

Exchange Commission (“SEC” or Commission”) addressing market timing of mutual funds formerly advised by Invesco Funds Group, Inc. (“IFG”).¹

On October 8, 2004, IFG consented to the entry of an Order Instituting Administrative and Cease-and-Desist Proceedings, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 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 a Cease-and-Desist Order (“Order”), without admitting or denying the Order’s findings. The Order found, among other things, that IFG entered into agreements that allowed certain individuals and entities (“Special Situations”) to make frequent trades in Invesco Funds advised by IFG during the period from at least 2001 through July 31, 2003, that were inconsistent with fund prospectuses and potentially harmful to Invesco Funds shareholders. In addition to entering into the market timing agreements described, from at least 2000 through July 2003 (“Relevant Period”), IFG typically did not take action to restrict the trading of Invesco Fund shareholders whom IFG knew were trading in excess of the four-exchange limit set forth in the Invesco Funds’ prospectuses (“Tolerated Timers”).

As described more fully below, the process of calculating the amounts to be distributed to investors and causing those distributions to be made from the IFG Fair Fund will be implemented through a “Twenty-Six Step Process.”

Pursuant to the Order, IFG agreed to pay \$325 million, of which \$110 million represents civil penalty and \$215 million represents disgorgement, into a Fair Fund (“IFG Fair Fund”) established under Section 308(a) of the Sarbanes-Oxley Act for the benefit of injured

¹ *In the Matter of Raymond R. Cunningham*, Admin. Proc. No. 3-11702 (October 8, 2004), *In the Matter of Michael D. Legoski*, Admin. Proc. No. 3-11620 (August 30, 2004), *In the Matter of Timothy J. Miller*, Admin. Proc. No. 3-11619 (August 30, 2004), and *In the Matter of Thomas A. Kolbe*, Admin. Proc. No. 3-11618 (August 30, 2004).

shareholders which is currently on deposit with the U.S. Treasury (“Treasury”). Pursuant to the Order, AIM Advisors, Inc. (“AIM Advisors”), which had become the advisor to the mutual funds advised by IFG during the time period covered by the Order, retained “the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and the independent board members of the AIM Funds.” The Order directs “AIM Advisors [to] require ... that the Independent Distribution Consultant develop a Distribution Plan for the distribution of the monies ordered to be paid in ... paragraph IV.E.3. of the Order, and any interest or earnings thereon, according to a methodology developed in consultation with AIM Advisors and acceptable to the staff of the Commission and the independent board members of AIM Funds.” The Order further directs “IFG and AIM Advisors [to] cooperate fully with the Independent Distribution Consultant and [to] provide the Independent Distribution Consultant with access to IFG’s and AIM Advisors’ files, books, records, and personnel as reasonably requested for the review.”² As required by the Order, AIM Advisors has agreed to pay the “Independent Distribution Consultant’s compensation and expenses.”³

In accordance with the Order, AIM Advisors has retained Professor Gordon J. Alexander, who holds the John Spooner Chair in Investment Management in the Carlson School of Management at the University of Minnesota and is a former Academic Fellow at the Commission, as the Independent Distribution Consultant (“IDC”). This submission constitutes the Distribution Plan required by the Order. The IDC was assisted in preparing the Plan by CRA International, an economic, financial, and management consulting firm with 17 offices located in the United States and 13 offices located elsewhere in the world. Assistance was also provided by Arnold & Porter, a law firm with six offices located in the United States and two located

² Order at ¶ 55.

³ *Id.*

overseas. The Plan is subject to approval by the Commission and the Commission will retain jurisdiction over the implementation of the Plan.

Pursuant to Commission Rule 1103 (17 C.F.R. §201.1103), notice of this Plan shall be published in the SEC Docket, on the Commission’s website, on the website listed immediately below, and in such other publications, if any, as the Commission or hearing officer may require.

<http://www.invescofairfund.com>

ADMINISTRATION OF THE PLAN

Appointment of an Administrator for the IFG Fair Fund

The Commission’s Order requires that the IDC submit a 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.”⁴ The Order provides that “AIM Advisors shall require that the Independent Distribution Consultant, with AIM Advisors, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.”⁵ Accordingly, AIM Advisors and the IDC have proposed that Boston Financial Data Services, Inc. serve as the administrator of the IFG Fair Fund (“Fund Administrator”).

The Fund Administrator, founded in 1973, is a third-party service provider that provides transfer agency services to over 145 fund companies. The Fund Administrator has extensive experience in both the settlement administration industry (over 11 years) and the mutual fund industry (over 30 years). Under the supervision of the IDC, the Fund Administrator will be responsible for, among other things: overseeing administration of the IFG Fair Fund; obtaining

⁴ *Id.* at ¶ 55d.

⁵ *Id.*

accurate mailing information for shareholders; preparing accountings; cooperating with the Tax Administrator appointed by the Commission (described *infra*) in providing the information necessary to accomplish any income tax compliance, ruling, and advice work; distributing money from the IFG Fair Fund to shareholders in accordance with this Plan; setting up and staffing a call center to address shareholder questions or concerns regarding the distribution; and maintaining an informational website to address frequently asked questions and other information regarding the Plan. AIM Advisors will pay all fees and costs associated with the Fund Administrator's services.

