In the Matter of FLEET INVESTMENT ADVISORS INC. (as successor to Shawmut Investment Advisers, Inc.), Respondent

ADMINISTRATIVE PROCEEDING File No. 3-10005

SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940 RELEASE NO. 1821

September 9, 1999

ACTION:

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS, AND CEASE-AND-DESIST ORDER

TEXT:

I.

The Securities and Exchange Commission deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(f) of the Investment Company Act of 1940 ("Company Act") against Fleet Investment Advisors Inc. ("Fleet Advisors"), an investment adviser registered with the Commission, as successor to Shawmut Investment Advisers, Inc. ("Shawmut Advisers").

II.

In anticipation of the institution of these proceedings, Fleet Advisors has submitted an Offer of Settlement that 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, except those findings pertaining to the jurisdiction of the Commission over it and the subject matter of these proceedings, which Fleet Advisors admits, Fleet Advisors by its Offer of Settlement consents to the entry of the findings and the imposition of the remedial sanctions and cease-and-desist order set forth below.

Accordingly, IT IS ORDERED that proceedings pursuant to Sections 203(e) and 203(k) of the Advisers Act and Section 9(f) of the Company Act be, and hereby are, instituted.

III.

On the basis of this Order Instituting Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Section 9(f) of the Investment Company Act of 1940, Making Findings and Imposing Remedial Sanctions, and Cease-and-Desist Order ("Order") and the Offer of Settlement submitted by Fleet Advisors, the Commission makes the following findings. n1

A. THE RESPONDENT

Fleet Advisors is registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act (File No. 801-20312) with its principal place of business in Boston, Massachusetts. Fleet Advisors is the successor to Shawmut Investment Advisers, Inc., which was registered with the Commission as an investment adviser (File No. 801-20738). n2 Fleet Advisors is named as a Respondent solely on that basis. n3

B. FACTS

1. Summary

This proceeding is based on Shawmut Advisers' undisclosed use of approximately $ 1.9 million of advisory client commissions and mark-ups and mark-downs ("commissions" unless otherwise noted) to compensate certain broker-dealers ("brokers") for client referrals. From mid-1993 through December 1995, Shawmut Advisers represented to its clients that it directed brokerage commissions to brokers on the basis of research they provided. However, certain brokers were selected by a Shawmut Advisers salesman (the "Salesman") on the basis of their ability to refer clients to Shawmut Advisers. Shawmut Advisers did not disclose to its clients, in its Form ADV or otherwise, that it directed commissions to certain brokers in exchange for client referrals. In addition, two Shawmut Advisers' fixed-income traders altered several trade tickets in order to conceal that they did not seek the best price on certain transactions directed to a broker selected by the Salesman. Finally, certain of the brokerage commissions which Shawmut Advisers directed to brokers on the basis of client referrals resulted from transactions in the account of a registered investment company with which Shawmut Advisers was affiliated. As a result of the above, Shawmut Advisers violated Sections 204, 206(1), 206(2) and 207 of the Advisers Act and Rules 204-1(b)(1) and 204-2(a)(3) thereunder, and Section 17(e)(1) of the Company Act.

2. Shawmut Advisers' Brokerage Allocation Practice

a. Shawmut Advisers' Written Procedures

Prior to 1993, Shawmut Advisers adopted written brokerage allocation policies and procedures designed to ensure that its use of its clients' commissions to generate soft dollars n4 was consistent with its disclosures and within the safe harbor provisions of Section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act"). n5 Pursuant to these procedures, on an annual basis, Shawmut Advisers' Director of Research proposed a list of brokers and the amount of commissions to be directed to each of them. The Director of Research prepared the proposal after polling the research analysts regarding the research contributions of the brokers. Subsequently, a commission allocation committee, consisting of Shawmut Advisers' Chief Investment Officer ("CIO"), the Director of Research and other investment professionals, met to approve the "research brokers," and the amount of Shawmut Advisers' anticipated discretionary commissions to be allocated to each broker. n6

b. Shawmut Advisers, Through Certain of its Employees, Circumvented its Brokerage Allocation Procedures and Initiated an Undisclosed Practice of Directing Brokerage in Exchange for Client Referrals

