

**MEMO# 17993**

September 20, 2004

## **SEC SETTLES WITH FORMER EMPLOYEES OF FUND GROUP CHARGED WITH FACILITATING MARKETING TIMING OF MUTUAL FUND SHARES**

[17993] September 20, 2004 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 SMALL FUNDS MEMBERS No. 101-04 RE: SEC SETTLES WITH FORMER EMPLOYEES OF FUND GROUP CHARGED WITH FACILITATING MARKET TIMING OF MUTUAL FUND SHARES The Securities and Exchange Commission has issued orders making findings and imposing disgorgement, penalties, and remedial sanctions in enforcement actions charging three former employees (collectively, "Respondents") 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 those Funds' public disclosures.\* The Respondents consented to the entry of the SEC Orders without admitting or denying the SEC's findings. Findings The SEC Orders find that from 2001 through July 2003, the investment adviser, through the Respondents, permitted select investors to make excessive exchanges and redemptions totaling approximately \$58 billion in various of the Funds. The SEC Orders state that under all of the market timing agreements, the investment adviser required that the market timers keep their timed monies within the Funds' complex when exchanging out of a Fund approved for timing and that under some of the market timing agreements, the investment adviser required \* See In the Matter of Michael D. Legoski, SEC Release Nos. 34-50289, IA-2290, and IC-26590, Admin. Proc. File No. 3-11620 (Aug. 30, 2004); In the Matter of Timothy J. Miller, SEC Release Nos. IA-2289 and IC-26589, Admin. Proc. File No. 3-11619 (Aug. 30, 2004); In the Matter of Thomas A. Kolbe, SEC Release Nos. IA-2288 and IC-26588, Admin. Proc. File No. 3-11618 (Aug. 30, 2004) (collectively, "SEC Orders"). The SEC Orders also censure and impose cease and desist orders against each of the Respondents. The Respondents held various positions with Invesco Funds Group, Inc. including, chief investment officer, portfolio manager of one of the Funds, senior vice president and national sales manager, and assistant vice president in the sales department. Copies of the SEC Orders and accompanying press release are available at <http://www.sec.gov/litigation/admin/34-50289.htm>, <http://www.sec.gov/litigation/admin/ia-2289.htm> , <http://www.sec.gov/litigation/admin/ia-2288.htm>, and <http://www.sec.gov/news/press/2004-123.htm>, respectively. 2 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 Orders,

the Funds' prospectuses represented that shareholders were limited to four exchanges out of each Fund per twelve-month period and also reserved the right to modify the exchange policy if such a modification was determined to be in the "best interests" of the Fund. According to the SEC Orders, 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. As a result of the conduct generally described above, the SEC Orders find that the Respondents 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. The SEC Order relating to Respondent Miller also finds that he caused the investment adviser's violation of Section 34(b) of the Investment Company Act of 1940 due to an act or omission that he knew or should have known would contribute to such violation. Undertakings In the SEC Orders, the Respondents undertake to cooperate fully with the SEC in any investigations, litigations or other proceedings brought by the SEC relating to or arising from the matters described in the SEC Orders and agree: 1. To comply with any reasonable requests by the SEC's staff for documents or other information; 2. To be interviewed at such times as the SEC's staff reasonably may direct; 3. To appear and testify in investigations, depositions, hearings or trials as the SEC's staff reasonably may direct; and 4. That in connection with 1. and 3. above, that any notice or subpoena for such may be addressed to Respondents' counsel, and be served by mail or facsimile. Disgorgement, Civil Penalties and Other Sanctions • Respondents Miller, Kolbe and Legoski will each pay \$1 in disgorgement and civil money penalties of \$150,000, \$150,000 and \$40,000, respectively. • Each Respondent 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 Commission to serve or act in any capacity after one year from the date of the SEC Orders. 3 • Respondents Miller and Kolbe are barred from associating with any investment adviser, with a right to reapply to the Commission for association after one year from the date of the SEC Orders. • Respondent Legoski is barred from associating with any broker, dealer, or investment adviser, with a right to reapply to the Commission for association after one year from the date of the SEC Orders. • Respondent Miller may not serve as a chairman, director, or officer of any investment adviser, or as an officer or director of any registered investment company for three years from the date of the SEC Orders. • Respondent Kolbe may not serve as a chairman, director, or officer of any investment adviser, or as an officer or director of any registered investment company for two years from the date of the SEC Orders. Jane G. Heinrichs Assistant Counsel