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U.S. DISTRICT COURT
NO. DIST. OF CALIF.

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5 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION

7 SECURITIES AND EXCHANGE
COMMISSION,

8 Plaintiff,

9 vs.

10 PERENNIAL FUND I LP;
PERENNIAL INVESTMENTS, LLC;
11 SENTINEL FUND I LP;
SENTINEL INVESTMENTS, LLC;
12 JERRY EATON, Individually and d/b/a
ISLAND PARK BUSINESS TRUST;
13 KEVIN J. KYES;
JOHN A. DI PIETRO;
14 CRAIG D. HAWKINS,

15 Defendants,

16 and

17 HAROLD L. KILLGORE;
ALEX VOLODARSKY;
18 CARL T. JOHNSON;
JAMES A. PERSON;
19 SNAPPY ENTERPRISES, INC.; and
MALACHI FINANCIAL CORPORATION,

20 Defendants Solely for Purposes
21 Of Equitable Relief.

C00-21181 EAI

Case No.

ADR

COMPLAINT

1 **COMPLAINT**

2 Plaintiff Securities and Exchange Commission (“Commission”), for its claims against
3 Perennial Fund I LP; Perennial Investments, LLC; Sentinel Fund I LP; Sentinel Investments
4 LLC; Jerry Eaton, individually and doing business as Island Park Business Trust; Kevin J. Kyes;
5 John A. Di Pietro; and Craig D. Hawkins (collectively “the Defendants”), and Harold L.
6 Killgore; Alex Volodarsky; Carl T. Johnson; James A. Person; Snappy Enterprises, Inc.; and
7 Malachi Financial Corporation, (collectively “the Relief Defendants”), alleges as follows.

8 **Jurisdiction**

9 1. Plaintiff Commission is an agency of the United States of America established by
10 Section 4(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §77d(a)].

11 2. The Commission brings this action pursuant to the authority conferred upon it by
12 Section 20(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77t(b)], Section 21(d)
13 of the Exchange Act [15 U.S.C. §78u(d)], Section 209(d) of the Investment Advisers Act of 1940
14 (“Advisers Act”) [15 U.S.C. §80b-9(d)] and by Section 42 (d) [15 U.S.C. §80a-41(d)] of the
15 Investment Company Act of 1940 (“Investment Company Act”) to enjoin the Defendants from
16 future violations of the federal securities laws. The Commission also seeks disgorgement of ill-
17 gotten gains from the Defendants, plus prejudgment interest, and civil penalties pursuant to
18 Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d) of the Exchange Act
19 [15 U.S.C. §78u(d)], Section 42 (e) [15 U.S.C. §80a-41(e)] of the Investment Company Act and
20 to Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)]. The Commission is also seeking
21 disgorgement, plus prejudgment interest, from each Relief Defendant of all funds derived,
22 directly or indirectly, from the defendants’ fraudulent conduct.

1 Defendants Perennial Investments LLC, and Sentinel Investments LLC, respectively. Kyes. Di
2 Pietro and Hawkins also personally marketed and sold the partnership interests to investors.

3 9. Defendant Jerry Eaton of Las Vegas, Nevada, who claims to be a federally
4 approved "trader" of prime bank notes entered into an agreement with the Perennial partnership
5 claiming the partnership funds would be used in a "high yield investment program overseen by
6 the Federal Reserve."

7 10. In fact, almost all of the Perennial Fund I LP limited partnership funds have been
8 misappropriated.

9 11. The promoters ceased selling Perennial Fund I LP partnership interests in July
10 2000, however they are continuing to lull investors and are in control of substantial assets
11 purchased with investor funds. For example, they distributed a phony financial statement to the
12 investors representing that the partnership had already earned \$40 million as a result of the sale
13 of the fund. Investors also have been told that that distribution checks will soon follow.

14 12. With the exception of approximately \$200,000, no funds have been paid to any
15 Perennial investors. Moreover, one of the defendants admitted that the partnership has paid
16 certain investors "returns" with principal funds (i.e. "Ponzi" payments). Bank and other records
17 reveal that virtually all investor funds have been misappropriated by the participants in the
18 scheme, including approximately \$3.2 million used by Eaton toward the purchase of two Las
19 Vegas mansions.

