

MEMO# 18111

October 25, 2004

SEC SETTLES WITH FORMER EXECUTIVE OF FUND GROUP CHARGED WITH FACILITATING MARKET TIMING OF MUTUAL FUND SHARES

[18111] October 25, 2004 TO: BOARD OF GOVERNORS No. 68-04 CHIEF COMPLIANCE OFFICER COMMITTEE No. 17-04 COMPLIANCE ADVISORY COMMITTEE No. 102-04 PRIMARY CONTACTS - MEMBER COMPLEX No. 97-04 SEC RULES MEMBERS No. 155-04 SMALL FUNDS MEMBERS No. 116-04 RE: SEC SETTLES WITH FORMER EXECUTIVE OF FUND GROUP CHARGED WITH FACILITATING MARKET TIMING OF MUTUAL FUND SHARES The Securities and Exchange Commission has issued an order making findings and imposing disgorgement, penalties, and remedial sanctions in an enforcement action charging the former chief executive officer, president and chief operating officer of a registered investment adviser to a group of mutual funds ("Funds") with securities fraud for facilitating market timing of certain of the Funds in contravention of the Funds' public disclosures.¹ The Respondent consented to the entry of the SEC Order without admitting or denying the SEC's findings. Findings The SEC Order finds that from 2001 through July 2003, the investment adviser, through the Respondent and others,² entered into agreements with select investors allowing them to market time the Funds. Under the agreements, according to the SEC Order, the investment adviser permitted the investors to make excessive exchanges and redemptions totaling 1 See In the Matter of Raymond R. Cunningham, SEC Release Nos. 34-50507, IA-2312, and IC 26630, Admin. Proc. File No. 3-11702 (Oct. 8, 2004) ("SEC Order"). The SEC Order also censures and imposes a cease and desist order against the Respondent. Copies of the SEC Order and accompanying press release are available at <http://www.sec.gov/litigation/admin/34-50507.htm> and <http://www.sec.gov/news/press/2004-143.htm>, respectively. For a summary of the Invesco Funds Group, Inc., AIM Advisors, Inc., and AIM Distributors, Inc. settlements with the SEC and state regulators, see Institute Memorandum to Board of Governors No. 67-04, Chief Compliance Officer Committee No. 16-04, Compliance Advisory Committee No. 101-04, Primary Contacts - Member Complex No. 96-04, SEC Rules Members No. 154-04, and Small Funds Members No. 115-04, dated Oct. 25, 2004 [18095]. 2 For a summary of the SEC settlement orders with other former employees of Invesco Funds Group, Inc. involving related allegations, see Institute Memorandum to Board of Governors No. 57-04, Chief Compliance Officer Committee No. 6-04, Compliance Advisory Committee No. 89-04, Primary Contacts - Member Complex No. 82-04, SEC Rules Members No. 135-04, and Small Funds Members No. 101-04, dated Sept. 20, 2004 [17993]. 2 approximately \$58 billion in certain Funds. The SEC Order finds that under some of the market-timing agreements, the investment adviser required that the market timers invest "sticky" assets in other Funds

(i.e., long-term money that would remain in a particular Fund without being actively traded). During the same time period, according to the SEC Order, the Funds' prospectuses stated that shareholders were limited to four exchanges out of each Fund per twelve-month period and reserved the right to modify the exchange policy if such a modification was determined to be in the "best interests" of the Fund. The SEC Order states that the investment adviser's market-timing agreements were inconsistent with the Funds' prospectus disclosure because the agreements provided for more than the disclosed number of exchanges and the investment adviser did not make a "best interests" determination before entering into the timing agreements. The SEC Order further states that the Respondent signed the prospectuses and, as a member of the Funds' board of directors, although the Respondent was responsible for formally informing the Funds' board about the investment adviser's operations, the Respondent never disclosed the market-timing agreements to the board. As a result of the conduct generally described above, the SEC Order finds that the Respondent willfully aided and abetted and caused the investment adviser's violations of the antifraud provisions of Section 206(1) and (2) of the Investment Advisers Act of 1940 and willfully violated Section 34(b) of the Investment Company Act of 1940. Undertakings In the SEC Order, the Respondent undertakes to cooperate fully with the SEC in any investigations, litigation, or other proceedings brought by the SEC relating to or arising from the matters described in the SEC Order and agrees: • to comply with any reasonable requests by the SEC's staff for documents or other information; • to be interviewed at such times as the SEC's staff reasonably may direct; and • to appear and testify in investigations, depositions, hearings or trials as the SEC's staff reasonably may direct. Disgorgement, Civil Penalties and Other Sanctions • The Respondent will pay \$1 in disgorgement and a civil money penalty of \$500,000. • The Respondent is barred from association with any broker, dealer, or investment adviser and is 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, with a right to reapply to the SEC to serve or act in any capacity after two years from the date of the SEC Order. Jane G. Heinrichs Assistant Counsel