UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Investment Adviser Act of 1940
Release No. 2318 / November 4, 2004

Investment Company Act of 1940
Release No. 26651 / November 4, 2004

Administrative Proceeding
File No. 3-11727

In the Matter of: NANCY C. TENGLER, Respondent.	ORDER INSTITUTING ADMINSTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(f) 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(f) 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 Nancy C. Tengler ("Tengler" or "Respondent").

II.

In anticipation of the institution of this proceeding, Tengler 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 Tengler admits the jurisdiction of the Commission over her and over the subject matter of these proceedings, Tengler 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 thirteen mutual funds, granted a large client the right to engage in high volume short term trading (or "market timing"), a practice prohibited for all other investors in the funds. Fremont's then-president, respondent Nancy Tengler, acquiesced in the arrangement, notwithstanding prospectus language and internal policies prohibiting market timing. In order to secure the special trading rights, the client agreed to deposit $10 million in long term (or "sticky") assets into a Fremont mutual fund which at that time had been recently established and was co-managed by Tengler.

2. By authorizing the improper timing agreement, and failing to disclose the inherent conflict of interest it created to Fremont's shareholders and board of directors, Tengler willfully violated Section 206(2) of the Advisers Act and Section 34(b) of the Investment Company Act and caused Fremont's violation of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.[2]

Respondent

3. Nancy C. Tengler, age 46 and a resident of Alamo, California, served as president, director and chief investment officer of Fremont from October 2000 until her resignation in January 2003. She also served as Fremont's chief executive officer from May 1, 2001 until January 2003. Tengler became a board member for the investment companies Fremont manages in February 2001.

Other Relevant Entity

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

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[1] The findings herein are made pursuant to Tengler's Offer of Settlement and are not binding on any other persons or entities in this or any other proceedings.

[2] "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, see Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that she is violating one of the Rules or Acts.

investment adviser to the Fremont Mutual Funds (the "Funds"). The Funds comprise thirteen 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. From at least 2000 through October 2002, the prospectus provided to investors and potential investors in the Fremont mutual funds disclosed that Fremont did not permit "excessive short-term trading, market-timing, or other abusive trading practices in our Funds."[3] 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."

6. During the relevant period, Tengler signed registration statements filed by Fremont with the Commission and made available to the investing public. These registration statements included the Funds' prospectus.

7. Fremont employed an individual whose responsibilities included identifying and blocking market timers in the Funds. This individual, referred to by some people as Fremont's "timing cop," blocked timers on a daily basis. She 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."

The Improper Market Timing Arrangement

8. In October 2001, Fremont entered into a written agreement with a brokerage firm that allowed 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

[3] 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.

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 the New Era Value Fund, a Fremont Fund founded a short time before and co-managed by Tengler.

9. At or around the same time of the arrangement, the head of institutional sales informed Tengler of its general terms. Several of Fremont's other officers voiced their opposition to the arrangement. Ultimately, Tengler permitted the head of institutional sales to go forward with a market timing arrangement. The sales head then directed Fremont's "timing cop" to allow the customer to time the Fund because the arrangement had been approved by Tengler.

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 an additional $27,000 in advisory fees for Fremont.

12. Prior to Tengler's authorization 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 NASD (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, Tengler had not conducted any type of analysis or study to understand the impact of market timing activity. Nor did she determine whether market timing was consistent with the terms of the Funds' prospectus, even though she signed the registration statements that contained the prospectus. As set forth above, market timing was expressly prohibited by the prospectus, and was inconsistent with Fremont's internal policy of closely monitoring trading in the Funds and barring abusive traders.

Failure to Inform Shareholders and Directors About Market Timing

14. At no time did Fremont or Tengler notify the Funds' shareholders that Fremont was permitting a favored investor to time the Funds while excluding others from exceeding the five-exchange limitation. Nor did Fremont or Tengler disclose Fremont's potential conflict of interest as a result of the increased fees and assets under management the deal generated. In addition, Tengler failed to disclose the existence of the market timing arrangement to the independent directors of the Fremont Mutual Funds.

Fremont Entered Into a Prohibited Joint Arrangement

15. 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.

Violations

16. As a result of the conduct described above, Tengler willfully violated Section 206(2) of the Advisers Act. Section 206(2) prohibits an investment adviser from engaging in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. A violation of Section 206(2) may be established by a showing of negligence. SEC v. Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992). Specifically, Tengler permitted a self- dealing arrangement whereby a favored client engaged in market timing notwithstanding a prohibition on market timing in the Funds' prospectus and an internal policy of barring investors from timing the Funds, and failed to disclose the special arrangement and Fremont's conflict of interest to the Funds' shareholders and board of directors.

17. As a result of the conduct described above, Tengler willfully violated Section 34(b) of the Investment Company Act, in that she 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 statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

18. As a result of the conduct described above, Tengler caused Fremont's violations of 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 files an application regarding such joint enterprise or arrangement with the Commission.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions agreed to in Respondent Tengler's Offer.

Accordingly, it is hereby ORDERED:

A. Pursuant to Sections 203(k) of the Advisers Act and 9(f) of the Investment Company Act, Respondent Tengler shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act and Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder.

B. Tengler shall, within 30 days of entry of this Order, pay $27,000 in disgorgement, plus a civil money penalty of $100,000, for a total payment of $127,000. Such payment shall be (1) made by United States postal money order or wire transfer, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (4) submitted under cover letter that identifies Tengler as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Helane L. Morrison, District Administrator, San Francisco District Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 1100, San Francisco, California, 94104. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution"). 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, Tengler agrees that she shall not, in any Related Investor Action, benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor in this proceeding that is proportionately attributable to the civil penalty paid by Tengler ("Tengler Penalty Offset"). If the court in any Related Investor Action grants such an offset or reduction, Tengler agrees that she shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in this action and pay the amount of the Tengler 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 against Tengler in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Tengler by or on behalf of one or more investors based on substantially the same facts as alleged in the Order in this proceeding.

C. Pursuant to Section 203(f) of the Advisers Act, Respondent shall be, and hereby is, suspended from association with any investment adviser for a period of six (6) months effective on the second Monday after the date of this Order.

D. Pursuant to Section 9(b) of the Investment Company Act, Respondent shall be prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter for a period of six (6) months effective on the second Monday after the date of this Order.

By the Commission.

Jonathan G. Katz
Secretary