UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Investment Adviser Act of 1940
Release No. 2317 / November 4, 2004

Investment Company Act of 1940
Release No. 26650 / November 4, 2004

Administrative Proceeding
File No. 3-11726

In the Matter of: FREMONT INVESTMENT ADVISORS, INC. Respondent.	ORDER INSTITUTING ADMINSTRATIVE 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

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be and hereby are instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Fremont Investment Advisors, Inc. ("Fremont" or the "Company" or the "Respondent").

II.

In anticipation of the institution of these proceedings, Fremont has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or in which the Commission is a party, and without admitting or denying the findings herein, except that Fremont admits the jurisdiction of the Commission over it and over the subject matter of these proceedings, Fremont consents to the issuance of this 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 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that

Summary

1. Fremont Investment Advisors, Inc. ("Fremont"), a San Francisco-based investment adviser that manages 13 mutual funds, granted certain preferred shareholders special trading privileges prohibited for other shareholders. Among other things, in 2001 Fremont entered into an agreement with a broker allowing the broker's customer to engage in high volume short term trading (or "market timing"), notwithstanding language in Fremont's prospectus barring market timing.[2] In order to secure the special trading rights, the customer agreed to deposit $10 million into a Fremont mutual fund co-managed by Fremont's then-president.

2. During the same period, a Fremont employee, without knowledge of Fremont's management, allowed another broker to engage in late trading, authorizing the broker to place trade orders after the 4:00 p.m. Eastern Time market close while still receiving the current day's price. This arrangement conferred an unfair advantage upon the broker's customers, allowing them to profit from post-market close information and stale prices.

3. By permitting these improper timing and late trading arrangements, and failing to disclose the firm's conflict of interest to Fremont's shareholders and board of directors, Fremont willfully violated Sections 206(1) and 206(2) of the Advisers Act, Sections 17(d) and 34(b) of the Investment Company Act, and Rule 17d-1 and caused the funds' violation of Rule 22c-1 thereunder.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Market timing includes (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. Market timing, while not illegal per se, can harm other mutual fund shareholders because it can dilute the value of their shares if the market timer is exploiting pricing inefficiencies, disrupt the management of the mutual fund's investment portfolio, and can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

Respondent

4 Fremont Investment Advisors, Inc., a Delaware corporation with headquarters in San Francisco, California, became registered with the Commission as an investment adviser effective February 26, 1987. Fremont is a majority-owned subsidiary of Fremont Investors, Inc. During the relevant time period, Fremont served as an investment adviser to the Fremont Mutual Funds. The Fremont Mutual Funds are composed of 13 portfolios: nine equity funds, three fixed income funds and one money market fund. As of March 31, 2004, the Funds held total net assets of approximately $3 billion. Besides managing the Funds, Fremont also provides investment management services to individuals, pension and profit sharing plans, limited partnerships, charitable organizations and corporations. As of March 31, 2004, Fremont's assets under management including both the Funds and the management services totaled approximately $5.1 billion.

Fremont's Market Timing Policy

5. Pursuant to its advisory function, Fremont was responsible for drafting a prospectus provided to all investors and potential investors in the Fremont mutual funds. In addition, Fremont filed registration statements with the Commission, made available to the investing public, which incorporated the Funds' prospectus.

6. From at least 2000 through October 2002, the Funds' prospectus represented that Fremont did not permit "excessive short-term trading, market-timing, or other abusive trading practices in our Funds." Also, the Funds reserved the right to reject any purchase order from any investor who had a history of abusive trading or traded in a disruptive manner in the Fund. Abusive trading was defined as "making six or more complete exchanges – into and out of – one fund within a 12-month period" ("the five-exchange limitation").

7. Fremont employed an individual whose primary responsibility was to identify and block all market timers in the Funds. This individual, referred to as Fremont's "timing cop," blocked market timers on a daily basis. Fremont used a form letter informing the client that its trading privileges were being terminated and the Fund would refuse any further request to purchase or exchange additional shares of the Fund. The letter further explained that market timing could have a negative impact on the mutual fund investment process: "Excessive and unpredictable trading hinders a fund manager's ability to pursue the fund's long term goals."