20 13. In early June 2000, the promoters formed the Sentinel I Fund LP, a partnership
21 nearly identical to the Perennial I Fund LP that they have marketed to investors. While it does
22 not appear that the Sentinel Fund has accepted any investor funds, over 100 investors, including
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1 40 Perennial investors, have executed subscription agreements to purchase Sentinel partnership
2 interests totaling \$7.5 million.

3 14. All of the defendants (with the exception of De Pietro) have either refused to
4 comply with the Commission's investigative subpoenas, asserted their Fifth Amendment
5 Privilege against self-incrimination or engaged in dilatory tactics.

6 15. By reason of these activities, the defendants have violated Sections 5(a), 5(c) and
7 17(a) of the Securities Act [15 U.S.C. §§77e(a), 77e(c) and 77q(a)] and Section 10(b) of the
8 Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5]. In addition, by reason
9 of these activities, Defendants Perennial I Fund LP and Sentinel I Fund LP have violated Section
10 7(a) of the Investment Company Act [15 U.S.C. §80a-7(a)]. In addition, by reason of these
11 activities, Defendant Perennial Investments LLC, aided and abetted by Defendants Kyes, De
12 Pietro and Hawkins, has violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C.
13 §§80b-6(1) and 80b-6(2)].

14 **Defendants**

15 16. Perennial Fund I LP ("Perennial Fund") is a California limited partnership formed
16 in October 1999, with its office located in Los Gatos, California. Between February and July
17 2000, it raised over \$5 million from 96 investors located throughout the United States for
18 purported investments in prime bank instruments.

19 17. Perennial Investments LLC ("Perennial Investments") Perennial Fund's general
20 partner, is a California limited liability company with its office located in Los Gatos, California.
21 The principals of Perennial Investments are Kevin J. Kyes and John A. Di Pietro.

22 18. Sentinel Fund I LP ("Sentinel Fund") is a California limited partnership formed
23 in June 2000 with its office located in Los Gatos, California. From approximately June to
24

1 September, 2000 over 100 investors, including 40 individuals who had invested in Perennial
2 Fund, submitted subscription documents subscribing to over \$7.5 million in limited partnership
3 interests.

4 19. Sentinel Investments LLC ("Sentinel Investments") is a Nevada limited liability
5 company with its registered office located in Las Vegas, Nevada and the general partner for
6 Sentinel Fund. The principals of Sentinel Investments are Kyes, Di Pietro and Hawkins.

7 20. Jerry Eaton ("Eaton") d/b/a Island Park Business Trust, is a former truck driver
8 who resides in Las Vegas, Nevada. Eaton claims to be a federally approved "trader" of prime
9 bank instruments and entered into a "high yield" bank-trading contract with the Perennial Fund.
10 Eaton is believed to have participated in a number of apparently fraudulent prime bank schemes
11 in addition to Perennial and Sentinel. Eaton asserted his Fifth Amendment privilege against self-
12 incrimination during the Commission's formal administrative investigation.

13 21. Kevin J. Kyes ("Kyes") is the registered agent and a principal for Perennial
14 Investments, as well as the treasurer for Sentinel Investments. He held Series 6, 26 and 63
15 securities licenses in 1991, when he was a registered representative with a brokerage firm in
16 DeLuth, Georgia. Kyes asserted his Fifth Amendment privilege against self-incrimination
17 during the Commission's formal administrative investigation.

18 22. John A. Di Pietro ("Di Pietro") is a principal for Perennial Investments and the
19 secretary of Sentinel Investments. On August 31, 2000, the State of California issued a Desist
20 and Refrain order against Di Pietro, Hawkins, Sentinel Fund and Sentinel Investments for
21 violations of the antifraud provisions of the securities laws of the State of California.

22 23. Craig D. Hawkins ("Hawkins") resides in Carmel, California. He is the president
23 of Sentinel Investments and offered and sold interests in the Perennial Fund. Hawkins asserted
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1 his Fifth Amendment privilege against self-incrimination during the Commission's formal
2 administrative investigation.