At the beginning of 1993, pursuant to its brokerage allocation procedures, Shawmut Advisers developed a list of research brokers and budgeted annual amounts of brokerage commissions to be directed to them. In May 1993, Shawmut Advisers hired the Salesman to market Shawmut Advisers' asset management services to large institutional clients, primarily pension plans. Shortly after he was hired, the Salesman asked Shawmut Advisers' CIO to direct trades to certain brokers in exchange for the referral of potential investment management clients. The CIO discussed the Salesman's request with Shawmut Advisers' President and CEO ("President"), who supported the allocation of brokerage commissions based on client referrals. As a result, the CIO instructed the trading desk to direct trades to brokers selected by the Salesman in contravention of Shawmut Advisers' written brokerage allocation procedures.

Pursuant to the Salesman's request and the CIO's direction, during the second half of 1993, Shawmut Advisers' traders directed $ 71,618 in brokerage commissions to three brokers selected by the Salesman who were not on the research broker list. In 1994, Shawmut Advisers again selected research brokers and budgeted amounts of commissions to be directed to them during the year pursuant to its policy. However, in approximately March 1994, the CIO added seven brokers selected by the Salesman and approved an allocation of $ 405,000 in brokerage commissions to these brokers. All of the Salesman's brokers were selected on the basis of client referrals, rather than on the basis of brokerage and research services provided, as required by Shawmut Advisers' written brokerage allocation procedures.

c. Shawmut Advisers' President Knew it Was Improper to Allocate Commissions to Brokers in Exchange for Client Referrals Without Disclosure to Shawmut Advisers' Clients

Shawmut Advisers' President knew that Shawmut Advisers allocated brokerage commissions to the Salesman's brokers based on client referrals. In a July or August 1994 meeting attended by Shawmut Advisers' President, the Salesman explained that, pursuant to his arrangements with certain brokers, he directed a specified amount of brokerage commissions to the brokers per each million dollars of business that the brokers referred to him.

Further, the President knew that Shawmut Advisers was required to disclose its brokerage allocation practice to its clients. For example, in mid-1994, Shawmut Advisers' President reviewed an internal compliance report regarding Shawmut Advisers' soft dollar services. The report concluded that hard dollars must be used to pay for services that benefit Shawmut Advisers' sales or marketing efforts. As a result of the report, in August 1994, Shawmut Advisers' compliance department developed a soft dollar worksheet, which Shawmut Advisers' President reviewed. The worksheet cautioned that the broker selection process, and the reasonableness of commissions paid to brokers, must be evaluated to ensure regulatory compliance and that disclosure s must be made to clients for soft dollar arrangements.

Moreover, in September 1994, the President reviewed an opinion from Shawmut Advisers' in-house legal counsel which warned that any agreement which involved the allocation of brokerage commissions based on client referrals was inappropriate, and that Shawmut Advisers' receipt of such "non-research" services in exchange for direction of brokerage, must be disclosed. Contrary to this opinion, the President permitted the allocation of brokerage commissions to the Salesman's brokers, and did not ensure that the practice was disclosed to Shawmut Advisers' clients.

d. Shawmut Advisers Adopted an Exception to its Brokerage Allocation Policy Which Was Improperly Used to Approve Allocations to Brokers Selected by the Salesman.

In early fall 1994, as a result of concerns raised by certain of Shawmut Advisers' investment professionals regarding the circumvention of the written broker selection procedures, Shawmut Advisers adopted an exception to its procedures. The exception procedure was developed in order to provide a mechanism for approving the selection of the Salesman's brokers, who had not been approved by the commission allocation committee. The exception procedure was prepared by Shawmut Advisers' compliance manager, and approved by the commission allocation committee in September 1994. The procedure allowed the CIO to unilaterally approve the addition of a broker to the research broker list when it was in the best interest of Shawmut Advisers' clients.

