

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-11726

In the Matter of

**FREMONT INVESTMENT
ADVISORS, INC.,**

Respondent.

PROPOSED PLAN OF DISTRIBUTION

1. Introduction and Background

- 1.1 On November 4, 2004, the Securities and Exchange Commission (the “SEC” or the “Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) 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 Sanctions and Issuing a Cease-and-Desist Order (*In the Matter of Fremont Investment Advisors, Inc.*, Admin. Proc. File No. 3-11726, Investment Adviser Act of 1940 Release No. 2317 (November 4, 2004)) (“Order”) finding that Respondent Fremont Investment Advisors, Inc. (“Fremont” or “Respondent”) violated Sections 206(1) and 206(2) of the Investment Advisers Act and Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder by entering into improper and undisclosed agreements allowing favored large investors to engage in rapid in-and-out securities trading known as market timing. In addition to the market timing findings, the Commission found Fremont engaged in late trading by allowing mutual fund trades to be placed after the 4:00 p.m. market close, while still receiving the current day’s price.
- 1.2 The Order required Respondent to pay disgorgement of \$2.146 million and a civil money penalty of \$2 million and established a Fair Fund in the total amount of \$4.146 million pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (“Fair Fund”) for the distribution of disgorgement and penalties paid by the Respondent. On May 5, 2005, Respondent paid the entire amount. In a separate order issued on November 4, 2004, (*In the Matter of Nancy C. Tengler*, Admin. Proc. File No. 3-11727, Investment Adviser Act of 1940 Release No. 2318 (November 4, 2004)) the Commission ordered Nancy Tengler, who served as President, Director and Chief Investment Officer of Fremont from October 2000 until her resignation in January 2003, to pay disgorgement of \$27,000 and a civil money penalty of \$100,000. The additional \$127,000 was paid on December 7, 2004 and later deposited in the Fair Fund established by the Order.
- 1.3 The Order required Respondent to retain an Independent Distribution Consultant (“IDC”) to develop a Plan of Distribution of the Fair Fund according to a methodology developed in consultation with the Respondent and not unacceptable to the staff of the Commission. Pursuant to the Order, the IDC is to “...develop a Distribution Plan for the distribution of all of the disgorgement and penalty ordered in Section IV, Paragraph D of the Order, and any interest or earnings thereon, according to a methodology developed in consultation with Fremont and acceptable to the staff of the Commission and the independent directors of the Fremont Mutual Funds. The Distribution Plan shall provide for investors to receive, from the monies available for distribution in order of priority, (i) their proportionate share of losses suffered by the fund due to market timing, and (ii) a proportionate share of advisory fees paid by funds that suffered such losses during the period of such market timing.”¹
- 1.4 Dr. Richard Stanton was retained by Fremont in accordance with the Commission Order requiring Fremont to retain an IDC. Dr. Richard Stanton is a Professor of Finance and past

¹ SEC Order, §3 paragraph 27, Admin. Proc. File No. 3-11727.

Finance Group Chair at the Haas School of Business, University of California, Berkeley.²
Respondent has agreed to pay all costs associated with the engagement of the IDC.

- 1.5 Dr. Stanton was assisted on this assignment by the ERS Group, an economics and litigation consulting firm located in San Francisco, California.

1.6 Definitions

Net Asset Value – The Net Asset Value (“NAV”) is the end of day calculated price for a mutual fund. The change in net asset value between the end of day t and the end of day t+1 will be denoted as $\Delta NAV_{t,t+1}$.

Cash Balance Effect – The Cash Balance Effect results from the practices of some fund managers of holding a larger proportion of the portfolio in cash to accommodate redemption requests. Excess cash reduces portfolio returns in an up market and reduces losses in a down market.

Direct Accounts, Omnibus Accounts and Retirement Accounts are defined in Section 6.

- 1.7 Market Timing Activity According to the SEC Order, from January 2001 through October 2001, the Respondent “permitted one broker to time the Fremont Global Fund on behalf of one of its customers. In addition, between June and September 2001, this same broker was permitted to time Fremont’s U.S. Micro-Cap Fund on behalf of another customer.” In October 2001, the Respondent “entered into a written agreement with a second brokerage firm allowing the broker’s customer to time the Fremont U.S. Micro-Cap Fund. Shortly thereafter, the customer began timing the U.S. Micro-Cap Fund. From October 19, 2001, through October 25, 2002, the customer made twenty complete exchanges between the U.S. Micro-Cap Fund and Fremont’s money market fund....”³

- 1.7.1 Market timing activity, as defined by the October 10th, 2003 Fremont prospectus, is “the making of six or more complete exchanges-into and out of-one fund within a 12-month period.” Notwithstanding the prospectus and instituted policies of restricting such transactions, the Respondent permitted market timing in its funds and failed to disclose this to its non-timer shareholders.

- 1.7.2 The information below is derived from documents provided by the Respondent and data provided by PFPC, Inc., the transfer agent.

² Dr. Stanton’s academic research has been in the areas of mortgage and lease markets, term structure modeling, mutual funds, risk management and employee stock options. He serves as an Associate Editor of the Journal of Finance and is on the editorial board of the Journal of Real Estate Finance and Economics. He obtained a M.A. in Mathematics from Cambridge University in 1986 and a Ph.D. in Finance from Stanford University in 1992.

³ SEC Order §3, paragraphs 8-10.