3 **Relief Defendants Solely for Purposes Of Equitable Relief**

4 24. Harold L. Killgore ("Killgore") is a resident of Las Vegas, Nevada and a business
5 associate of Eaton. Killgore received over \$1.4 million of investor funds from Eaton for no
6 apparent consideration. Killgore is also believed to reside in a house that Eaton purchased with
7 investor funds.

8 25. Alex Volodarsky ("Volodarsky") is a resident of San Francisco, California. For
9 no apparent consideration, Volodarsky received nearly \$209,000 of investor funds.

10 26. Carl T. Johnson ("Johnson") is a resident of San Dimas, California. Johnson
11 received at least \$897,000 of investor funds for no apparent consideration.

12 27. James A. Person ("Person") a resident of San Dimas, California, is Snappy's
13 secretary-treasurer and has received approximately \$175,000 in investor funds from Snappy for
14 no apparent consideration.

15 28. Snappy Enterprises, Inc. ("Snappy") is a California corporation controlled by
16 Johnson with its offices located in San Dimas, California. For no apparent consideration,
17 Snappy received approximately \$4.5 million of investor proceeds from the Perennial Fund
18 offering, which funds have been commingled with funds apparently from other prime bank
19 schemes promoted by Eaton and Johnson.

20 29. Malachi Financial Corp. ("Malachi") is a Nevada corporation created in May
21 1998 by Kyes. Malachi received approximately \$70,800 of funds raised in the Perennial Fund
22 offering for no apparent consideration.

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2 **Statement of Facts**

3 A. **The Perennial Fund Limited Partnership Offering**

4 30. From late February through July 2000, Perennial Fund, through its general
5 partner, Perennial Investments, raised approximately \$5 million from the offer and sale of
6 limited partnership interests to 96 investors residing in at least 10 states. Perennial Fund was
7 advertised on an Internet investment club web site as an offering that would provide a return of
8 14.4 percent per month.

9 31. According to the Perennial Fund private placement memorandum, the offering
10 proceeds were to be invested only in U.S. government securities, or “certificates of deposit, bills
11 of exchange, bank notes or bank debentures issued by, or savings accounts or time deposits with,
12 any United States bank or any foreign (non-United States) commercial bank that has been
13 classified for rating purposes by Moody’s National Credit Office as Prime-1 or by Standard &
14 Poors Corporation as A-1 (“Qualifying Banks”).”

15 32. In addition, the offering memorandum states that the limited partnership would
16 enter into contracts with “trading companies and/or Qualifying Banks,” which would “effect
17 secondary investments based on the [limited partnership’s] deposits.”

18 33. The offering memorandum repeatedly states that “in no event” would the limited
19 partnership’s principal funds “be subject to risk or forfeiture as a result of such secondary
20 investments.”

21 34. These representations regarding the use and safety of potential investor’s
22 partnership funds are completely false.

1 35. The Perennial Fund's offering memorandum contains no explanation of the
2 "secondary investment" program, and fails to identify the purported companies or banks
3 involved in the trading program. The memorandum further claims that the limited partners
4 would receive 60 percent of the profits from the secondary investments and that the general
5 partner, Perennial Investments, would receive 35 percent of the profits. The profits were to be
6 distributed "no later than 30 days after the end of each fiscal quarter," and each limited partner
7 was promised an "annual audited financial statement" from the general partner.

8 B. Fraudulent Solicitation of Perennial Investors

9 36. In addition to advertising the Perennial Fund offering over the Internet website,
10 Kyes and Di Pietro utilized at least 14 "finders," including Hawkins, to solicit investors. At least
11 one of these finders utilized a direct mail advertisement. Although the offering memorandum
12 specifically claimed that none of the Perennial partnership proceeds would be used to pay sales
13 commissions, bank records reviewed by the Commission reveal that the general partner,
14 Perennial Investments, paid over \$50,000 from the partnership proceeds to the finders.

15 37. Kyes, Di Pietro, and later Hawkins, utilizing the offering memorandum and oral
16 sales presentations, personally offered Perennial Fund limited partnership interests to numerous
17 prospective investors.

18 38. Kyes, Di Pietro, and Hawkins told investors to expect an annual return of 500 to
19 600 percent, and claimed that there would be no risk to investors' principal.