Despite the requirements of the exception procedure, no formal analysis of the Salesman's brokers ever took place to ensure that the selection of the Salesman's brokers was in the best interest of Shawmut Advisers' clients. Rather, in September 1994, a newly appointed CIO improperly used the exception procedure to approve an allocation of $ 445,000 in brokerage commissions to nine brokers selected by the Salesman. The allocation was based on client referrals, and not on research provided by the brokers. The exception procedure was adopted solely to accommodate the selection of the Salesman's brokers and used as a guise to make it appear that the brokers were selected properly. n7

e. Shawmut Advisers' Client Referral Arrangement with a Michigan Broker

In late 1994, the Salesman entered into a client referral arrangement with a registered representative of a Michigan broker-dealer ("Michigan Broker"). n8 The Salesman and the registered representative agreed that for every one million dollars of pension plan assets that the registered representative assisted the Salesman in securing for Shawmut Advisers, the Salesman would cause $ 1,000 of brokerage commissions to be directed to the Michigan Broker. n9 However, because the Michigan Broker had no facilities for executing or clearing securities transactions, Shawmut Advisers directed all trades to specific clearing brokers for the benefit of the Michigan Broker. n10

With the assistance of the registered representative, in May 1995, Shawmut Advisers was selected by a pension plan ("Pension Plan") to liquidate the Pension Plan's $ 600 million fixed-income portfolio and reinvest the proceeds. In order to ensure that the Michigan Broker would receive a specified amount of commissions as compensation for the registered representative's assistance in obtaining the Pension

Plan account, the Salesman falsely told the head of Shawmut Advisers' fixed-income department that the Pension Plan had instructed Shawmut Advisers to direct trades in the account to specific brokers for the benefit of the Michigan Broker. Subsequently, the Michigan Broker entered into a correspondent agreement with a fixed-income broker-dealer ("Fixed-Income Broker-Dealer"). Pursuant to that agreement, the Fixed-Income Broker-Dealer forwarded to the Michigan Broker 80% of the mark-ups or mark-downs on securities transactions in the Michigan Broker's customers' accounts.

f. Two Shawmut Advisers' Fixed-Income Traders Altered Trade Tickets to Conceal that They Had Awarded Trades to the Fixed-Income Broker-Dealer When it Did Not Offer the Best Price

Shawmut Advisers' procedures for the selection of broker-dealers to execute fixed-income securities transactions involved obtaining bids or offers from three or more broker-dealers for each transaction, and awarding the transaction to the broker-dealer with the best price. Shawmut Advisers' fixed-income traders were responsible for directing trades in accordance with Shawmut Advisers' procedures.

After receiving the Salesman's instructions to direct transactions to the Michigan Broker, the head of Shawmut Advisers' fixed-income department told Shawmut Advisers' two fixed-income traders to give the Fixed-Income Broker-Dealer an opportunity to bid or offer on all trades. He told the traders to give the Fixed-Income Broker-Dealer a "last look" on all trades, meaning to give the Fixed-Income Broker-Dealer an opportunity to beat the best price. He also told the traders to "credit" the Michigan Broker on all trades which they awarded to the Fixed-Income Broker-Dealer.