The Fremont Global Fund

1.7.3 Based on the transactions data provided by PFPC, there were 31 round trip transactions made by one broker between January and September 2001. Transaction amounts ranged from \$8 to \$10 million from January to March 2001, and from \$11 to \$13 million from April to July 2001. Beginning in July 2001, transaction amounts increased to \$14-\$16 million.⁴

The Fremont U.S. Micro-Cap Fund

1.7.4 In the analysis of the data provided, it was calculated that the broker made 13 round trip trades between July and September 2001 in dollar amounts ranging from \$4 to \$15 million, and that a second broker made 19 round trip trades between October 2001 and October 2002 in dollar amounts ranging from \$13 to \$16 million.

2. Content of the Plan

This Distribution Plan (“Plan of Distribution”) sets forth the methodology for allocating the Fair Fund among investors and the process by which the Fair Fund will be distributed.

2.1 Allocation of the Fair Fund This Plan of Distribution provides the calculation of the aggregate loss suffered by harmed shareholders of the Fremont U.S. Micro-Cap Fund and the Fremont Global Fund between January 2001 and October 2002 as a result of discretionary market timing agreements between the Respondent and the two brokers. The methods of calculation of each eligible investor’s share of the Fair Fund are intended to result in a payment to each eligible investor that restores the impaired value of the investor’s investment in the Fremont U.S. Micro-Cap Fund and the Fremont Global Fund. Some of this impaired value is susceptible to calculation, while some of this impaired value is not. The methods of calculation are intended by the Commission to fairly estimate the impaired value that each investor has suffered and make a payment in that amount. The Fair Fund is not intended to compensate investors for losses they incurred because of fluctuations in securities markets that were unrelated to Respondent’s conduct, as set forth in the Order.

2.2 The Order requires that all disgorgement and penalty be distributed; investors are to receive, in order of priority, (a) “their proportionate share of losses,” and, to the extent that such losses are less than the value of the Fair Fund, (b) their share of the advisory fees paid by the affected mutual funds for advisory services during the relevant period. Thus, the Order requires an estimation of losses for each affected mutual fund during the relevant period. Losses have been estimated on a daily basis for each mutual fund and the daily losses for each fund are calculated for each class of shares of each fund with positive losses. A description of the methodology used to estimate losses is set forth below.

⁴ An additional 26 round trip trades from 1/3/2001 to 8/23/2001 in amounts ranging from \$536k to \$582k were found in the transactions data. These trades, however, generated no losses to the non-market timing shareholders and therefore had a negligible impact on the losses due to the market timers.

2.3 Computation of Shareholder Losses In this analysis, losses caused by market timing activity are defined as the sum of dilution losses and forgone appreciation (as defined in 2.4.4). In this analysis, the primary way in which market timing adversely affects returns namely, the ‘stale price effect’ is considered. While market timing could, in principle, also affect returns through the ‘cash balance effect’, available data did not indicate the presence of a cash balance effect.⁵

2.3.1 Stale Price Effect SEC Rule 22c-1 mandates investment companies to use a “forward” pricing rule when issuing shares of mutual funds, so that shares of a mutual fund are priced at a calculated end of day net asset value (or “NAV”). Consequently, an investor who purchases or sells shares of a mutual fund prior to the daily NAV calculation, typically 4 p.m. Eastern Time, will receive that day’s NAV. Orders placed after 4 p.m. will receive the next trading day’s NAV. It is often the case that fund NAVs are several hours old (or “stale”), especially for funds containing international stocks, small cap stocks, or illiquid securities. Some purchases and sales of these mutual funds therefore occur at stale NAVs. This provides investors with opportunities to exploit potential NAV inefficiencies by deliberately trading shares of a mutual fund at a NAV that does not incorporate current market information. This is the ‘Stale Price Effect’. Under normal circumstances, the opportunities to exploit stale NAVs are restricted by trading limits placed on a fund.

2.3.2 This analysis estimates dilution damages based on the data provided and the transactions identified as market timing transactions. The SEC Order defines market timing to include “(a) frequent buying and selling of shares of the same mutual fund, or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing.”⁶

2.4 Market Timing Losses For purposes of the Plan, included in the calculation of market timing transactions are also those transactions described in the SEC order as “late trading.”

2.4.1 Dilution Losses Methodology The Change in Net Asset Value methodology was employed to calculate dilution losses. Dilution losses are defined as the first day gains generated (not necessarily realized) minus the losses avoided on the shares sold.

The First Day Gain is the product of the number of shares purchased on day t and the one day change in NAV from day t to day t+1. Transactions with negative first day gains indicate positive gains for the long-term shareholders.

$$\text{First Day Gain} = (\text{Shares Purchased}) * (\Delta \text{NAV}_{t,t+1})$$

Loss Avoided is calculated as the product of the number of shares redeemed and the change in NAV over the redemption date on day t and the day immediately following. The

⁵ A fund manager that is aware of high frequency trading has an incentive to hold higher proportions of a managed fund’s net assets in cash than normal to accommodate frequent redemptions. This would affect the returns earned by non-market timers.

⁶ SEC Order §3, footnote 2.

holding period is limited to thirty (30) days or fewer. Transactions with positive losses avoided indicate gains for the long-term shareholders. Note that transactions with a holding period of one (1) day are not included in this calculation.

$$\text{Loss Avoided} = (\text{Shares Redeemed}) * (\Delta \text{NAV}_{t, t+1})$$

2.4.2 Fremont Dilution Losses Dilution losses attributable to market timing transactions are calculated to be \$589,488 for the Fremont Global Fund and \$2,427,884 for the Fremont Micro-Cap Fund for a total of \$3,017,373 across both funds.

