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A I M Advisors, Inc.

January 19, 2005



VIA CERTIFIED MAIL/RRR

Securities and Exchange Commission
450 Fifth Street
Washington, D.C. 20549

Re: Filing Pursuant to Section 33 of the Investment Company Act of 1940 by A I M Advisors, Inc. (1940 Act Registration No. 801-12313), and A I M Distributors, Inc. (1933 Act Registration No. 8-21323)

Ladies and Gentlemen:

Pursuant to Section 33 of the Investment Company Act of 1940, we hereby file on behalf of A I M Advisors, Inc., an investment adviser, and A I M Distributors, Inc., a distributor, a copy of a **Joint Discovery/Case Management Plan Under Rule 26(f) Federal Rules of Civil Procedure** in *Ronald Kondracki v. A I M Advisors, Inc., and A I M Distributors, Inc.*

Sincerely,

Stephen R. Rimes
Assistant General Counsel

Enclosures

cc: Mr. Robert B. Pike, SEC – Fort Worth
Mr. James H. Perry, SEC – Fort Worth

PROCESSED
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FINANCIAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD KONDRACKI,

Plaintiff,

v.

AIM ADVISORS, INC., and
AIM DISTRIBUTORS, INC.,

Defendants.

No.: 04-CV-3179

Assigned: Hon. Kenneth M. Hoyt

**JOINT DISCOVERY/CASE MANAGEMENT PLAN
UNDER RULE 26(f)
FEDERAL RULES OF CIVIL PROCEDURE**

(Please restate the instruction in bold before furnishing the responsive information.)

- 1. State where and when the conference among the parties required by Rule 26(f) of the Federal Rules of Civil Procedure was held, and identify the counsel who attended for each party, including name, address, bar number, phone and fax numbers and email addresses.**

The Rule 26(f) conference was held telephonically on January 14, 2005 between Robin Harrison and Charles Kelley.

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2. **List the cases related to this one that are pending in any state or federal court with the case number and court, and state how they are related.**

Plaintiff's Position: *Berdat v. INVESCO Funds Group, Inc.*, S.D. Tex., 04-cv-2555 (assigned to Judge Ellison). The *Berdat* case is based, in large part, on numerous common issues of law and fact, nearly identical pleadings, an identical cause of action (based on alleged violations of both the Investment Company Act of 1940, 15 U.S.C. § 80a-1, *et seq.*, and 17 C.F.R. § 270.12b-1), and substantially similar factual allegations. Judge Atlas consolidated *Papia v. AIM ADVISORS, INC., et al.*, S.D. Tex., 04-cv-2583 into the *Berdat* case on December 23, 2004.

Defendant's Position: In *Berdat, et al. v. INVESCO Funds Group, Inc., et al.*, S.D. Tex., 04-cv-2555, each of the plaintiffs asserts derivative claims on behalf of one or more of the eight separate mutual funds in which that plaintiff allegedly invested. Defendants are the advisers to the separate funds and the distributors of their shares to the public. The claims are that each of the eight funds, in violation of §§ 36(b) and 12(b) of the Investment Company Act of 1940, paid excessive fees to defendants, pursuant to written agreements negotiated by that fund's independent directors with defendants, for the services rendered to that fund by defendants. The parties include three INVESCO defendants, as they provided advisory and distribution services to the eight funds before the AIM defendants did so.

In *Papia, et al. v. AIM Advisors, Inc., et al.*, S.D. Tex. 04-cv-2583, each of the plaintiffs asserts derivative claims on behalf of one or more of the ten separate mutual funds in which that plaintiff allegedly invested. Defendants are the adviser to the separate funds and the distributor of their shares to the public. The claims are that each of the ten funds, in violation of §§ 36(b) and 12(b) of the Investment Company Act of 1940, paid excessive fees to defendants, pursuant to written agreements negotiated by that fund's independent directors with defendants, for the services rendered to that fund by defendants. On December 22, 2004, the Court consolidated the *Papia* action into the *Berdat* action.

Kondracki, Papia and *Berdat* have some common facts, parties, witnesses and legal issues. However, they involve different disputes about different mutual funds with different investment strategies, different fees, and often different advisors and distributors and different boards of directors or trustees. Many of the witnesses will not be the same. Thus, while coordination may be appropriate for pre-trial purposes, there should be separate trials.