In an effort to ensure that the Michigan broker received transactions, the two fixed-income traders awarded several trades to the Fixed-Income Broker-Dealer when it did not submit the best price. Under Shawmut Advisers' procedures, the fixed-income traders were required to record all bids or offers for each transaction on a trade ticket, and fax the trade ticket to the client. In order to conceal from Shawmut Advisers' clients that they did not seek the best available price, the traders altered trade tickets by either covering with white-out or crossing out more favorable bids or offers to make it appear that the Fixed-Income Broker-Dealer had submitted the best price, when it had not. Accordingly, on those transactions, Shawmut Advisers failed to seek the best price for its clients' securities transactions, which cost its clients $ 63,359.

g. Shawmut Advisers Arranged for a Commission-Splitting Agreement Between a National Brokerage Firm and the Michigan Broker In Order to Facilitate Paying the Michigan Broker for Client Referrals

In July 1995, the Salesman recommended that Shawmut Advisers approve a large increase in the allocation to the Michigan Broker in order to continue to fulfill Shawmut Advisers' obligations to the Michigan Broker pursuant to the client referral arrangement. Shawmut Advisers' CIO became concerned that such a large allocation to the Michigan Broker would draw the attention of regulators. n11 In order to increase the allocation to the Michigan Broker and to avoid regulatory scrutiny, the Salesman, with the knowledge and approval of Shawmut Advisers' President, arranged for a commission-splitting agreement between a national brokerage firm ("National Broker") and the Michigan Broker. Pursuant to the arrangement, the National Broker executed transactions in Shawmut Advisers' clients' accounts, and forwarded 80% of the commissions on those transactions to the Michigan Broker.

After the National Broker and the Michigan Broker entered into the commission-splitting arrangement, Shawmut Advisers' Acting CIO approved a brokerage allocation to the National Broker, knowing that 80% of the commissions would be directed to the Michigan Broker. At the same time, the Acting CIO decreased the direct allocation to the Michigan Broker. Therefore, Shawmut Advisers' commission reports showed a decrease in the allocation to the Michigan Broker, although by directing commissions to the National Broker, Shawmut Advisers actually had increased the Michigan Broker's allocation. n12

h. Shawmut Advisers Also Directed Transactions to the Salesman's Brokers from The Shawmut Funds, a Registered Investment Company

Approximately $ 49,259 of the brokerage commissions directed to the Salesman's brokers during 1994 and 1995 resulted from transactions that Shawmut Advisers' traders directed on behalf of The Shawmut Funds (the "Funds"), which was registered with the Commission as an investment company from

December 1992 until December 1995. Although Shawmut Advisers was not the adviser to the Funds, and did not ordinarily direct transactions for the Funds, Shawmut Advisers, through its traders, directed certain transactions for the Funds during this period in order to generate further commissions to compensate the Salesman's brokers for client referrals. n13

i. Fleet Advisors' Discovery of Shawmut Advisers' Brokerage Allocation Practice

After the merger between Shawmut Advisers and Fleet Advisors in December 1995, the Salesman and Shawmut Advisers' President misled Fleet Advisors about the practice of directing brokerage in exchange for client referrals by falsely stating that Shawmut Advisers had received client direction letters concerning the Salesman's brokers. In March 1996, in connection with the preparation of its Form ADV, Fleet Advisers learned of some of the brokerage allocation practices that had occurred at Shawmut Advisers, and initiated an internal investigation. As a result, Fleet Advisors suspended trading with the Salesman's brokers. By the time Fleet Advisors halted trading with these brokers, Shawmut Advisers had directed approximately $ 1,815,254, and Fleet Advisors had directed approximately $ 27,448 in commissions to brokers selected by the Salesman, consisting of approximately $ 1,175,345 in equity commissions and approximately $ 667,357 in fixed-income mark-ups and mark-downs. n14

3. Shawmut Advisers Failed to Disclose its Brokerage Allocation Practice

Shawmut Advisers failed to disclose in its Form ADV or amendments thereto that it used commissions generated from its clients' brokerage transactions to pay for client referrals. Part II, Item 12.A.3 of Form ADV requires the adviser to describe "the factors considered in selecting brokers and determining the reasonableness of their commissions." Shawmut Advisers' Form ADV, filed on April 1, 1986, which was in effect at the time Shawmut Advisers began its practice of selecting brokers on the basis of client referrals, contained the following disclosures in response to Item 12.A.:

Applicant will consider the contribution made to its investment product by the research offered by brokers when selecting brokers whose execution is acceptable. Brokers' research contributions will be measured by their depth of knowledge and the timeliness of information available for selected industry groups and companies, the accuracy and reliability of their information, their ability to effectively communicate research information, and their responsiveness to the analysts.

