

**MEMO# 18175**

November 12, 2004

## **SEC CHARGES FORMER EXECUTIVE OF FUND GROUP WITH FACILITATING MARKET TIMING OF MUTUAL FUND SHARES**

[18175] November 12, 2004 TO: BOARD OF GOVERNORS No. 74-04 CHIEF COMPLIANCE OFFICER COMMITTEE No. 23-04 COMPLIANCE ADVISORY COMMITTEE No. 108-04 SEC RULES MEMBERS No. 161-04 SMALL FUNDS MEMBERS No. 120-04 RE: SEC CHARGES FORMER EXECUTIVE OF FUND GROUP WITH FACILITATING MARKET TIMING OF MUTUAL FUND SHARES The Securities and Exchange Commission announced an enforcement proceeding against a former executive of a registered investment adviser to a group of mutual funds ("Funds") involving allegations that the former executive facilitated marketing timing of certain of the Funds in contravention of the Funds' public disclosures.\* According to the SEC Order, the SEC instituted administrative proceedings against the former executive based on allegations by the SEC's Division of Enforcement that in October 2001 the former executive negotiated a market timing agreement on behalf of the adviser with a brokerage firm that allowed the broker's customer to make frequent exchanges into and out of one of the Funds. The Division alleges that the former executive authorized this arrangement notwithstanding the Funds' prospectus language and internal policies that prohibited market timing. As part of this arrangement, the Division notes that the customer agreed to make a long-term investment of \$10 million in a Fund, which generated an additional \$27,000 in advisory fees for the adviser. The Division alleges that at no time did the former executive or the adviser notify the Funds' shareholders about the market timing agreement. As a result of the conduct generally described above, the Division alleges that the former executive willfully aided and abetted and caused the adviser's violations of: • the antifraud provisions of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 by entering into an arrangement with a market timer that was inconsistent \* See In the Matter of Larry Adams, SEC Release Nos. IA-2319 and IC-26652, Admin. Proc. File No. 3-11728 (Nov. 4, 2004) ("SEC Order"). Copies of the SEC Order, accompanying release, and press release describing the Fremont Investment Advisors, Inc. settlement are available at <http://www.sec.gov/litigation/admin/ia-2319-o.pdf>, <http://www.sec.gov/litigation/admin/ia-2319.htm>, and <http://www.sec.gov/news/press/2004-153.htm>, respectively. 2 with the Funds' prospectus disclosures and not disclosed to the Funds' shareholders and • Section 34(b) of the Investment Company Act of 1940, by making material misstatements and omissions in the Funds' prospectuses. A hearing will be scheduled before an administrative law judge to determine if the allegations are true and what sanctions, if any, are appropriate in the public interest. Jane G. Heinrichs Assistant Counsel

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