2.4.3 Transaction Costs In addition to dilution losses, the transactional data indicates investors may have suffered loss due to transaction costs. The data provided were not sufficient to compute losses due to excessive transactions costs. Further, it could not be concluded whether excess redemptions to accommodate market timer trading were present based on the data provided.

2.4.4 Forgone Appreciation Forgone appreciation is the return that long-term shareholders would have earned on the losses due to discretionary frequent trading had those losses not occurred. The losses due to market timing may have also relieved legitimate shareholders of the risk associated with the loss amounts. As a proxy for the potential return earned, US Government STRIPS were used as the risk free rate measure to calculate the return on the realized losses had those loss amounts been invested and held until maturity, November 15th, 2002.⁷

Forgone appreciation generated from the market timing transactions to November 15th, 2002 is estimated to be \$33,145 for the Fremont Global Fund and \$49,491 for the Fremont Micro-Cap Fund for a total of \$82,637 across both funds.

2.4.5 Computation of Loss For each recipient, the Fund Administrator will distribute an amount calculated based on the investor's proportionate share of losses as computed on an account level basis. To accomplish this, the aggregate loss by fund was calculated on a daily basis between January 2001 and December 2002, and was then divided by the corresponding fund's daily shares outstanding to arrive at a daily loss per share. The daily loss per share was then multiplied by the number of shares held by each account for each day. Losses per day, plus any associated forgone appreciation, were then aggregated across days for each account to arrive at a total loss by account. In the view of the IDC, this constitutes a fair and reasonable allocation of the Fair Fund.

2.4.6 Total Distribution to Investors Dilution losses due to round trip trades are estimated to be \$3,017,373. Forgone appreciation on all losses (the missed potential earnings on realized losses) is estimated to be \$82,637 as of November 15th, 2002.⁸ Aggregate loss to long term

⁷ The last timer sell transaction occurred on October 25th, 2002. All timer generated losses were carried forward to November 15th, 2002, the nearest maturity date of a STRIP.

⁸ The prices of US Government STRIPS were used to approximate daily holding period returns for each of the event day losses. "STRIPS," an acronym for "Separate Trading of Registered Interest and Principal" Treasury bonds, are

shareholders is estimated to be \$3,100,010. Distribution of the Fair Fund, which was approximately \$4,400,000 on December 11, 2008, will consist of losses with the remainder of the distribution paid from a return of a portion of the advisory fees that were paid on the days in which there was market timing.⁹

3. Procedures for Distribution Process

- 3.1 The remainder of the Fair Fund consists of advisory fees that will be distributed in the same proportionate share as the investors' share of the total losses.
 - 3.1.1 The Plan of Distribution is designed to distribute the Fair Fund among investors who held shares in the Fremont U.S. Micro-Cap Fund and the Fremont Global Fund between January 2001 and October 2002 except those investors identified in the Order as market timers, late traders or persons aiding and abetting the timers or late traders.
 - 3.1.2 Respondent will bear the fees and other expenses of administering this Plan of Distribution, except for tax liabilities, which shall be paid first from interest and then from principal.
 - 3.1.3 This Fair Fund is not being distributed according to a claims-made process, so the procedures for making and approving claims are not applicable.
 - 3.1.4 A de minimis threshold is established based on the conclusion that it would not be cost effective to attempt to distribute amounts of less than \$10 to individual accounts. Only shareholders of record eligible to receive an aggregate distribution of at least \$10 will receive a distribution from the Fair Fund. In order to implement this de minimis distribution amount, the IDC and the Fund Administrator will apply the following Gross-Up Formula. The Gross-Up Formula requires that the distributions be ranked in descending order of the size of the distribution. The IDC and the Fund Administrator will then calculate the total amount of the distributions that were calculated by the Fund Administrator to be less than \$10 (the "de minimis Distribution"). The IDC and the Fund Administrator will then redistribute the de minimis Distribution in sequence to the accounts with the largest distributions less than \$10, sequentially assigning a distribution of \$10 to each account until the de minimis Distribution is depleted. After this process, accounts with dollar allocation amounts less than \$10 will be set to \$0.
 - 3.1.5 Both current and former shareholders are eligible to receive payments.
 - 3.1.6 Shareholders will not have to pay fees to receive their distribution.

government bonds where the interest and principal components have been separated thus providing the best estimate of interest rates at a given period of time. These returns were the assumed returns investors would have earned on the loss amounts had the losses been invested on the day of loss in a STRIP, and held until maturity on November 15th, 2002. Note that the forgone appreciation generated out to any later date would not affect the proportion of the loss amounts. For illustrative purposes, we estimate that an additional \$677,173 of forgone appreciation would be generated if the Fair Fund payout is assumed to have occurred on August 15th, 2008.

⁹ The portion of the distribution that will be paid from advisory fees is substantially less than the approximately \$4.8 million of advisory fees that were paid during the days market timing occurred.

3.2 Notice and Dispute Provision

3.2.1 Disputes Shareholders may initiate disputes through the Fund Administrator. The bases for such disputes are limited to claims that the shareholder received an incorrect amount in the distribution, or was incorrectly excluded from the distribution because the terms of the Plan were incorrectly applied to that shareholder. The Fund Administrator will refer any such shareholder disputes to the IDC for resolution within 45 days, and the IDC's decision shall be final. The IDC will not consider types of disputes other than those identified in this Section.