Where applicant pays a broker a commission in excess of that which another broker might have charged for executing the same order, applicant will do so only when the execution is performed according to high quality standards and the research services clearly provide value added to the investment process in the terms of the brokers' research standards stated above.

Part II, Item 13.B. asks whether the adviser has any arrangements where it "directly or indirectly compensates any person for referrals," and requires the adviser to describe any such arrangements. Shawmut Advisers' Form ADV, filed on April 1, 1986, answered "yes", and contained the following disclosure in response to Item 13.B.:

Applicant pays bonus compensation to any employee of a Shawmut Corporation affiliate bank or organization who makes a successful new business referral to the applicant. The employee is paid a bonus equal to 10% of the first year's estimated fee.

After Shawmut Advisers began selecting brokers based on client referrals, it filed four amendments to its Form ADV in 1994 and 1995. Shawmut Advisers personnel responsible for the completion and filing of Shawmut Advisers' Form ADV were familiar with the disclosure requirements. An outside consultant that assisted Shawmut Advisers with its Form ADV advised Shawmut Advisers that it must disclose all relationships that Shawmut Advisers had with brokers. The consultant further advised that, as a fiduciary, Shawmut Advisers must disclose all conflicts and potential conflicts of interest to its clients. Notwithstanding, none of the amendments to Shawmut Advisers' Form ADV disclosed Shawmut Advisers' use of brokerage commissions to compensate brokers for client referrals.

Shawmut Advisers also failed to disclose its client referral arrangements in response to a request from a potential client. On or about May 16, 1995, Shawmut Advisers' CIO received a letter from a retirement plan ("Retirement Plan") asking whether Shawmut Advisers had any formal or informal agreements to

compensate any individual or firm for activities leading to the selection of Shawmut Advisers as an investment adviser. The CIO knew that the Salesman was seeking business from the Retirement Plan, and suspected that Shawmut Advisers was directing commissions to a broker who had referred the Retirement Plan to the Salesman. Nonetheless, the CIO failed to respond to the letter. A representative from Shawmut Advisers' marketing department, who did not know about the Salesman's arrangements, sent a response to the Retirement Plan denying that Shawmut Advisers had such agreements. When the CIO learned about the marketing representative's response to the Retirement Plan, he took no steps to correct the false information which had been provided.

C. LEGAL ANALYSIS

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

Sections 206(1) and (2) prohibit an investment adviser from employing any device, scheme or artifice to defraud clients or prospective clients, or from engaging in any transaction, practice or course of business that operates as a fraud on clients. Sections 206(1) and (2) establish a fiduciary duty for investment advisers to act for the benefit of their clients. Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979). This fiduciary duty precludes the adviser from any undisclosed use of its clients' assets to benefit itself. Kingsley, Jennison McNulty & Morse Inc., Advisers Act Rel. No. 1396, 55 SEC Docket 2434, 2438 (Dec. 23, 1993). Further, an investment adviser has a duty to disclose to clients all material information which might incline an investment adviser consciously or unconsciously to render advice which is not disinterested. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-92 (1963). The standard of materiality is whether a reasonable client or prospective client would have considered the information important in deciding whether to invest with the adviser. See SEC v. Steadman, 967 F.2d 636, 643 (D.C. Cir. 1992). Information regarding an investment adviser's directed brokerage arrangements is material and must be disclosed to clients. Sheer Asset Management, Inc. and Arthur Sheer, Advisers Act Rel. No. 1459, (Jan. 3, 1995).