Improper Market Timing Arrangements

8. Notwithstanding Fremont's prospectus language and internal procedures prohibiting market timing, beginning in at least January 2001, Fremont carved out exceptions for certain preferred shareholders. From January 2001 through October 2001, Fremont 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. These market timing arrangements generated approximately $38,000 in advisory fees for Fremont.

9. In October 2001, Fremont entered into a written agreement with a second brokerage firm allowing the broker's customer to time the Fremont U.S. Micro-Cap Fund. Fremont's then-head of institutional sales negotiated the agreement on behalf of Fremont. The arrangement provided that the customer could make up to three round trip securities trades per *month* (in contrast with the five per *year* maximum set forth in the Funds' prospectus). As part of the arrangement, the customer agreed to invest $10 million in Fremont's New Era Value Fund, a relatively new Fremont Fund established and co-managed by Fremont's then-president and CEO.

10. 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, well in excess of the five-exchange limitation set forth in the prospectus. The amount of each exchange varied from between $13 million to $17 million. The total amount traded over the course of the year was in excess of $600 million. These investments generated approximately $104,000 in advisory fees for Fremont.

11. As had been agreed, the customer made a long-term investment (the so-called "sticky" asset) in the New Era Value Fund (though only $3.7 million was ultimately invested, rather than the full $10 million set forth in the written agreement). The customer maintained this investment in the New Era Value Fund from October 15, 2001 until November 19, 2002. The "sticky" asset generated approximately $27,000 in additional advisory fees for Fremont.

12. Prior to initiation of the timing arrangement, the New Era Value Fund had net assets totaling around $23.5 million. The $3.7 million "sticky" asset caused the assets of the New Era Value Fund to pass the $25 million threshold, which, under rules established by the National Association of Securities Dealers, made the mutual fund eligible to be placed on the News Media List. Funds on the News Media List are eligible to be included in the fund tables of newspapers and are broadcast over the NASDAQ's Level 1 data feed service distributed by market data vendors. Thus, the "sticky" asset potentially enabled the relatively young New Era Value Fund to gain recognition in the marketplace.

13. At the time Fremont entered into the market timing arrangement, it had not conducted any type of analysis or study to understand the impact of market timing activity, nor had Fremont determined whether market timing was consistent with the terms of the Funds' prospectus.

14. At no time did Fremont notify the Funds' shareholders that Fremont was permitting favored shareholders to time the Funds while excluding others from exceeding the five-exchange limitation. Nor did Fremont disclose its conflict of interest as a result of the increased fees and assets under management the deal generated. In addition,

Fremont failed to disclose the existence of the market timing arrangement to the independent directors of the Fremont Mutual Funds.

15. Through the foregoing conduct, Fremont entered into a joint arrangement with the Funds whereby a select customer was allowed to time one of the Funds in exchange for depositing long-term assets into a different Fund. Fremont did not file an application regarding this arrangement seeking an exemption from Commission rules governing joint arrangements, and the Commission never granted such an order.

Trading in Fremont Mutual Funds after the Close of the Market

16. Rule 22c-1 promulgated under Section 22 of the Investment Company Act prohibits any registered investment company issuing any redeemable security or person designated in a fund's prospectus as authorized to consummate transactions in the fund's shares or a principal underwriter in or dealer of the fund's shares from purchasing or selling its shares except at a price based on the current net asset value ("NAV") of such shares that is next calculated after receipt of a buy or sell order. Since at least June 2001, the prospectus of the Fremont Mutual Funds set forth Fremont's policy that comported with industry practice and was consistent with Rule 22c-1. Simply put, the Funds' prospectus stated that an investment had to be received by the Fund's transfer agent before the close of trading on the New York Stock Exchange in order to receive that day's price. Orders received after closing would be processed with the following day's NAV. An order was considered received when the transfer agent received the investment from the mutual fund shareholder.