3. **Briefly describe what this case is about.**

Plaintiff's Position: Plaintiff brings a derivative action pursuant to § 36(b) of the Investment Company Act ("ICA"), as amended, 15 U.S.C. § 80a-35(b), on behalf of three (3) open-end registered investment companies, or mutual funds, allegedly created, sold, advised, and managed by the Defendants. *Kondracki* Complaint ¶¶ 1, 15. Plaintiff alleges that while the plaintiff shareholder's mutual funds have grown dramatically in

size, the nature of the services rendered by Defendants has changed little, if at all, and that, nonetheless, the distribution and advisory fees paid to the Defendant Advisors have grown dramatically. As a result, Plaintiff asserts that the advisory fees paid to Defendants (and accepted by them in violation of their statutory fiduciary duties) are disproportionately large in relationship to the services rendered to Plaintiff. *Kondracki* Complaint ¶¶ 7-9. As stated in the *Kondracki* Complaint, Plaintiff seeks to rescind the investment advisory agreements and Rule 12b-1 Distribution Plans, 17 C.F.R. § 270.12b-1. *Kondracki* Complaint ¶ 14.

Defendants' Position: Defendants dispute certain procedural and all substantive allegations set forth by Plaintiff. Defendants deny any and all allegations of wrongdoing, and specifically deny that they are liable to any party based on any of the claims alleged in this action.

4. Specify the allegation of federal jurisdiction.

This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 80a-43, 15 U.S.C. § 80a-35(b)(5), and 28 U.S.C. § 1331.

5. Name the parties who disagree with the plaintiff's jurisdictional allegations and state their reasons.

None.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

Plaintiff: The Plaintiff does not intend to add additional parties at this time. At such time as Plaintiff has had the opportunity to conduct additional discovery, Plaintiff will, to the extent necessary and appropriate, amend his Complaint, or, if required, seek leave to amend to add such other additional parties if warranted.

Defendants: At this time Defendants do not intend to add additional parties. If they change their position after appropriate discovery, defendants will take appropriate steps to add additional parties.

7. List anticipated interventions.

Plaintiff: At this time, Plaintiff does not anticipate any interventions.

Defendants: Defendants are unaware of any parties who may seek to intervene at this time. None is anticipated.

8. Describe class-action issues.

These cases are not class actions.

9. **State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.**

Plaintiff: Plaintiff plans to serve his initial disclosures on or by January 18, 2005.

Defendants: Defendants intend to serve initial disclosures on or by February 11, 2005.

10. **Describe the proposed agreed discovery plan, including:**
- a. **Responses to all the matters raised in Rule 26(f).**
 - b. **When and to whom the plaintiff anticipates it may send interrogatories.**
 - c. **When and to whom the defendant anticipates it may send interrogatories.**
 - d. **Of whom and by when the plaintiff anticipates taking oral depositions.**
 - e. **Of whom and by when the defendant anticipates taking oral depositions.**
 - f. (i) **Specify the date experts for plaintiff (or party with the burden of proof on an issue) will be designated and their reports provided to opposing party.**
(ii) **Specify the date experts for defendant will be designated and their reports provided to opposing party.**
 - g. **List expert depositions the plaintiff (or party with the burden of proof on an issue) anticipates taking and their anticipated completion date. *See* Rule 26(a)(2)(B) (expert report).**
 - h. **List expert depositions the defendant (or opposing party) anticipates taking and their anticipated completion date. *See* Rule 26(a)(2)(B) (expert report).**
11. **If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.**

The parties' proposals for a discovery plan are outlined as follows. In considering the deadlines established in this Plan, the parties have considered the complexity of the issues and law regarding this case and the necessity of expert witnesses.

(a) The parties intend to utilize any form of discovery permitted by the Federal Rules of Civil Procedure. The Plaintiff intends to serve the Advisor-Defendants with interrogatories after the development of document discovery. They intend to serve approximately 25 interrogatories. Defendants reserve the right to serve 25 interrogatories.

All non-expert discovery shall be noticed and/or propounded so that responses are due and discovery is completed by: Plaintiff: October 14, 2005; Defendants: March 31, 2006. All discovery motions shall be filed on or before this same date. Discovery may continue beyond that date as to any items which are then the subject of Court order or as may be agreed between the parties.

(b) Given the number of individuals likely to have discoverable information relevant to this case, as identified in Plaintiff's Initial Disclosures, Plaintiff believes that he will need as many as 65 non-expert depositions. Defendants oppose Plaintiff's proposal, believe that his estimate of 65 depositions is highly unrealistic, and reserve the right to oppose various portions of Plaintiff's proposal. Further, Defendants propose that the guidelines set forth in the appropriate rules govern these proceedings, and that the parties meet and confer at an appropriate time to the extent that any party sees a need for additional depositions.