3.2.2 Excluded Timers/Late Traders Not later than 30 days after the Commission's final approval of the Plan, the Fund Administrator will, working with the IDC, attempt to notify the preferred shareholders and customers identified as market timers/late traders that they are excluded in the distribution of the settlement funds. The notice will also inform the preferred shareholders or customers identified as market timers/late traders that they can review the Plan through the website of the Fund Administrator. A preferred shareholder or customer identified as market timer/late trader may dispute its exclusion from the distribution by submitting, to the IDC, through the Fund Administrator, a sworn statement under penalty of perjury containing information about why he/she/it should not be excluded from the distribution. Any submission must be made to the IDC, through the Fund Administrator, within 45 days after Plan approval. The IDC will resolve any dispute in his sole discretion and his decisions will be final.

Any submissions may be shared with the staff of the Commission. False statements in connection with any submissions may subject the certifying individual or entity to civil or criminal sanctions, including but not limited to, liability under 18 U.S.C. § 1001, liability for any false statements made in an unsworn certificate under penalty of perjury as permitted by 28 U.S.C. § 1746, or liability under any other applicable law.

3.3 Fund Administrator

3.3.1 The IDC recommends that Rust Consulting ("Rust") serve as Fund Administrator pursuant to Rule 1105 of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. §201.1105 (the "Fund Administrator"). Rust has extensive experience on the claims administration process in the financial industry. The Respondent has agreed to pay Rust its compensation and expenses.

3.3.2 In coordination with the IDC, the Fund Administrator will be responsible for, among other things: overseeing the administration of the Fair Fund, obtaining accurate mailing information for shareholders, preparing accountings, cooperating with the tax administrator in providing the information necessary to accomplish the income tax compliance, distributing money from the Fair Fund to shareholders in accordance with this Plan, and setting up and staffing a call center to address shareholder questions or concerns regarding the distribution. The IDC will require Rust to perform certain tasks in preparation for the

forthcoming distribution of the Fair Fund. The IDC believes Rust will perform satisfactorily as the Fund Administrator.

- 3.3.3 A waiver of the bond required for the Fund Administrator by Rule 1105(c) is requested. Good cause for waiver exists for the reasons that follow: (1) the Fund Administrator will have no custody, and only limited control, of the Fair Fund; (2) the Fair Fund will be held by U.S. Treasury Bureau of Public Debt until immediately before transmittal of checks or electronic transfers to eligible investors; (3) funds will be transferred from U.S. Treasury Bureau of Public Debt to a commercial bank (“Bank”) and those funds will be held in an escrow account, separate from Bank assets, until presentation of a check or electronic transfer, at which time funds will be transferred to a controlled distribution account; (4) presented checks or electronic transfers will be subject to “positive pay” controls before honored by the Bank; and (5) both the Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud.
- 3.3.4 In lieu of bond, Rust Consulting maintains and will continue to maintain insurance until termination of the Fair Fund. The primary insurer, Illinois Union Ins. Co. (ACE USA), is a company which, as of its most recent renewal, was rated “A+XV” by A.M. Best. The Fund Administrator maintains, and will continue to maintain until termination of the Fair Fund, E&O insurance in the amount of \$10,000,000. It has a policy limit of \$10,000,000 per occurrence and an overall limit of \$10,000,000 during the life of the policy. The Fund Administrator also maintains an additional \$5,000,000 in general liability insurance. Lastly, the Fund Administrator maintains a crime policy in the amount of \$5,000,000 per occurrence, which provides protection against employee dishonesty, forgery or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment or delivery of funds as a result of fraudulent input, preparation or modification of computer instructions, data or fraudulent electronic transmissions or communications. The Fund Administrator’s print vendor maintains and will continue to maintain until termination of the Fair Fund, an errors and omissions insurance policy. The primary insurer is a company which, as of its most recent renewal, was rated A+ by A.M. Best. The policy is in the amount of \$25 million per occurrence. Under the Plan of Distribution, at no time will there be funds under the custody and control of the Fund Administrator that exceed the amount covered by insurance.
- 3.3.5 Minneapolis-based U.S. Bank, a subsidiary of U.S. Bancorp, will hold Fair Fund assets during the check-cashing period. U.S. Bank maintains and will continue to maintain until termination of the Fair Fund, a financial institution bond. The primary insurer is Indian Harbor Insurance Company, a company which, as of its most recent renewal, was rated A+ by A.M. Best. The bankers blanket bond is in the amount of \$150 million. The bond provides protection against errors and omissions committed by employees of U.S. Bank in the course of their performance of professional services. U.S. Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data, exposure to loss and internal company controls. U.S. Bank limits are reviewed annually by the company’s Board of Directors. Documentation of coverage has been provided to the assigned SEC staff for review and the coverage has been deemed “not unacceptable.”

3.3.6 Additionally, to further control risk, when checks are presented for payment they will be subjected to positive pay controls. Positive pay is an automated fraud detection tool that requires a check presented for payment to match certain information in a master file before it is accepted for payment. Moreover, the account out of which funds will be disbursed is the U.S. Bank Account identified in paragraph 10.3. When checks are presented for payment, they will be subjected to the positive pay controls described above, the payments will be authorized, money will be transferred from the U.S. Bank Account to pay the authorized checks, and the account will be zeroed out at the end of the day. Furthermore, each distribution check and each distribution wire transfer will be assigned a unique control number. The IDC believes that the combination of the Bank's bonding and insurance coverage, its positive pay system, the use of a zero balance disbursement account, the unique control numbers for each check and wire transfer, provide sufficient risk protection for the Fair Fund.

