



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

September 20, 2018

Mr. Eric S. Purple  
Stradley Ronon Stevens & Young, LLP  
1250 Connecticut Avenue, NW, Suite 500  
Washington, D.C. 20036

**Re: Invesco Capital Management LLC**  
**File No. TP 18-15**

Dear Mr. Purple:

In your letter dated September 20, 2018 ("Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets ("Staff"), you request on behalf of the Invesco Exchange-Traded Fund Trust, Invesco Exchange Traded Fund Trust II, Invesco India Exchange-Traded Fund Trust, and Invesco Exchange-Traded Self-Indexed Trust (each a "Trust" and collectively the "Trusts"), each of which is an open-end management investment company, with respect to currently offered series of the Trusts, and any future series of the Trusts (or any existing or future series of any other existing or future open-end management investment companies operating as an exchange traded fund) that are advised by Invesco Capital Management LLC ("Invesco" or the "Advisor"), or an entity controlling, controlled by, or under common control with the Advisor (collectively, the "Invesco ETFs"), any national securities exchange or national securities association on or through which shares of the Funds ("Shares") are listed (each, a "Listing Exchange") and/or may subsequently trade (with each such market referred to herein as a "Market"), Invesco Distributors Inc. (the "Distributor") and other persons or entities engaging in transactions in Shares, no-action relief from the requirements of Rule 10b-17 under the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of creation units, as discussed in the Letter. This response is attached to the enclosed photocopy of your correspondence. Each defined term in this letter has the same meaning as defined in the Letter, unless otherwise noted herein.

You represent in the Letter that, but for the fact that the Invesco ETFs will not continuously issue and redeem Shares at net asset value ("NAV") in aggregations of at least 50,000 Shares (or such other amount where the value of a creation unit aggregation is at least \$1 million), the issuer, selling securities holders, or distribution participants could rely on the no-action relief from Rule 10b-17 under the Exchange Act, and from Rules 101 and 102 of Regulation M, in connection with funds that track a fixed-income based index ("Fixed-Income ETFs")<sup>1</sup> and funds that track a mix of equity-based and fixed-income based indexes

<sup>1</sup> Letter from James A. Brigagliano, Assoc. Dir., Div. of Mkt. Regulation, SEC, to Benjamin J. Haskin, Willkie Farr & Gallagher, LLP (Apr. 9, 2007) ("Fixed-Income Class Relief").

(“Combination ETFs”).<sup>2</sup> Specifically, you represent in the Letter that Invesco is seeking relief to permit the Invesco ETFs to have the flexibility to purchase and redeem their Shares at NAV in creation unit size aggregations that differ from the limits contained within Condition 5 of the Fixed-Income Class Relief, without being bound by a specific size and/or dollar value of such creation. You note in the Letter that the Staff has recently revised its position of minimum sizing of creation units with respect to funds that track an equity based index,<sup>3</sup> and you request that the Staff similarly consider whether the required minimum creation unit size is material to previously granted relief with respect to Fixed-Income ETFs and Combination ETFs by providing no-action relief to allow Fixed-Income ETFs and Combination ETFs to rely on the Fixed-Income Class Relief and Combination Class Relief, respectively, even though the creation unit size may be less than 50,000 shares or such other amount where the value of Creation Unit is less than \$1 million at the time of issuance. You represent in the Letter that all creation unit sizes will be set in aggregations by each Invesco ETF at a size best designed to facilitate the purchase and sales activities of the Invesco ETF to ensure an efficient arbitrage mechanism and that amount will be fully disclosed in a Trust’s registration statement.

Based on the facts and representations that you have made in the Letter, but without necessarily concurring in your analysis, the Staff will not recommend to the Securities and Exchange Commission (the “Commission”) enforcement action under Rule 10b-17 under the Exchange Act, and Rules 101 and 102 of Regulation M, based solely upon the fact that the Funds will not continuously issue and redeem shares at NAV in aggregations of at least 50,000 shares (or such other amount where the value of a creation unit aggregation is at least \$1 million), with regard to persons or entities engaging in the creation, redemption, and secondary market transactions in shares, provided that fund shares are continuously redeemed at NAV and all other conditions set forth in the relevant class relief are met.<sup>4</sup>

The foregoing no-action position taken under Rule 10b-17 under the Exchange Act, and Rules 101 and 102 of Regulation M is based on your representations and the facts presented, and is strictly limited to the application of those rules to transactions involving shares under the circumstances described above and in the Letter, and to transactions in shares of similarly

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<sup>2</sup> Letter from Josephine Tao, Assist. Dir., Div. of Mkt. Regulation, SEC, to Domenick Pugliese, Paul, Hastings, Janofsky and Walker LLP (June 27, 2007) (“Combination Class Relief”).

<sup>3</sup> Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to Certain Index-Based ETFs Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M, Exchange Act Release No. 82234 (Dec. 7, 2018) (“John Hancock Order”).