20 39. Kyes told investors that the partnership would take advantage of the varying
21 interest rates between different countries on the same government bond to make money for
22 investors.

1 40. Adding an aura of righteousness to the entire program. Kyes and Di Pietro also
2 claimed to investors that a portion of all trading proceeds would be used to fund various
3 humanitarian efforts and ministries.

4 41. Although the Perennial Fund offering memorandum purportedly limited the
5 offering to accredited investors, many of Perennial Fund's investors were unsophisticated about
6 investments, including several elderly investors with little or no investment experience.

7 C. Perennial Fund Enters Into Trading Agreement with Eaton's Island Park Business Trust

8 42. On March 30, 2000, the Perennial Fund entered into a "high yield investment"
9 contract with the Island Park Business Trust ("Island Park"). Island Park is an assumed name for
10 Eaton, a former truck driver who claims to be a federally approved "trader" of prime bank
11 instruments.

12 43. Volodarsky, a business associate of Eaton, introduced the principals of Perennial
13 Fund to Eaton.

14 44. In Perennial Fund's contract with Island Park, Eaton represented that Island Park
15 would deposit the partnership's proceeds into an unidentified escrow account "to be used as
16 security in a high yield investment program overseen by the Federal Reserve Bank." The
17 contract specifically provides that the partnership's funds could only be removed from the
18 escrow account upon demand of the Federal Reserve, and that the proceeds or any profits from
19 the high yield program shall also be deposited into the escrow account and distributed to the
20 Perennial Fund every two weeks.

21 45. For its part, Perennial Fund represented in the contract that it held at least \$1.6
22 million in funds available for speculative transactions.

1 D. Misappropriation of Perennial Funds by Kyes, Di Pietro and Hawkins

2 46. Contrary to their representations that all of the partnership's proceeds would be
3 used to secure bank-trading transactions, Kyes, Di Pietro and Hawkins used approximately
4 \$500,000 of Perennial partnership proceeds for undisclosed and unauthorized purposes,
5 including payments to relief defendant, Malachi, and apparent Ponzi payments to certain of
6 Perennial Fund's investors.

7 47. Approximately \$180,000 in mutual fund shares were purchased and retained by
8 Perennial Investments, approximately \$70,800 was paid to Kyes' privately-held company, relief
9 defendant Malachi, \$50,000 was paid to the finders and at least \$200,000 was paid to certain of
10 Perennial Fund's investors in apparent Ponzi payments.

11 48. The remaining approximate \$ 4.5 million in partnership proceeds were transferred
12 to accounts controlled by Eaton and relief defendant Johnson.

13 E. Misappropriation of Funds by Eaton and Johnson

14 49. Bank records obtained by the Commission reflect that Perennial's \$4.5 million
15 was commingled with approximately \$8.1 million that was apparently raised in other prime bank
16 offerings orchestrated by Eaton.

17 50. None of the approximate \$12.6 million received by Eaton from Perennial and
18 other prime bank offerings has been used in any bank-trading program and a substantial portion,
19 if not all, of the funds have been misappropriated.

20 51. Eaton and Johnson used at least \$4.8 million of the commingled investor funds for
21 their own personal benefit. Eaton used approximately \$3.2 million toward the purchase of two
22 luxury homes located in Las Vegas, Nevada.

1 52. Johnson received at least \$897,000, from which he used approximately \$229,000
2 to purchase a rental property near Phoenix, Arizona. The property was purchased in the name of
3 relief defendant, Snappy, Johnson's privately held company.

4 53. One of Johnson's business associates, relief defendant Person, received
5 approximately \$175,000 in investor proceeds from Snappy.

6 54. A substantial amount of the commingled investor funds were transferred to
7 various business associates of Eaton. Eaton transferred \$1.423 million and \$209,000 to relief
8 defendants Killgore and Volodarsky, respectively.

9 55. At least \$2.85 million of the commingled investor proceeds appears to have been
10 used to make Ponzi payments to the participants in the various other prime bank offerings
11 promoted by Eaton.