In addition, an investment adviser's fiduciary duty includes the requirement to seek the best execution of client securities transactions where the adviser is in a position to direct brokerage transactions. Kidder Peabody & Co., Inc., Edward B. Goodnow, Advisers Act Rel. No. 232, (Oct. 16, 1968); Delaware Management Company, Inc., Exchange Act Rel. No. 8128, (July 19, 1967). Scienter is an element of a Section 206(1) violation. Steadman v. SEC, 603 F.2d 1126, 1134 (5th Cir. 1979). Proof of scienter is not required to establish a violation of Section 206(2). Capital Gains, 375 U.S. at 195.

Shawmut Advisers willfully violated Sections 206(1) and (2) by failing to disclose to its clients in its Form ADV, or otherwise, that it used brokerage commissions generated from its clients' transactions to compensate brokers for client referrals. Shawmut Advisers also willfully violated Sections 206(1) and (2) by failing to seek the best available price on certain fixed-income transactions for its clients.

2. Willful Violations of Sections 207 and 204 of the Advisers Act and Rules 204-1 and 204-2

Section 207 of the Advisers Act makes it unlawful for any person willfully to make any untrue statement of material fact in any registration application or report filed with the Commission or willfully to omit to state in any such application or report any material fact required to be stated therein. A person violates Section 207 by filing false amendments to Form ADV. See Stanley Peter Kerry, Advisers Act Rel. No. 1550, 61 SEC Docket 431 (Jan. 25, 1996).

Form ADV embodies mandatory disclosure requirements to ensure that material information regarding brokerage placement practices and policies is disclosed to investors. See Investment Adviser Requirements Concerning Disclosure, Recordkeeping, Applications for Registration and Annual Filings, Advisers Act Rel. No. 664, 16 SEC Docket 901 (Jan. 30, 1979); Disclosure of Brokerage Placement Practices By Certain Regulated Investment Companies and Certain Other Issuers, Advisers Act Rel. No. 665, 16 SEC Docket 837 (Jan. 30, 1979). For investment advisers who have discretionary authority to select the brokers to be used to execute trades in client accounts, Item 12.B. of Form ADV requires a description of the factors considered in selecting brokers and determining the reasonableness of their commissions. Item 12.B. also requires advisers to describe the "products, research and services" received from brokers, if the value of such "products, research and services" is a factor in selecting brokers. Item 13.B. requires an investment adviser to disclose and describe any arrangement whereby it

directly or indirectly compensates any person for client referrals. These disclosure requirements are designed to "assist clients in determining whether to hire an adviser or continue a contract with an adviser, and permit them to evaluate any conflicts of interest inherent in the adviser's arrangements for allocating brokerage." Kingsley, Jennison McNulty & Morse Inc., Advisers Act Rel. No. 1396, 55 SEC Docket 2434, 2441-42 (Dec. 23, 1993).

Under the mandatory disclosure standards embodied in Form ADV, Shawmut Advisers had a duty to file a Form ADV that was not false or misleading and that did not omit to state material facts required to be stated therein. S Squared Technology Corp., Advisers Act Rel. No. 1575, 62 SEC Docket 1560 (Aug. 7, 1996). Furthermore, an adviser's arrangement to direct brokerage in exchange for benefits to the adviser is material and must be disclosed on Form ADV. Sheer Asset Management. In 1994 and 1995, Shawmut Advisers filed four amendments to its Form ADV, none of which disclosed its arrangements to direct brokerage in return for client referrals. Therefore, Shawmut Advisers willfully violated Section 207.

Section 204 and Rule 204-1(b)(1) require investment advisers promptly to amend inaccurate material statements in Part II of Form ADV. Shawmut Advisers willfully violated Section 204 and Rule 204-1(b)(1) by failing promptly to amend Part II of its 1986 Form ADV to correct its non-disclosure of its brokerage allocation practice after mid-1993, when it began using brokerage commissions to compensate brokers for client referrals.