4. **Limitation of Liability** The IDC and the Fund Administrator, and/or each of their designees, agents and assistants, shall be entitled to rely on any Orders issued in this proceeding by the Commission, the Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any injured investor or potential injured investor for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission is caused by such party's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Plan of Distribution. This paragraph is an expression of the current state of the law and is not intended, nor should it be deemed to be, a representation to or an indemnification of the IDC or the Fund Administrator or their designees, agents and assistants, nor should this paragraph preclude the Commission or the Qualified Settlement Fund ("QSF") from seeking redress for any act or omission in the course of administering the Fair Fund or from seeking redress from any insurance or bond provided as set forth in this Plan of Distribution.
5. **Tax Administrator** The Commission has appointed Damasco & Associates as the Tax Administrator ("Tax Administrator") of the Fund. *Order Directing Appointment of Tax Administrator*, Admin. Proc. File No. 3-11726, Securities Exchange Act Release No. 51341 (March 9, 2005). The IDC, Fund Administrator and Respondent 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. The Tax Administrator shall be compensated by the Respondent.
6. **Categories of Potentially Eligible Recipients** There are many forms of mutual fund share ownership, which vary depending on whether the "shareholder of record" is the same as the "ultimate investor" or "beneficial owner." For example, retirement plan sponsors or brokers who administer an Omnibus Account are shareholders of record. However, they are empowered to hold shares on behalf of one or more ultimate investors, who may include participants in a retirement plan or investors in a 529 plan. In these intermediated relationships, the shareholder of record may have certain pre-existing contractual and/or

fiduciary duties to the ultimate investors. For purposes of this Plan of Distribution, three categories of shareholder accounts are distinguished:

- 6.1 “Direct Accounts” are retail shareholders and joint ownership accounts that are held directly with the applicable mutual fund managed by Respondent. In these accounts, the shareholder of record and the ultimate investor are the same.
- 6.2 “Omnibus Accounts” are accounts in which a financial institution is the shareholder of record, serving as an intermediary, and holding shares on behalf of clients who are the ultimate investors. Accounts of Retirement Plans, as defined below, are not considered Omnibus Accounts for purposes of this Plan of Distribution, although a Retirement Plan could be a shareholder (of record or otherwise) with other shareholders within an Omnibus Account.
- 6.3 Accounts of “Retirement Plans” are accounts of an “employee benefit plan”, as such plans are defined in Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which is not an Individual Retirement Account, whether or not the plan is subject to Title 1 of ERISA.

7. Distributions to Direct Accounts

- 7.1 All shareholders with Direct Accounts that experienced losses are eligible to receive payment. This includes both current and former shareholders in all funds that incurred losses in the period studied.
- 7.2 In the interest of carrying out the distribution efficiently, there is a need to establish de minimis levels of payments. It is common practice to establish de minimis levels for various payments made to shareholders. For Direct Accounts, if the aggregate amount due is less than \$10, it will be considered a de minimis amount.
- 7.3 The Fund Administrator shall use commercially reasonable efforts to identify and locate current and former shareholders of record:
 - 7.3.1 Where necessary, shareholders will be identified per Rule 17Ad-17 under the Securities Exchange Act of 1934.
 - 7.3.2 Current and former shareholder addresses will be systematically compared against the U.S. Postal Service’s forwarding address database. Shareholders that are deemed “Lost” in accordance with Rule 17Ad-17 will not receive payments; instead, their payments will be added to the Undistributed Pools, described in Section 10.5 below.
 - 7.3.3 Individuals who believe that they might be Lost shareholders may contact the Fund Administrator, who will assist such individuals in evaluating their claims and reviewing applicable documentation in accordance with reasonable and customary business practices.

- 7.3.4 Payments that are not claimed by Lost shareholders within ninety (90) days after the completion of distribution with respect to Direct Accounts will be added to the Undistributed Pools.
- 7.3.5 The Fund Administrator will report on the resolution of Lost shareholder claims in its periodic accounting to the Commission, as described in Section 12.1 hereto.
- 7.4 The Fund Administrator shall issue and mail checks to all identified and located Direct Account shareholders whose aggregate distribution meets the de minimis level of \$10.
- 7.4.1 For returned checks, the Fund Administrator will conduct one (1) address trace on undeliverable checks in excess of \$25 and re-mail the check.
- 7.4.2 For returned checks where a forwarding address has been provided by the Post Office, the check will be re-sent. If the check is returned a second time, the payment will be added to the Undistributed Pools.
- 7.4.3 All checks shall bear a stale date of ninety (90) days from the date of issuance. Checks that are not negotiated on or before the stale date shall be voided and U.S. Bank shall be instructed to stop payment on those checks. These amounts will be added to the Undistributed Pools.
- 7.4.4 Electronic credits if any will be made only to cash equivalent accounts (e.g., money market accounts).