(c) Disclosures and reports in accordance with Rule 26(a)(2) from experts retained by Plaintiff shall be due by: Plaintiff: December 15, 2005; Defendants: May 31, 2006.

(d) Disclosures and reports in accordance with Rule 26(a)(2) from experts retained by Defendants shall be due by: Plaintiff: January 26, 2006; Defendants: June 30, 2006.

(e) Rebuttal report(s) shall be filed thereafter as permitted by Rule 26(a)(2).

(f) Depositions in accordance with Rule 26(b)(4) of experts retained by Plaintiff shall be completed by: Plaintiff: April 17, 2006; Defendants: October 13, 2006.

(g) Depositions in accordance with Rule 26(b)(4) of experts retained by Defendants shall be completed by: Plaintiff: May 22, 2006; Defendants: November 22, 2006.

(h) Other items:

(i) Amendment of the pleadings shall be governed by FRCP 15;

(ii) All potentially dispositive motions shall be filed on or before:
Plaintiff: August 8, 2006; Defendants: January 15, 2007;

- (iii) Responses to dispositive motions shall be filed on or before:
Plaintiff: September 19, 2006; Defendants: five weeks after the dispositive motion is served;
- (iv) Replies to responses to dispositive motions shall be filed: Plaintiff:
on or before October 26, 2006; Defendants: five weeks after the response is served.
- (v) A final pretrial conference shall be set for: Plaintiff: November 14, 2006; Defendants: March 1, 2007.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

None to date.

13. State the date the planned discovery can reasonably be completed.

Plaintiff: October 14, 2005; Defendants: March 31, 2006

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

The parties agree that settlement discussions would be premature at this time.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

Parties have met and conferred in compliance with Rule 26(f).

Plaintiff: Mediation may assist the parties in reaching a settlement some time in the future.

16. From the attorneys' discussion with their client(s), state the alternative dispute resolution techniques that are reasonably suitable.

Plaintiff: Mediation.

Defendants: Defendants are not prepared at this point to determine if such mediation may be appropriate.

17. **Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.**

The parties agree that the trial would require a district court judge.

18. **State whether a jury demand has been made and if it was made on time.**

No jury demand has been made. The parties agree that Plaintiff's claims require a bench trial.

19. **Specify the number of hours it will take to present the evidence in this case.**

Plaintiff: This case, involving overlapping and common witnesses, documents, factual issues, and legal issues can and should be efficiently resolved in a single trial that will last for 20-25 days (160-200 hours), or 4-5 weeks assuming 5 trial days per week.

Defendants: Defendants believe that the amount of time will be greater than what Plaintiff proposes. To date, only six § 36(b) cases have gone to trial. Defendants' counsel have appeared in three of those cases. Each of those six cases concerned a § 36(b) claim about fees of a single fund. Each of those cases consumed about 2-3 weeks for the presentation of the evidence. *Kondracki* features § 36(b) claims of three funds. Thus, 3 different § 36(b) claims are involved for 3 different funds. Any trial of more than a single § 36(b) claim will involve some overlapping evidence. While a trial of one § 36(b) claim would require about 2-3 weeks of court time, a trial which would cover more than one such claim (a prospect which Defendants neither advocate nor support) would consume many, many other trial days per additional fund. Defendants will work with Plaintiff and the Court to structure appropriate trial(s) after the Court rules on any dispositive or other relevant pleadings and a suitable amount of discovery has been concluded.

20. **List pending motions that could be ruled on at the initial pretrial and scheduling conference.**

Plaintiff: There is a motion pending in the *Berdar* case, No. 04-02555, Motion for Appointment of Co-Lead Plaintiffs, Appointment of Co-Lead Counsel, Appointment of an Executive Committee, Appointment of Co-Chairs of the Executive Committee that, if granted, could affect *Kondracki*.

Defendants: Defendants are not aware of any motions pending at this time in *Kondracki*.

21. **List other motions pending.**

None.

22. **Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.**

Plaintiff: None.

Defendants: Whether *Kondracki* should be transferred to the judge presiding over *Berdat* and *Papia* for treatment.

23. **Certify that all parties have filed Disclosure of Interested Persons as directed in the Order for Conference and Disclosure of Interested Persons, listing the date of filing for original and any amendments.**

Please see the signatures below confirming that all such disclosures have been filed or will be filed prior to the Court's scheduling conference on January 24, 2005..

24. **List the names, bar numbers, addresses and telephone numbers of all counsel.**

Counsel for Plaintiffs:

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Robin Harrison – signed by permission CSK /s/
Counsel for Plaintiff(s)

January 18, 2005
Date

Charles S. Kelley /s/
Counsel for Defendant(s)

January 18, 2005
Date