.

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1 Mr. Pillai is no longer associated with Millennium. For that reason, we do not request relief under the Rule for Mr. Pillai.

As a result of this settlement, Millennium, the Millennium Persons and Mr. Pillai, without admitting or denying the Commission's findings in the administrative action filed in connection therewith, have consented to a final order (the "Final Order") entered by the Commission.[2] As part of the Final Order, Millennium consented, pursuant to Section 8A of the Securities Act of 1933 (the "Securities Act"), Section 21C of the Securities Exchange Act of 1934 (the "Exchange Act"), and Section 203(e) of the Advisers Act to 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. The Millennium Persons and Mr. Pillai also consented, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, to 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.

Furthermore, the Millennium Persons each consented to a bar, pursuant to Section 9(b) of the Investment Company Act of 1940, 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. Pursuant to the Final Order and the respective Offers of Settlement of the Millennium Persons, the Millennium Persons may make application to reapply after the specified time period of each bar under Section 9(b) of the Investment Company Act. Each such application will be subject to the applicable law governing the reentry process and will be reviewed under the processes specified by Rule 193 of the Commission's Rules of Practice. [3]

In addition, Millennium, pursuant to the terms of the Final Order, consented to an undertaking to, among other things:

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2 *In the Matter of Millennium Partners, L.P., Millennium Management, L.L.C., Millennium International Management, L.L.C., Israel Englander, Terrence Feeney, Fred Stone, and Kovan Pillai,* Securities Act Release No. 8639 (Dec. 1, 2005).

3 Mr. Stone also consented to a suspension, pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice, of the privilege of appearing and practicing before the Commission as an attorney for a period of six months. Pursuant to the Final Order, Mr. Stone must submit an affidavit that meets certain enumerated conditions to the Commission's Office of the General Counsel prior to appearing and resuming practice before the Commission.

1. create a Compliance, Legal and Ethics Oversight Committee responsible for formulating Millennium's compliance, legal and ethics rules, polices and procedures and ensuring that these rules, policies and procedures are appropriately implemented and enforced, which will:
    a. create a formal code of ethics and provide semiannual ethics training for Millennium's professional employees;
    b. review compliance, legal and ethics issues throughout Millennium's business as they arise and report to Millennium's chairman and managing partner the results of any such reviews and the responsive measures theretofore taken by the Oversight Committee and, if and to the extent necessary and appropriate, recommend additional responsive measures to Millennium's chairman and managing partner; and
    c. investigate possible breaches of compliance, legal or ethical policies committed by any person acting on Millennium's behalf and report to Millennium's chairman and managing partner the results of any such investigation and, if and to the extent necessary and appropriate, recommend any responsive measures to be taken by the Oversight Committee; and

2. retain an Independent Consultant, not unacceptable to the staff of the Commission, to conduct a review of Millennium's operations and its legal, compliance, and ethics structure, make certain recommendations with respect thereto, submit a report to the Commission staff outlining the results of the review and any recommendations made, and conduct a follow-up review to determine the extent to which its recommendations were implemented.

Millennium, the Millennium Persons and Mr. Pillai, as part of the settlement with the Commission, also paid a total of approximately $180 million in disgorgement and civil penalties.

SOLICITATION ACTIVITIES

Millennium and the Millennium Persons are currently not engaged in any cash solicitation activities that are subject to the Rule.

EFFECT OF RULE 206(4)-3

Rule 206(4)-3 prohibits any investment adviser that is required to be registered under the Advisers Act from paying a cash fee, directly or indirectly, to any solicitor

with respect to solicitation activities if, among other things, the solicitor has been found by the Commission to have engaged, or has been convicted of engaging, in any of the conduct specified in Section 203(e)(1), (5), or (6) of the Advisers Act, or who is subject to an order, judgment, or decree described in Section 203(e)(4) of the Advisers Act. The findings in the Final Order cause Millennium and the Millennium Persons to be disqualified under the Rule, and accordingly, absent no-action or other relief, Millennium and the Millennium Persons are unable to receive cash payments for the solicitation of advisory clients.

EFFECT AND APPLICABILITY OF *DOUGHERTY*

The Staff previously has stated that it would not recommend enforcement action to the Commission under Section 206(4) of the Advisers Act and Rule 206(4)-3 thereunder if any investment adviser that is required to be registered with the Commission pays a cash fee to any solicitor that is subject to certain solicitor disqualifications under the Rule, provided that, among other things, no such solicitor disqualification bars or suspends the solicitor from acting in any capacity under the federal securities laws.[4] Although Millennium will not be subject to any such bar or suspension under the Final Order, the Millennium Persons will be subject to a bar under Section 9(b) of the Investment Company Act. Thus, the Millennium Persons cannot rely on the *Dougherty* Letter. Because Mr. Englander is the founder of and largest beneficial owner in Millennium, Englander might be deemed to be a solicitor in respect of solicitation activities of Millennium pursuant to Rule 206(4)-3(d)(1), and cash payments made directly to Millennium for its solicitation activities might be deemed to be cash payments indirectly to Englander for such activities.[5]

DISCUSSION

In the release adopting the Rule, the Commission stated that "a finding that a person has engaged in the conduct specified in Section 203 only authorizes and does not require the Commission to bar such persons from being associated with a registered investment adviser. The Commission would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person

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4 Dougherty & Co., LLC, SEC No-Action Letter (pub. avail. July 3, 2003) ("*Dougherty* Letter"). The Staff noted that firms that meet the enumerated conditions may rely on the *Dougherty* Letter rather than seeking individual relief.