8. Distributions to Omnibus Accounts

- 8.1 The intent of this Plan of Distribution is to distribute funds through intermediated accounts to ultimate investors, as if they had been Direct Account shareholders. Omnibus Accounts include accounts maintained for multiple beneficial owners (typically individual brokerage customers), but for the purpose of this Plan of Distribution Omnibus Accounts do not include accounts of qualified Retirement Plans.
- 8.2 Omnibus accounts are accounts in which the transactions of two or more individual investors are combined into the single account of an intermediary, such as a broker/dealer, who is the shareholder of record. An omnibus account is transparent if the shareholder of record has access to records identifying the actual beneficial owners and is opaque if the shareholder of record does not have access to such records. The underlying shareholder account information within each omnibus account is not known without further information from the omnibus account holder. Thus, if information about underlying shareholders were known, distributions to individual underlying shareholders may differ from those that would be made if the shareholder of record were treated as a single shareholder.
- 8.3 If the aggregate amount due to the Omnibus Account is less than \$1,000, it will be considered a de minimis amount, and the Fund Administrator will so inform the shareholder of record. Omnibus account holders with harmed amounts less than \$1,000

will have the option of accepting distribution amounts. Upon acceptance, the holder has the option of employing the distribution method in this Plan of Distribution or a distribution method of choice consistent with any legal, contractual, or fiduciary obligations.

8.4 Omnibus Accounts that are due to receive \$1,000 or more will have three options with respect to administering the Plan of Distribution:

- (1) The Fund Administrator will calculate payments to beneficial owners and execute the distributions, based on account data and address files provided by the holder of record.

The IDC will employ “commercially reasonable best efforts” to obtain the underlying transactions data that constitute omnibus accounts from omnibus account holder institutions that experienced harm in amounts greater than or equal to \$1,000. Attempts will be made via telephone, fax, or any other means necessary to request the underlying transactions data. The shareholder of record may provide the necessary data to the Fund Administrator to calculate payments to beneficial owners. The Respondent will reimburse the reasonable out of pocket costs incurred by the omnibus shareholder of record in conjunction with preparing the data that would enable the Fund Administrator to calculate the payments and execute the distribution. Requests for reimbursement from these Omnibus account holder firms will be paid by the Respondent to the extent that such costs are commercially reasonable in light of the amount to be distributed to such firms. All requests for reimbursement are subject to a final review by the IDC and such requests may be approved, modified or rejected by the IDC.

- (2) The Fund Administrator will calculate the payments to beneficial owners, based on account data and address files provided by the holder of record, but the holder of record will execute the distributions.

The shareholder of record will provide the necessary data to the Fund Administrator to calculate payments to beneficial owners. The Respondent shall reimburse the reasonable out of pocket costs incurred by the omnibus shareholder of record in conjunction with preparing the data that would enable the Fund Administrator to calculate the payments. The Fund Administrator will issue a single payment to the shareholder of record for the total amount to be distributed. The shareholder of record will bear the costs of executing the distribution to beneficial investors.

- (3) The Fund Administrator will provide the algorithm for calculating the individual payments to the holder of record, but the holder of record will both calculate the payments to beneficial owners and execute the distributions to beneficial owners.

The Fund Administrator shall issue a single payment to the shareholder of record for the total amount to be distributed. The shareholder of record will bear all costs of the calculation and the distribution.

- 8.5 In 8.3, and regardless of the option selected in 8.4, the procedures to be employed should be substantially the same as those employed for Direct Accounts, except as described below:
- 8.5.1 The Omnibus Account holder of record will be required to develop and execute a program similar to that described for Direct Accounts, including a de minimis amount no larger than \$10 for the beneficial investor.
- 8.5.2 For current accounts, the Omnibus Account holder of record has the option to write a check or to credit the account of the beneficial owner.
- 8.5.3 If an Omnibus Account holder of record is unable to identify a beneficial shareholder after receipt of the payment from the Fund Administrator, such beneficial shareholder's payment shall be returned to the Fund Administrator and will be added to the Undistributed Pools for distribution as detailed below.
- 8.6 In the course of calculating payments in the distribution phase of this Plan of Distribution, the Fund Administrator or shareholders of record of Omnibus Accounts may determine that payments due to an Omnibus Account's beneficial investors may differ from the amounts calculated pursuant to Section 2 of this Plan of Distribution. If the Fund Administrator's payment to an omnibus shareholder of record exceeds the payments due to beneficial shareholders (e.g., there are beneficial shareholders who fail to meet the Direct Account investor de minimis threshold of \$10), the excess will be added to the Undistributed Pools for distribution as detailed below. If the Fund Administrator's payment to a shareholder of record is less than the payments to a plan's beneficial shareholders that exceed the de minimis levels (e.g., due to netting at the Omnibus Account level that obscured losses due to ultimate shareholders), the amount distributed to those beneficial shareholders will be proportional to the funds actually received by the shareholder of record. In any event, in no case will Respondent have to pay more than the amount that would be distributed to the opaque omnibus account if it were treated as a Direct Account investor.
- 8.7 Omnibus account holders will use "commercially reasonable best efforts" to identify and distribute funds to beneficial owners in omnibus accounts. Information obtained should be maintained confidentially and held exclusively by the Fund Administrator. Respondent will not have access to the data. For purposes of this paragraph, "commercially reasonable best efforts" to identify and distribute funds to beneficial owners in omnibus accounts involve assembly, in appropriate format, of (i) names, addresses and other necessary identifying information for beneficial owners, and (ii) daily records or opening account balances and subsequent transaction data (or, if such data are either unavailable or available only at a cost that would otherwise result in the application of the previous subsection, the most extensive records (monthly, quarterly or yearly) that are available) necessary to determine each such owner's fund share balance during the period to which the distribution in question relates.
- 8.8 If the Fund Administrator does not receive from the omnibus account holders, within a reasonable amount of time (within sixty (60) days of the approval of the Plan of