17. In or around mid-2001, a Fremont employee, without knowledge of Fremont's management, authorized a brokerage firm to place trades in two of Fremont's Funds after the 4:00 p.m. ET market close for three of its customers and still receive the current day's NAV pricing. Between June 2001 and September 2001, the brokerage firm placed over 50 trades after the 4:00 p.m. market close. No steps were taken to determine whether the broker had received the trade orders from its customers prior to 4:00 p.m., as required by Rule 22c-1, and in fact certain of the orders originated after market close. The employee has subsequently been terminated.

18. This arrangement created a potential risk that the broker's customers could capitalize on post-market close information by trading after hours based on stale prices, creating an unfair advantage over other Fremont investors.

Fremont's Remedial Actions

19. Fremont has taken the following remedial steps:

A. the chief compliance officer receives a daily report reflecting money movements in and out of each of the Fremont Mutual Funds and copies of all letters sent by Fremont that inform identified timers that they are being blocked from trading in the Funds;

B. the chief compliance officer meets privately in quarterly meetings with the independent directors of the Fremont Mutual Funds, and reports directly to the independent directors regarding any breach of securities laws and/or fiduciary duties that come to her attention;

C. Fremont created a written procedure that sets forth the process by which market timers are blocked;

D. all Fremont employees are required to sign a certificate attesting to their review and understanding of Fremont's market timing policies and procedures; and

E. a "Whistleblower Protection Policy" has been instituted that provides a reporting line to the Funds' Chief Legal Officer or the lead independent director of the Funds' board of directors for any employee who identifies real or potential violations of the securities laws, questionable accounting or auditing practices, or complaints regarding internal controls.

Violations

20. As a result of the conduct described above, Fremont willfully violated Sections 206(1) and 206(2) of the Advisers Act in that it, while acting as investment adviser, employed devices, schemes, or artifices to defraud clients or prospective clients; and engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Specifically, Fremont entered into agreements with market timers that created a conflict of interest Fremont knowingly or recklessly failed to disclose to the Funds' board of directors and the Funds' shareholders, and that were inconsistent with the Funds' prospectus disclosures.

21. As a result of the conduct described above, Fremont willfully violated Section 34(b) of the Investment Company Act, in that it made an untrue statement of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein any fact necessary in order to prevent the statement made herein, in the light of the circumstances under which they were made, from being materially misleading.

22. As a result of the conduct described above, Fremont willfully violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, which make it unlawful for any affiliated person of, or principal underwriter for a registered investment company, or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant. Rule 17d-1 makes it unlawful for any

affiliated person to participate in any such joint arrangement unless it obtains an order from the Commission approving the transaction.

23. As a result of the conduct described above, Fremont caused the Funds' violation of Rule 22c-1, which makes it unlawful for any registered investment company issuing any redeemable security, any person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and any principal underwriter of, or dealer in any such security to sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Undertakings

24. Ongoing Cooperation. Fremont shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Fremont has undertaken:

A. To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;

B. To use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;

C. To use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

D. That in connection with any testimony of Fremont to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Fremont:

i. Agrees that any such notice or subpoena for Fremont's appearance and testimony may be served by regular mail on its attorney; and

ii. Agrees that any such notice or subpoena for Fremont's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

25. General Compliance. Fremont will comply with the following undertakings:

A. Fremont shall at its own expense, establish and staff a full-time senior-level position whose responsibilities shall include compliance matters related to

conflicts of interests. This officer will report directly to the chief compliance officer of Fremont.

B. Fremont shall require that its chief compliance officer or a member of his or her staff review compliance with the policies and procedures established to address compliance issues under the Investment Advisers Act and Investment Company Act and that any violations be reported to the president of Fremont and the chief compliance officer of Fremont.

C. Fremont shall require its chief compliance officer to report to the independent directors of the Fremont Mutual Funds any breach of fiduciary duty and/or the federal securities laws of which he or she becomes aware in the course of carrying out his or her duties, with such frequency as the independent directors may instruct, and in any event at least quarterly, provided however that any material breach (i.e., any breach that would be important, qualitatively or quantitatively, to a reasonable director) shall be reported promptly.