The Fund Administrator is not a "Commission employee," and therefore Rule 1105(c) requires that "the administrator shall . . . obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission," but "the Commission may waive posting of a bond for good cause shown." AIM Advisors and the IDC propose that the bond requirement for the Fund Administrator be waived. Good cause exists to waive posting of a bond for several reasons: (1) the Fund Administrator will have no custody and restricted control of the IFG Fair Fund; (2) the distribution funds will remain at the U.S. Treasury Bureau of Public Debt ("BPD") until checks are prepared and are ready for mailing; (3) upon transfer from Treasury, the funds will be held in an escrow account (the "QSF Escrow Account," described *infra*) until presentation of a check or wire; (4) at the time a check is presented the funds will transfer to a controlled disbursement account at a bank (the "QSF Disbursement Account," described *infra*), and presented checks will be subject to "positive pay" controls before being honored by the bank; and (5) the Fund Administrator maintains adequate insurance coverage against loss. In lieu of bond, the Fund Administrator maintains, and will maintain until termination of the IFG Fair Fund, a Financial Institutions Bond (including a Computer Crime Policy) and Errors and

Omissions insurance. The financial strength of the primary insurers, as of the most recent renewal of the coverage, was rated “A+” by A.M. Best. The Financial Institutions Bond 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 Errors and Omissions insurance protects against errors and omissions committed by employees in the course of their performance of professional services. The Fund Administrator’s professional liability insurance protects against errors and omissions committed by employees of the Fund Administrator in the course of their performance of professional services. Documentation of coverage has been provided to the assigned Commission staff for review and that coverage has been deemed “not unacceptable.” Under the Plan, \$325 million, plus accumulated interest and possible receipt of Other Plan Payments and from settlements with former Invesco employees, is the maximum amount that will be under the Fund Administrator’s limited control.

Deutsche Bank Trust Company Americas (“Bank”), where the IFG Fair Fund assets will be held during the check-cashing period, maintains, among other insurance, a Financial Institution Blanket Bond, and Errors and Omissions insurance coverage. The financial strength of the primary insurers, as of the most recent renewal of the coverage, was rated “A++” and “A+,” respectively, by A.M. Best. The Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data, exposure to loss, and internal company controls. The Bank’s limits are reviewed annually by its Board of Directors. Documentation of coverage has been provided to the assigned Commission staff for review and that coverage has been deemed “not unacceptable.” Furthermore, upon transfer from Treasury, funds will be held

in the QSF Escrow Account, described *infra*, separate from the Bank's assets, until presentation of a check or wire, at which time funds will be transferred to the QSF Disbursement Account, described *infra*, and presented checks or wires will be subject to "positive pay" controls before being honored by the Bank.

Control of the IFG Fair Fund

Pursuant to the Order, AIM Advisors made a payment of \$163,657,534 on December 29, 2004 and made a further payment of \$170,936,643 on October 12, 2005, representing a total of \$334,594,177,⁶ into an escrow account at Deutsche Bank Trust Company Americas ("Escrow Agent") to be invested in short-term United States Treasury Securities with maturities not to exceed six months. On September 29, 2005, the SEC issued an Order Directing Escrow Agent To Transmit Funds (the "September 29, 2005 Order") which directed that, upon the maturity of the securities held in the escrow account, the Escrow Agent transfer the monies in the escrow account to the Office of Financial Management at the SEC ("OFM"). In accordance with the September 29, 2005 Order, the Escrow Agent subsequently transferred all escrowed monies to OFM.

The assets of the IFG Fair Fund are under the continuing jurisdiction and control of the Commission. The IFG Fair Fund is currently deposited at the BPD and will remain there until released to the QSF Escrow Account in accordance with Step Fifteen below. This IFG Fair Fund will not receive additional funds, other than the interest from the funds on deposit at the BPD and possible payments made by Other Plan Payments and from settlements with former Invesco employees. The distribution of payments from Other Plan Payments is described in greater detail in a later section of this document.

⁶ This total amount consisted of \$215 million in disgorgement, a civil penalty of \$110 million, and \$9,594,177 in interest.

The IFG 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. Upon approval of the Plan, the Fund Administrator, under the supervision of the IDC, shall establish an escrow account and a controlled disbursement account at the Bank in the name of and bearing the Taxpayer Identification Number of the QSF (the “QSF Escrow Account” and the “QSF Disbursement Account”, respectively, or together, the “QSF Accounts”). Following approval of the Plan and the IDC’s satisfaction of the requirements of Step Fifteen below, and unless otherwise directed by the Commission, the Commission staff shall cause the balance in the IFG Fair Fund to be deposited in the QSF Escrow Account. The Fund Administrator shall be the signer on the QSF Accounts, subject to the supervision of the IDC and the continuing jurisdiction and control of the Commission. The Fund Administrator shall authorize the Bank to provide QSF Account information to Damasco & Associates (“Tax Administrator”). The Fund Administrator shall use the assets and earnings of the IFG Fair Fund to provide payments to investors and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs associated with the QSF Accounts. The QSF Escrow Account shall be invested in direct obligations of the United States Government of a type and term necessary to meet the cash requirements of the payments to investors, tax obligations, and fees.