Distribution), a response to the request for information identifying shareholders or the requested information, the Fund Administrator will proceed as follows: the Fund Administrator will ask the Omnibus account holder to certify that the Omnibus account holder will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties, as applicable, to disburse the Fair Fund payment to its affected account holders in accordance with the methodology and the deadlines set forth in this Plan of Distribution, and that the Omnibus account holder will return any undistributed money to Undistributed Pools for ultimate disposition in accordance with this Plan of Distribution. After each such Omnibus account holder has provided its certification to the IDC, which the Fund Administrator will make commercially reasonable efforts to obtain under the direction of the IDC, the IDC will instruct the Fund Administrator to disburse the portion of the Fair Fund allocated to the Omnibus account holder so that it can distribute the funds to its affected sub-account holders. In the event such Omnibus account holder does not provide such certification, the amount of Fair Fund allocated to such Omnibus account holder shall be treated as “undistributed” for purposes of this Plan of Distribution, and processed pursuant to Section 10.5, below. After the Omnibus account holder has distributed the funds in this fashion, the Omnibus account holder will be required to provide the IDC with a certification that it has complied with these terms and conditions.

- 8.9 The Fund Administrator will maintain records of each attempt to contact an Omnibus Account holder to provide the requested shareholder information or certification, and each response received, if any. These records will be provided to Commission staff at least 30 days before the scheduled distribution is to be made.
- 8.10 Confidentiality Provision Rust shall maintain in confidence Shareholder Identifying Information and any other information relating to sub-account holders obtained from any Omnibus Account holder pursuant to this Distribution Plan, and shall not share such information with Respondent; Rust, however, may share such information with the Commission, Rust’s service providers or other parties to the extent necessary to perform its duties under this Distribution Plan, and Rust shall require that such service providers and other parties maintain such information in confidence.

9. Distributions to Retirement Plans

- 9.1 "Retirement Plan" as used in this Plan means an employee benefit plan, as such plans are defined in section 3(3) of ERISA, 29 U.S.C. § 1002(3), which is not an Individual Retirement Account (IRA), whether or not the plan is subject to Title I of ERISA. Under this Plan of Distribution, IRA retirement plans are treated as direct accounts if the specific information as to the holder of the IRA retirement plan is known or as omnibus accounts if the specific information as to the holder of the IRA retirement plan is not known, and distributions to IRAs will be made in accordance with Sections 7 (if a direct account) or 8 (if part of an omnibus account) of this Plan of Distribution.
- 9.2 Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. This Plan of Distribution requires the plan fiduciaries and intermediaries, as defined in 13 Department of Labor Field Assistance Bulletin No. 2006-01, April 19, 2006

(the “Field Assistance Bulletin”), of Retirement Plans to distribute the monies received in accordance with their legal, fiduciary, and contractual obligations and consistent with guidance issued by the Department of Labor, including, but not limited to, the Field Assistance Bulletin.

- 9.3 An intermediary to one or more Retirement Plans may allocate the distribution it receives pursuant to this Plan of Distribution among eligible Retirement Plans participating in an omnibus account administered by such intermediary according to the procedures set forth in section 8 above or according to the average share or dollar balances of the Retirement Plans’ investment in The Fremont Global Fund from January 2001 through October 2001 and the Fremont U.S. Micro-Cap Fund from October 2001 through October 2002, provided, however, that for the purposes of such allocation each Retirement Plan itself (and not the individual plan participants) shall be treated as the beneficial owner.
- 9.4 The fiduciary of a Retirement Plan receiving a distribution may distribute it pursuant to one of the following four alternatives:
 - 9.4.1 Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology referenced in section 2. The IDC will make this methodology available to Retirement Plan fiduciaries.
 - 9.4.2 Retirement Plan fiduciaries may allocate the distribution *pro rata* (based on total account balance) among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
 - 9.4.3 Retirement Plan fiduciaries may allocate the distribution *per capita* among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees)
 - 9.4.4 To the extent that none of the three preceding alternatives is administratively feasible because the costs of effecting the allocation exceed the amount of the distribution, Retirement Plan fiduciaries may, to the extent permitted by the Retirement Plan, use the distribution amount to pay the reasonable expenses of administering the plan.
- 9.5 Distributions will be made to Retirement Plans if the amount of the distribution meets the de minimis threshold of \$10. Fiduciaries and intermediaries of Retirement Plans will not be reimbursed the costs and expenses associated with allocating any distribution.

10. Execution of the Distribution

- 10.1 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.