Section 204 and Rule 204-2(a)(3) require investment advisers to make and keep true and accurate memoranda of each order given by the investment adviser for the purchase or sale of any security. Shawmut Advisers willfully violated Section 204 and Rule 204-2(a)(3) by altering certain fixed-income trade tickets to conceal that it did not seek the best available price on those transactions.

3. Willful Violation of Section 17(e)(1) of the Company Act

Section 17(e)(1) of the Company Act makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, when acting as an agent, to accept compensation from any source (other than a salary or wages from the registered investment company) for the purchase or sale of any property to or for the registered investment company. n15 It is not necessary to show that the affiliated person, or its affiliated person, was actually influenced by receipt of the compensation, that the receipt of the compensation caused economic injury to the investment company, or that the violator acted with scienter. See Parnassus Investments, Jerome L. Dodson, Marilyn Chou, and David L. Gibson, Initial Decision Release No. 131, 1998 SEC LEXIS 1877 (Sept. 3, 1998), citing United States v. Deutsch, 451 F.2d 98, 109 (2d Cir. 1971); Investors Research Corporation, Fed. Sec. L. Rep. (CCH) p81,586 (May 1, 1978), aff'd in part and vacated in part, Investors Research Corporation and Stowers v. SEC, 628 F.2d 168 (D.C. Cir. 1980). Shawmut Advisers' receipt of client referrals in exchange for brokerage commissions from transactions executed on behalf of the Funds constitutes compensation in violation of this section. See Stein Roe & Farnham Inc., Advisors Act Rel. No. 1217, 1990 SEC LEXIS 71 (Jan. 22, 1990), citing Investors Research, Fed. Sec. L. Rep. (CCH) p81,586. n16 Therefore, Shawmut Advisers willfully violated Section 17(e)(1) of the Company Act.

IV.

In determining to accept the Offer of Settlement, the Commission considered remedial acts promptly undertaken by Fleet Advisors and cooperation afforded the Commission staff.

V.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in the Offer of Settlement submitted by Fleet Advisors.

VI.

Accordingly, IT IS ORDERED that:

A. Fleet Advisors, as successor to Shawmut Advisers, shall cease and desist from committing or causing

any violations and any future violations of Sections 204, 206(1), 206(2) and 207 of the Advisers Act and Rules 204-1(b)(1) and 204-2(a)(3) thereunder, and Section 17(e)(1) of the Company Act;

B. Fleet Advisors shall comply with its undertaking to pay, as successor to Shawmut Advisers, within 60 days of the entry of this Order, an aggregate of $ 1,918,646 to the appropriate clients. n17 Any portion of the $ 1,918,646 which is not paid to clients shall be paid to the United States Treasury within 90 days of the entry of this Order. Such payment shall be: (1) made by United States postal money order, 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 Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies Fleet Advisors 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 James B. Adelman, Associate District Administrator, Securities and Exchange Commission, Boston District Office, 73 Tremont Street, Suite 600, Boston, Massachusetts 02108; and

C. Fleet Advisors shall, within 90 days of the date of this Order, send via certified mail to James B. Adelman, Associate District Administrator, Securities and Exchange Commission, Boston District Office, 73 Tremont Street, Suite 600, Boston Massachusetts 02108, a letter certifying that Fleet Advisors has complied with its undertaking pursuant to paragraph VI(B) of this Order, setting forth the amount paid to clients. Such letter shall be submitted under cover letter which identifies Fleet Advisors, as successor to Shawmut Advisers, as the respondent in these proceedings, the file number and the Commission's case number.

By the Commission.