Tax Obligations of the IFG Fair Fund

The Commission has appointed Damasco & Associates as the Tax Administrator of the IFG Fair Fund pursuant to the March 10, 2006 Order Appointing Tax Administrator (Release No. 53468, Admin. Proc. File No. 3-11530). The IDC, Fund Administrator, and AIM Advisors will cooperate with the Tax Administrator in providing information necessary to accomplish income tax compliance, ruling, and advice work assigned to the Tax Administrator by the

Commission. The Tax Administrator will be compensated first by any earnings or interest of the QSF and second, if necessary, from the principal of the QSF. The Fund Administrator shall authorize the Bank to provide duplicate bank statements for the QSF Accounts directly to the IDC, the Tax Administrator, and Jeffery A. Cohen,, Assistant Regional Director, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, Texas 76102-6882.

The IDC, the Fund Administrator, and the Tax Administrator will not provide tax advice to any investors receiving distributions from the IFG Fair Fund. Access to any guidance issued by the Internal Revenue Service regarding the distribution will be provided along with the other information to investors described in Step Sixteen below.

Standard of Care of IDC and Fund Administrator

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 person other than the Commission or the QSF 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. This paragraph is an expression of the IDC's and the Fund Administrator's standard of care 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 by the Commission or the QSF, nor should this paragraph preclude the Commission or the QSF from seeking redress from IDC or the Fund Administrator in accordance with the rules and regulations of the Commission and the QSF.

DISTRIBUTION PLAN AND PROCEDURES

Eligible Investors

The Order requires that the IDC develop a distribution plan that “provides for investors to receive, from the monies available for distribution in order of priority, (i) their proportionate share of losses suffered by the funds 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.”⁷ Investors eligible to receive a share of the IFG Fair Fund are those investors who held shares in the mutual funds in which market timing occurred on the days on which such market timing occurred during the Relevant Period, except (1) identified timers referred to in paragraphs 6 and 17 of the Order (“Special Situations”), (2) certain of those market timers referred to in paragraph 25 of the Order as “Tolerated Timers,” as described below, and (3) former employees of IFG who were sanctioned by the Commission for their role in facilitating market timing agreements by others in IFG Funds (“Sanctioned Former Employees”). A list of the funds in which market timing occurred is shown in Exhibit A.

A list of Special Situations whose accounts will not receive a distribution from the IFG Fair Fund is attached hereto as Exhibit B. Those Tolerated Timers who made more than four exchanges out of any single fund in any 12-month period (“Certifying Accounts”) will be eligible to receive a share of the IFG Fair Fund only under conditions outlined in Step Seven.

The payments to be made to those investors harmed by improper market timing activity will be computed and distributed on an account-by-account basis, aggregating by identical owner where legally appropriate and practical.⁸

⁷ Order at ¶ 55.

⁸ The ability to aggregate by owner will be limited due to information availability. The IDC will determine the extent to which efforts will be made to identify common ownership of accounts based on the estimated costs and benefits of the activities required to do so.

Payment Calculation

The method of calculation of the payment to each eligible investor account from the IFG Fair Fund is intended to result in a restoration of the impaired value of the investment of the eligible investor account in the affected mutual funds. Some of this impaired value is susceptible to calculation, while some of this impaired value is not. The methods of calculation are intended to fairly estimate the impaired value that each investor has suffered as a result of market timing and to make a payment in that amount. In the view of the IDC, empirical analysis of the timing transactions at issue in this proceeding indicates that, on the specific facts of this case, there are two separate components of harm suffered by eligible investors – dilution of investment returns and excess transaction costs incurred.⁹ A fair and reasonable method for determining the dilution of investment returns caused by the trading described in the Order is to calculate the difference in the actual return of the fund and the estimated return of the fund “but for” the market timing trades addressed by the Order, taking into account the distortion in cash balances resulting from those trades.¹⁰ A fair and reasonable method for determining excess transaction costs is to (1) identify incremental portfolio trading volume (investments and disinvestments) executed by each fund’s portfolio manager in reaction to the market timing trades addressed by the Order, and (2) calculate the cost of that incremental portfolio trading volume, including both the direct cost of brokerage commissions and fees and the indirect costs of executed trades as

⁹ Potential causes of shareholder harm also considered include: tax costs due to increased portfolio trading; costs resulting from “flight of capital” caused by public disclosure and ultimate settlement of the market timing allegations; use of T+1 accounting; and higher administrative costs. Analysis by the IDC indicated the harm attributable to these causes, if any, was immaterial, and thus is not considered in the Plan.

¹⁰ This approach was first described in J. Greene and C. Hodges, “The Dilution Impact of Daily Fund Flows on Open-Ended Mutual Funds,” *Journal of Financial Economics*, May 8, 2001 and subsequently in J. Greene and C. Ciccotello (2006), “Mutual Fund Dilution from Market Timing Trades,” *Journal of Investment Management*, 4(1), 42-66.