- 10.2 This Fair Fund was deposited at the U.S. Treasury Bureau of Public Debt for investment in government obligations on February 11, 2005. Other than interest from these investments, it is not anticipated that the Fair Fund will receive additional funds.
- 10.3 The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund is currently deposited at the U.S. Treasury Bureau of Public Debt (“BPD”). Upon approval of the Plan, the Fund Administrator shall establish both an escrow account and a controlled distribution account (or a similar distribution account if approved by Commission staff) at U.S. Bank (Bank), in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund (“QSF”) as custodian for the distributees of the Distribution Plan. The name of the account shall be in the following form: Fremont Investment Distribution Fund, EIN No. 51-0537223, as custodian for the benefit of investors allocated a distribution from the Fremont Plan of Distribution (“Fremont Investment Distribution Fund”). Following approval of the Plan, and submission by the IDC of a list of payees and amounts to the Commission staff and all information necessary to make disbursement to each distributee, and unless otherwise directed by the Commission, the Commission staff shall cause the balance in the Fair Fund to be deposited in the Fremont Investment Distribution Fund. The Fund Administrator shall be the signer on the Fremont Investment Distribution Fund, subject to the continuing jurisdiction and control of the Commission. The Fund Administrator shall authorize U.S. Bank to provide account information to the Tax Administrator, including providing duplicate statements for the Fremont Investment Distribution Fund. The Fund Administrator shall use the assets and earnings of the Fair Fund to provide payments to eligible investors and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs. The Fremont Investment Distribution Fund shall be invested in short-term U.S. Treasury securities all backed by the full faith and credit of the U.S. Government of a type and term necessary to meet the cash requirements of the payments to eligible investors, tax obligations and fees; provided however, that investments in the U.S. Treasury securities will not be made through repurchase agreements or other derivative products.
- 10.4 In order to distribute funds, the IDC will submit a validated list of payees and the payment amounts to the assigned Commission staff, who will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6). The payees and amounts will be validated at the IDC’s direction by the Fund Administrator. The validation will state that the list was compiled in accordance with the Plan of Distribution and provides all information necessary to make disbursement to each distributee. Unless otherwise directed by the Commission, the Commission staff will obtain an Order Directing Disbursement that releases funds to the bank account established by the Fund Administrator based upon the validated list and representation by the Fund Administrator that the checks or electronic transfers will be issued within five business days.
- 10.5 Undistributed Pools All undistributed funds [resulting from “Lost” shareholders, disqualified shareholders, shareholders who decline payment, and de minimis amounts] will be aggregated into Undistributed Pools, tracked separately according to each mutual fund that suffered losses. At the discretion of the IDC, the Undistributed Pools may be

distributed to the respective mutual fund or successor mutual fund if cost effective to do so. Monies in the Undistributed Pools will be held by U.S. Bank. Undistributed Pools will be recorded and distributed to their respective mutual fund or successor mutual fund without any advance public disclosure. Any undistributed funds or funds remaining after the Undistributed Pool is paid out will be sent to the Commission for transfer to the U.S. Treasury.

- 10.6 To implement a distribution of the Undistributed Pools to the respective mutual funds or successor mutual funds, each such fund will be notified that the allocated monies are designated solely for the fund, should be deposited into the mutual fund's asset base, and, prior to deposit in the mutual fund's asset base, are not to be used directly for administrative or management fees. Each such mutual fund shall certify in advance that the distribution payment will be deposited into the mutual fund as intended. If the Fund Administrator is unable to make contact with such mutual fund or if a mutual fund does not certify that distribution payment will be deposited into the mutual fund's asset base within the deadline specified by the Fund Administrator, then the allocated monies will remain in the respective Undistributed Pools.
- 10.7 The Fund Administrator will keep records of each contact attempt to each mutual fund tracked for distribution of the Undistributed Pools, and each response received, if any. These records will be provided to Commission staff at least 30 days before the scheduled distribution is to be made.

11. Timing of the Distribution Process

- 11.1 The Fund Administrator shall complete the distribution as quickly as commercially reasonable following the final approval of this Plan of Distribution.
- 11.2 Upon distribution of the funds, the Fund Administrator shall make arrangement for the final payment of taxes and Tax Administrator fees and shall submit a final accounting to the Commission. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (1) a final accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Fund Administrator for approval of, and has been approved by, the Commission, (2) all taxes, fees and expenses have been paid, and (3) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the staff shall arrange for the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and shall seek an order from the Commission to approve the termination of the Fair Fund and discharge the Fund Administrator.
- 11.3 The IDC and Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Plan. The IDC will inform the Commission staff of any changes needed in the Plan. After agreement by Commission staff, the IDC may implement immaterial changes to the Plan to effectuate its general purposes. If staff deems a change to be material, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party or the Fund Administrator or upon the Commission's own motion.

11.4 For good cause shown, the Commission staff may extend any of the procedural dates set forth in this Plan.

12. Oversight

12.1 Once any portion the Fair Fund is transferred to U.S. Bank, the Fund Administrator shall file an accounting during the first ten (10) days of each calendar quarter, and will submit a final accounting for approval by the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator.

12.2 This Plan of Distribution is subject to approval by the Commission and the Commission retains jurisdiction over the implementation of the Plan of Distribution.

13. Public Information

13.1 All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting required of the QSF and related tax consequences; (c) a statement that checks will be void after ninety (90) days; and (d) the name of a person to contact, to be used in the event of any questions regarding the distribution. Any such communication about this distribution plan shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from a Fair Fund established by the SEC.

13.2 The Fund Administrator will provide customer support and communications programs which will become active at least by the time the first distribution occurs. These services shall include a toll free number and a website to the public. The Commission retains the right to review and approve any material posted on the website. The website will be publicized in communications to shareholders. The content may include descriptive information and instructions, telephone numbers for customer service, and links to the Plan of Distribution. The website shall not contain any shareholder-specific information. The Fund Administrator will set up and staff a dedicated call center with operators trained and dedicated to responding to investor inquiries about the distribution process. The Fund Administrator shall report on this activity periodically to the IDC.

14. Notice and Comment

Notice of the Proposed Plan of Distribution shall be published in the SEC Docket, on the Commission website (<http://www.sec.gov>), and in such other places as the Commission may require. Any person or entity wishing to comment on the Plan of Distribution must do so in writing by submitting their comments within thirty days of the date of the notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (ii) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (iii) 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. 3-11726) in the subject line. Comments received will be available to the public. Commenters should only submit information that they wish to make publicly available.