D. Fremont shall establish a corporate ombudsman to whom Fremont employees may convey concerns about Fremont business matters that they believe implicate matters of ethics or questionable practices. Fremont shall establish procedures to investigate matters brought to the attention of the ombudsman, and these procedures shall be presented for review and approval by the independent directors of the Fremont Mutual Funds. Fremont shall also review matters to the extent relating to fund business brought to the attention of the ombudsman, along with any resolution of such matters, with the independent directors of the Fremont Mutual Funds with such frequency as the independent trustees and directors of such funds may instruct.

26. Periodic Compliance Review. Commencing in 2005, and at least once every other year thereafter, Fremont shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of Fremont. At the conclusion of the review, Fremont shall cause the third party to issue a report of its findings and recommendations concerning Fremont's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by Fremont and its employees in connection with their duties and activities on behalf of and related to the Fremont Mutual Funds. Fremont shall cause each such report to be promptly delivered to Fremont's chief compliance officer and to the Compliance or Audit Committee of the board of directors of the Fremont Mutual Fund.

27. Independent Distribution Consultant. Fremont shall retain, within 180 days of the date of entry of the Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and the independent directors of the Fremont Mutual Funds. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by Fremont. Fremont shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested for the review. Fremont shall require that the Independent Distribution Consultant

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.

A. Fremont shall require that the Independent Distribution Consultant submit a Distribution Plan to Fremont and the staff of the Commission no more than 250 days after the date of entry of the Order.

B. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 280 days after the date of entry of the Order, Fremont or the staff of the Commission advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.

C. With respect to any determination or calculation with which Fremont or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 310 days of the date of entry of the Order. In the event that Fremont and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.

D. Within 325 days of the date of entry of this Order, Fremont shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission's Rules Regarding Disgorgement and Fair Fund Plans. Following a Commission order approving a final plan of disgorgement, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules Regarding Disgorgement and Fair Fund Plans, Fremont shall require that the Independent Distribution Consultant, with Fremont, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

E. Fremont shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Fremont, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Fremont shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of a majority of the independent directors and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with

Fremont, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

28. Certification. No later than twenty-four months after the date of entry of the Order, the chief executive officer of Fremont shall certify to the Commission in writing that Fremont has fully adopted and complied in all material respects with the undertakings set forth in this Order and with the recommendations of the Independent Compliance Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

29. Recordkeeping. Fremont shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of Fremont's compliance with the undertakings set forth in this Order.

IV.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the following remedial sanctions agreed to in Fremont's Offer.

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 203(e) of the Advisers Act, Fremont is hereby censured;

B. Pursuant to Sections 203(k) of the Advisers Act and 9(f) of the Investment Company Act, Fremont shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act and Sections 17(d) and 34(b) of the Investment Company Act and Rules 17d-1 and 22c-1 thereunder;

C. Fremont shall comply with the undertakings enumerated in Section III., Paragraphs 25-29; and

D. Disgorgement and Civil Money Penalties

1. Fremont shall pay $2.146 million in disgorgement ("Disgorgement"), plus a civil money penalty of $2 million ("Penalty"), for a total payment of $4.146 million.

2. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in Section IV.D.1. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that it shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, further benefit by offset or reduction of any part of Respondent's payment of a

civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

3. Pursuant to an escrow agreement not unacceptable to the staff of the Commission, Respondent shall, within 180 days of the entry of this Order, pay the Disgorgement and Penalties into an escrow account. The escrow agreement shall, among other things: (1) require that all funds in escrow be invested as soon as reasonably possible and to the extent practicable in short-term U.S. Treasury securities with maturities not to exceed six months; (2) name an escrow agent who shall be appropriately bonded; and (3) provide that escrowed funds be disbursed only pursuant to an order of the Commission. Respondent shall be responsible for all costs associated with the escrow agreement and the Fair Fund distribution.

E. Deadlines. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

F. Other Obligations and Requirements. Nothing in the Order shall relieve Fremont of any other applicable legal obligation or requirement, including any rule adopted by the Commission subsequent to the Order.

By the Commission.

Jonathan G. Katz
Secretary