12 **F. Perennial Fund's Lulling of Investors**

13 56. In late July 2000, Kyes, Di Pietro and Hawkins began telling Perennial Fund
14 investors that the fund had been purchased at an enormous profit to investors, that the partnership
15 would terminate early and distributions would be made to the investors.

16 57. During this same time period, Perennial Fund issued a phony financial statement
17 to the limited partners showing that it had earned over \$40 million in trading profits from the
18 initial \$5 million invested.

19 58. In mid August 2000, Perennial Fund sponsored a free weekend retreat at the
20 Hilton Hotel in La Jolla, California, at which investors were purportedly to be paid their profits.
21 However, no funds were distributed and since the retreat, investors have been treated to a myriad
22 of excuses about the delays in receiving their funds.

1 G. Sentinel Fund Limited Partnership Offering

2 59. At the same time that Kyes, Di Pietro and Hawkins were touting the
3 overwhelming success of Perennial Fund, they introduced a second limited partnership offering
4 called Sentinel Fund. The terms of the two offerings were virtually identical.

5 60. Specifically, the Sentinel Fund offering represented that the limited partners'
6 funds would be used to invest in purported secondary trading transactions, would not be subject
7 to risk or forfeiture to sell the limited partnership interests and that the total amount of the
8 offering was to be \$500 million.

9 61. Over 100 investors, including 40 Perennial limited partners, have submitted
10 subscription documents to the Sentinel offering that purports to expire on December 31, 2005,
11 indicating an interest in purchasing approximately \$7.5 million in limited partnership interests.

12 62. On August 31, 2000, the California Department of Corporations issued a Desist
13 and Refrain order against Sentinel Fund, Sentinel Investments, Hawkins and Di Pietro, ordering
14 them to stop offering or selling any securities in violation of the antifraud provisions of the
15 securities laws of the State of California.

16 CAUSES OF ACTION

17 COUNT ONE

18 Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5

19 63. The Commission restates and incorporates by reference herein the allegations set
20 forth in Paragraphs 1-62 of the Complaint.

21 64. The defendants Perennial Fund, Perennial Investments, Sentinel Fund, Sentinel
22 Investments, Eaton, Kyes, Di Pietro and Hawkins, directly or indirectly, singly or in concert with
23 others, in connection with the purchase and sale of securities, by use of the means and
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1 instrumentalities of interstate commerce and by use of the mails (a) have employed devices,
2 schemes and artifices to defraud, (b) have made untrue statements of material facts and have
3 omitted to state material facts necessary in order to make the statements made, in light of the
4 circumstances under which they were made, not misleading and (c) have engaged in acts, practices
5 and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers
6 and other persons.

7 65. As a part of and in furtherance of their scheme to defraud, the defendants, directly
8 and indirectly, prepared, disseminated or used contracts, written offering documents, promotional
9 materials, investor and other correspondence and oral presentations which contained untrue
10 statements of material facts and misrepresentations of material facts and which omitted to state
11 material facts necessary in order to make the statements made, in light of the circumstances under
12 which they were made, not misleading, including, but not limited to, those set forth above.

13 66. The defendants made those misrepresentations and omissions knowingly or with
14 reckless disregard for the truth.

15 67. By reason of the foregoing, the defendants violated and, unless enjoined, will
16 continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and
17 Rule 10b-5 [17 C.F.R. §240.10b-5].

18 COUNT TWO

19 Violations Of Section 17(a) Of The Securities Act

20 68. The Commission restates and incorporates by reference herein the allegations set
21 forth in Paragraphs 1- 62 of the Complaint.

22 69. The defendants Perennial Fund, Perennial Investments, Sentinel Fund, Sentinel
23 Investments, Eaton, Kyes, Di Pietro and Hawkins, directly or indirectly, singly or in concert with
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1 others, in the offer and sale of securities, by use of the means and instruments of transportation and
2 communication in interstate commerce and by use of the mails, have (a) employed devices, schemes
3 or artifices to defraud; (b) obtained money or property by means of untrue statements of material
4 fact or omissions to state material facts necessary in order to make the statements made, in light of
5 the circumstances under which they were made, not misleading; and (c) engaged in transactions,
6 practices or courses of business which operate or would operate as a fraud or deceit.