5 *See, e.g.*, Carnegie Asset Management, SEC No-Action Letter (pub. avail. July 11, 1994); Hickory Capital Management, SEC No-Action Letter (pub. avail. Feb. 11, 1993).

subject to a statutory bar."[6] We respectfully submit that the circumstances present in this case are precisely the sort that warrant a grant of no-action relief.

The Rule's proposing and adopting releases explain the Commission's purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

> [b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who . . . has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act . . . and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.[7]

The Final Order does not bar, suspend, or limit Millennium from acting in any capacity under the federal securities laws, and neither Millennium nor the Millennium Persons have been sanctioned for their solicitation of advisory clients.[8] The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder or permanently enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.[9] Such relief

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6 *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295, at note 10.

7 *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

8 Millennium additionally notes that it has not violated, or aided and abetted another person in violation of, the Rule.

9 *See, e.g.,* Fahnestock & Co., SEC No-Action Letter (pub. avail. Apr. 21, 2003); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); Founders Asset Mgmt LLC, SEC No-Action Letter (pub. avail. Nov. 2, 2000); Ramius Capital Mgmt, LLC SEC No-Action Letter (pub. avail. Apr. 5, 1996); Dechert Price & Rhoads, SEC No-Action Letter (pub. avail. Dec. 4, 1990); *see also* Prudential Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001); Tucker Anthony Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); J.B. Hanauer & Co., SEC No-Action

Footnote continued

was granted where the disqualified persons agreed to certain undertakings required by the Staff, such as those set forth below.

The existence of a bar under Section 9(b) of the Investment Company Act against the Millennium Persons in this case should not preclude the granting of relief. As described above, the conduct of the Millennium Persons is not related to solicitation of advisory clients and they are not barred from association with an investment adviser. The Final Order does not bar, suspend or limit Millennium from acting as an investment adviser. Therefore, it would be inconsistent with the purpose for the disqualification provisions in the Rule (which, as described above, prohibit an adviser from doing indirectly what it could not do directly) if Millennium, which may and does conduct its own investment advisory business without any limitation, and the Millennium Persons who are permitted to engage in solicitation activities for Millennium, were prohibited from receiving cash fees as a solicitor for any person under the Rule. Accordingly, we request that the Staff grant relief from the Rule notwithstanding the bar under Section 9(b) of the Investment Company Act against the Millennium Persons, both for the Millennium Persons and Millennium.

UNDERTAKINGS

In connection with this request, Millennium and the Millennium Persons each undertake with regard to their respective solicitation activities that:

1. they will conduct any cash solicitation arrangement entered into with any investment adviser required to be registered under Section 203 of the Advisers Act in compliance with the terms of Rule 206(4)-3 except for the investment adviser's payment

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Footnote continued from previous page

Letter (pub. avail. Dec. 12, 2000); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Aug. 24, 2000); Janney Montgomery Scott LLC, SEC No-Action Letter (pub. avail. July 18, 2000); Aeltus Investment Management, Inc., SEC No-Action Letter (pub. avail. July 17, 2000); William R. Hough & Co., SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Market Making Activities on Nasdaq, SEC No-Action Letter (pub. avail. Jan. 11, 1999); Paine Webber, Inc., SEC No-Action Letter (pub. avail. Dec. 22, 1998); NationsBanc Investments, Inc., SEC No-Action Letter (pub. avail. May 6, 1998); Kidder Peabody & Co., SEC No-Action Letter (pub. avail. Oct. 11, 1990); Stein Roe & Farnham Inc. and Touche Remnant Investment Mgmt Ltd., SEC No-Action Letter (pub. avail. Jan. 29, 1990); RNC Capital Mgmt Co., SEC No-Action Letter (pub. avail. Feb.7, 1989); Stein Roe & Farnham Inc. and Touche Remnant Investment Mgmt Ltd., SEC No-Action Letter (pub. avail. Aug. 25, 1988).

of cash solicitation fees, directly or indirectly, to the Millennium Persons, who are, or Millennium, which is, subject to the Final Order;

2. they will comply with the terms of the Final Order, including, but not limited to, the payment of disgorgement and civil penalties;

3. for ten years from the date of the entry of the Final Order, the Millennium Persons, Millennium, or any investment adviser with which either the Millennium Persons have or Millennium has a solicitation arrangement subject to Rule 206(4)-3 will disclose the Final Order in a written document that is delivered to each person whom the Millennium Persons solicit or Millennium solicits (a) not less than 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such a contract, if the person has the right to terminate such contract without penalty within 5 business days after entering into the contract.

CONCLUSION

We respectfully request the Staff to advise us that it will not recommend enforcement action to the Commission if an investment adviser that is required to be registered with the Commission pays Millennium, any of the Millennium Persons or any other associated person of Millennium a cash payment for the solicitation of advisory clients, notwithstanding the Final Order.

Please do not hesitate to call the undersigned at (212) 859-8558 regarding this request.

Sincerely,

Jessica Forbes

Jessica Forbes