Footnotes

n1 The findings, contained in Section III of this Order, are made pursuant to Fleet Advisors' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

n2 On December 1, 1995, Shawmut Advisers' parent company, Shawmut National Corporation, was acquired by Fleet Advisors' parent company, Fleet Financial Group, and Shawmut Advisers merged with Fleet Advisors. On December 31, 1995, Shawmut Advisers withdrew its registration as an investment adviser.

n3 See Meridian Securities, Inc., Corestates Capital Markets and Martin J. Stallone, Exchange Act Rel. No. 39905, 66 SEC Docket 3103 (April 23, 1998) (by operation of merger, successor charged with violations based on actions of its predecessor).

n4 "Soft dollar practices" generally describe arrangements whereby an investment adviser uses commission dollars generated by its advisory clients' securities trades to pay for research, brokerage, or other products, services or expenses. See S Squared Technology Corp., Advisers Act Rel. No. 1575, 62 SEC Docket 1560, 1561 (Aug. 7, 1996).

n5 Section 28(e) of the Securities Exchange Act of 1934 provides a safe harbor that protects an investment adviser from charges of breach of fiduciary duty for failing to obtain the lowest available commission rate when the adviser uses client brokerage commissions to obtain research and brokerage services from or through a broker-dealer, and discloses such use (and complies with other requirements). Research is generally defined as a product or service that provides lawful and appropriate assistance to a money manager in making investment decisions. See Republic New York Securities Corporation and James Edward Sweeney, Advisers Act Rel. No. 1789, 1999 SEC LEXIS 278 (Feb. 10, 1999); see also 1986 Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 23170, 35 SEC Docket 905, 906-907 (April 23, 1986) ("1986 Soft Dollar Release").

n6 Shawmut Advisers determined the amount of anticipated discretionary brokerage commissions to be allocated among its research brokers by taking the amount of brokerage allocated to the research brokers the prior year, and adjusting it according to the prevailing per share commission rate then being paid to brokers by the investment advisory industry.

n7 During 1994, Shawmut Advisers directed $ 410,566 in brokerage commissions to brokers selected by the Salesman, and obtained approximately $ 150 million in new assets under management through those brokers.

n8 The Michigan Broker had only one registered representative.

n9 The registered representative received 95% of the commissions directed to the Michigan Broker.

n10 Pursuant to this arrangement, at the Salesman's direction, Shawmut Advisers directed $ 36,354 in brokerage commissions to the Michigan Broker during the second half of 1994. In early 1995, Shawmut Advisers allocated $ 250,000 in brokerage commissions to the Michigan Broker as part of an overall allocation of $ 605,000 in brokerage commissions to be directed to the Salesman's brokers.

n11 The increase proposed by the Salesman would have made the allocation to the Michigan broker larger than the amount that Shawmut Advisers' allocated to its top research brokers.

n12 Pursuant to the agreement, Shawmut Advisers directed $ 84,533 in equity commissions to the National Broker in 1995.

n13 Shawmut Bank, N.A. was the adviser to the Funds. Shawmut National Corporation was the parent corporation of both Shawmut Bank, N.A. and Shawmut Advisers. The same traders performed trading functions for both Shawmut Bank, N.A. and Shawmut Advisers.

n14 Of the $ 1,842,702 directed to the Salesman's brokers, approximately $ 959,652 was directed to the Michigan Broker.

n15 Pursuant to the definition of affiliated person in Section 2(a)(3) of the Company Act, Shawmut Advisers was an affiliated person of Shawmut Bank, N.A., which was an affiliated person of the Funds because it was the adviser to the Funds.

n16 Even if Shawmut Advisers had adequately disclosed its receipt of client referrals in exchange for brokerage commissions, the disclosure would not have cured the violation of Section 17(e)(I) because that provision reflects the Congressional determination that disclosure alone is not adequate protection in the investment company field. See Parnassus Investments, 1998 SEC LEXIS 1877; see also 1986 Soft Dollar Release.

n17 The Commission notes that, subsequent to the commencement of the Commission's investigation but prior to the entry of this Order, Fleet Advisors paid the sum of $ 1,736,606.12 to clients. This amount includes interest of $ 12,585.48 on the $ 63,359 that was overpaid as a result of the altered trade tickets.