7 70. As part of and in furtherance of this scheme, the defendants, directly and indirectly,
8 prepared, disseminated or used contracts, written offering documents, promotional materials,
9 investor and other correspondence and oral presentations which contained untrue statements of
10 material fact and which omitted to state material facts necessary in order to make the statements
11 made, in light of the circumstances under which they were made, not misleading, including, but not
12 limited to, those statements and omissions set forth above.

13 71. The defendants made the above-referenced misrepresentations and omissions
14 knowingly or with reckless disregard for the truth.

15 72. By reason of the foregoing, the defendants violated, and unless enjoined, will
16 continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)(1)].

17 COUNT THREE

18 Violations Of Sections 5(a) And 5(c) Of The Securities Act

19 73. The Commission restates and incorporates by reference herein the allegations set
20 forth in Paragraphs 1-62 of the Complaint.

21 74. The defendants Perennial Fund, Perennial Investments, Sentinel Fund, Sentinel
22 Investments, Eaton, Kyes, Di Pietro and Hawkins, directly or indirectly, singly or in concert with
23 others, have been offering to sell, selling and delivering after sale, certain securities and have been,
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1 directly and indirectly, (a) making use of the means and instruments of transportation and
2 communication in interstate commerce and of the mails to sell securities, through the use of written
3 contracts, offering documents and otherwise, (b) carrying and causing to be carried through the
4 mails and in interstate commerce by the means and instruments of transportation such securities for
5 the purpose of sale and for delivery after sale, and (c) making use of the means or instruments of
6 transportation and communication in interstate commerce and of the mails to offer to sell such
7 securities.

8 75. No registration statement has been filed with the Commission or are otherwise in
9 effect with respect to the offer and sale of any securities described herein.

10 76. By reason of the foregoing, the defendants violated and, unless enjoined, will
11 continue to violate Section 5(a) and (c) of the Securities Act [15 U.S.C. §77e(a) and (c)].

12 COUNT FOUR

13 Violations of Section 7(a) of the Investment Company Act

14 77. The Commission restates and incorporates by reference herein the allegations set
15 forth in Paragraphs 1-62 of the Complaint.

16 78. Defendants Perennial I Fund LP and Sentinel I Fund LP, singly or in concert with
17 others, directly or indirectly, unless registered under Section 8 of the Investment Company Act,
18 have (a) offered for sale, sold, or delivered after sale, by the use of the mails or any means or
19 instruments of interstate commerce, securities or any interest in a security, whether the issuer of
20 such security is such investment company or another person, or by offering for sale, selling or
21 delivering after sale any such security or interest, having reason to believe that such security or
22 interest will be made the subject of a public offering by use of the mails or any means or
23 instruments of interstate commerce; (b) purchased, redeemed, retired, or otherwise acquired or
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1 attempted to acquire, by use of the mails or any means or instruments of interstate commerce, any
2 security or any interest in a security, whether the issuer of such security is such investment company
3 or another person; (c) controlled an investment company which does any of the acts enumerated in
4 paragraphs (a) and (b) above; (d) engaged in a business in interstate commerce; or (e) controlled any
5 company which is engaged in any business in interstate commerce, without having registered under
6 Section 8 of the Investment Company Act.

7 79. By reason of the foregoing, Perennial I Fund LP and Sentinel I Fund LP have
8 violated and, unless enjoined, will continue to violate Section 7(a) of the Investment Company Act
9 of 1940 [15 U.S.C. § 80a-7(a)].

10 COUNT FIVE

11 Violations of Sections 206(1) and 206(2) of the Advisers Act

12 80. The Commission restates and incorporates by reference herein the allegations set
13 forth in Paragraphs 1-62 of the Complaint.

14 81. Defendant Perennial Investments LLC, aided and abetted by defendants Kyes, De
15 Pietro and Hawkins, by engaging in the conduct described above, directly and indirectly, by use of
16 the mails and means and instrumentalities of interstate commerce, while acting as an investment
17 adviser, has:

18 (a) employed devices, schemes and artifices to defraud advisory clients or
19 prospective advisory clients; and

20 (b) engaged in transactions, practices or courses of business which operated as a
21 fraud or deceit upon advisory clients or prospective advisory clients.

22 82. By reason of the foregoing, defendant Perennial Investments LLC, aided and
23 abetted by defendants Kyes, De Pietro and Hawkins, has violated and, unless enjoined, will
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1 continue to violate Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)]. Further, Perennial
2 Investments LLC, aided and abetted by Kevin J. Kyes, John A. De Pietro and Craig D. Hawkins,
3 has intentionally, knowingly or recklessly made the untrue statements and omissions and engaged in
4 the devices, schemes, artifices, transactions, acts, practices, and courses of business described
5 above, so that Perennial Investments LLC, aided and abetted by Kevin J. Kyes, John A. De Pietro
6 and Craig D. Hawkins, has violated and, unless enjoined, will continue to violate Section 206(1)
7 of the Advisers Act [15 U.S.C. §§ 80b-6(1)].

8 COUNT SIX

9 Claim Against Relief Defendants As Custodians Of Investor Funds

10 83. The Commission restates and incorporates by reference herein the allegations set
11 forth in Paragraphs 1 - 62 of the Complaint.

12 84. The Relief defendants Killgore, Volodarsky, Johnson, Person, Snappy and Malachi
13 received, directly or indirectly, funds and/or other benefits from the defendants which either are the
14 proceeds of, or are traceable to the proceeds of, the unlawful activities alleged herein and have no
15 legitimate claim to those funds and property.

16 85. The relief defendants obtained the funds and property as part of and in furtherance of
17 the securities violations alleged and under circumstances in which it is not just, equitable or
18 conscionable for them to retain the funds and property, and they have been unjustly enriched.

19 86. The Commission is entitled to an order requiring that the relief defendants disgorge
20 those funds plus prejudgment interest thereon.

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff respectfully requests that this Court:

3 I.

4 Permanently enjoin the defendants Perennial Fund, Perennial Investments, Sentinel Fund,
5 Sentinel Investments, Eaton, Kyes, Di Pietro and Hawkins, and their agents, servants, employees,
6 attorneys and all persons in active concert or participation with them who receive actual notice of
7 the injunction by personal service or otherwise, and each of them, from future violations of Sections
8 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§77e(a), 77e(c) and 77q(a)] and Section 10(b)
9 of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5]; permanently
10 enjoin the Defendants Perennial I Fund LP and Sentinel I Fund LP, and their agents, servants,
11 employees, attorneys and all persons in active concert or participation with them who receive actual
12 notice of the injunction by personal service or otherwise, and each of them, from future violations of
13 Section 7(a) of the Investment Company Act [15 U.S.C. §§80a-7(a)]; and permanently enjoin the
14 Defendants Perennial Investments LLC, Kevin J. Kyes, John A. De Pietro and Craig D. Hawkins,
15 and their agents, servants, employees, attorneys and all persons in active concert or participation
16 with them who receive actual notice of the injunction by personal service or otherwise, and each of
17 them, from future violations, or aiding and abetting violations, a of Sections 206(1) and 206(2) of
18 the Advisers Act [15 U.S.C. §§80b-6(1) and 80b-6(2)].

19 II.

20 Order the Defendants to disgorge an amount equal to the funds and benefits they obtained
21 as a result of the violations alleged, plus prejudgment interest on that amount, and the Relief
22 Defendants to disgorge an amount equal to the funds and benefits they obtained as a result,

1 directly or indirectly, from the Defendants conduct alleged herein plus prejudgment interest on
2 that amount.

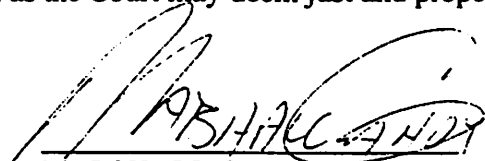
3 III.

4 Order civil penalties against the Defendants pursuant to pursuant to Section 20(d) of the
5 Securities Act, Section 21(d)(3) of the Exchange Act, Section 209(e) of the Advisers Act and
6 Section 42(e) of the Investment Company Act, for violations of the federal securities laws as
7 alleged herein.

8 IV.

9 Order such other and further relief as the Court may deem just and proper.

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11 Dated: November 20, 2000



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