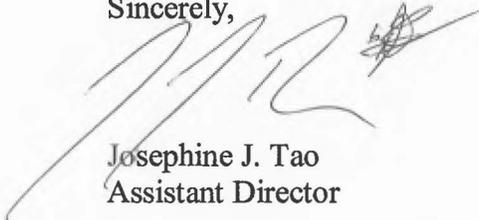
<sup>4</sup> We confirm that, so long as shares of a Fixed-Income ETF or a Combination ETF are continuously redeemed at NAV in creation unit size aggregations, the specific size and/or dollar value of such creation unit will not disqualify the fund’s reliance, with respect to Exchange Act Rule 10b-17 and Regulation M, on the Fixed-Income Class Relief or Combination Class Relief, provided that all of the other conditions set forth in the relevant no-action letter (i.e., Fixed-Income Class Relief with respect to Fixed-Income ETFs and Combination Class Relief with respect to Combination ETFs) are met. We also confirm that a Combination ETF may continue to rely on the Combination Relief if it complies with the Equity Class Relief conditions (as clarified by the John Hancock Order) with respect to its equity sleeve, and complies with the Fixed-Income Class Relief conditions with respect to its fixed-income sleeve.

Mr. Purple  
September 20, 2018  
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situated funds; any different facts or representations may require a different response. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations. Moreover, the foregoing no-action position taken under Rule 10b-17 and Rules 101 and 102 of Regulation M is subject to the condition that such transactions in shares or any related securities are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

This position concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of statutory or regulatory provisions of the federal securities laws. This position is subject to modification or revocation if, at any time, the Commission or the Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, your attention is directed to the continuing application of the antifraud and anti-manipulation provisions of the Exchange Act, particularly sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with each person relying on this position. The Staff expresses no view with respect to other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal and state laws to, the proposed transactions.

Sincerely,



Josephine J. Tao  
Assistant Director

Attachment

Eric S. Purple

epurple@stradley.com

202.507.5154

September 20, 2018

**Via Email and Hand Delivery**

Josephine J. Tao, Esq.  
Assistant Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, DC 20549

**Re: Request of Invesco Capital Management, LLC Regarding Relief from Rules 10b-17 and Regulation M under the Securities Exchange Act of 1934 with Respect to Minimum Creation Unit Size**

Dear Ms. Tao:

We are writing on behalf of the Invesco Exchange-Traded Fund Trust, Invesco Exchange Traded Fund Trust II, Invesco India Exchange-Traded Fund Trust, and Invesco Exchange-Traded Self-Indexed Trust (each a “Trust” and collectively the “Trusts”), each of which is an open-end management investment company, with respect to currently offered series of the Trusts, and any future series of the Trusts (or any existing or future series of any other existing or future open-end management investment companies operating as an exchange traded fund) that are advised by Invesco Capital Management LLC<sup>1</sup> (“Invesco” or the “Advisor”), or an entity controlling, controlled by, or under common control with the Advisor (collectively, the “Invesco ETFs”). The Trusts, on behalf of themselves, the Invesco ETFs, any national securities exchange or national securities association on or through which shares of the Funds (“Shares”) are listed (each, a “Listing Exchange”) and/or may subsequently trade (with each such market referred to herein as a “Market”),<sup>2</sup> Invesco Distributors Inc. (the “Distributor”) and other persons or entities

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<sup>1</sup> Prior to June 3, 2018, Invesco was known as “Invesco PowerShares Capital Management LLC.”

<sup>2</sup> In the future, the Trusts may determine to list Shares on a Market other than the Listing Exchange. If the Trust lists Shares on a Market other than the Listing Exchange, Shares will be listed in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Securities Exchange Act of

engaging in transactions in Shares, including APs (as defined below), hereby request from the staff of the Division of Trading and Markets (the “Staff”) of the Securities and Exchange Commission (the “Commission”) no-action relief regarding Rule 10b-17 and Rules 101 and 102 of Regulation M under the Exchange Act.<sup>3</sup>

As described more fully below, Invesco would like to obtain no-action relief that clarifies that the Invesco ETFs may rely on previously granted class relief letters that provide relief from the requirements of Rule 10b-17 under the 1934 Act and Rules 101 and 102 of Regulation M under the 1934 Act notwithstanding the fact that the Invesco ETFs propose to deviate from the specified creation unit size set forth in those letters.

## I. Background

In order to operate as an exchange-traded fund (“ETF”), that ETF must obtain exemptive relief from certain provisions of the Investment Company Act of 1940 (the “1940 Act”).<sup>4</sup> In addition to obtaining exemptions from certain provisions of the 1940 Act, ETFs also rely, as pertinent here, on relief from Rules 101 and 102 of Regulation M and Rule 10b-17 under the 1934 Act (collectively the “1934 Act Provisions”).<sup>5</sup>

The SEC staff has previously provided significant relief to ETFs from the 1934 Act Provisions through a series of broad-based exemptions issued pursuant to delegated authority and no-action positions. For example, ETFs have obtained class relief from the provisions of Rules 10b-17 under the 1934 Act, Rules 101 and 102 under Regulation M in connection with secondary market transactions in ETF shares and the creation and redemption of ETF shares for funds that track an equity-based index (“Equity ETFs”),<sup>6</sup> funds that track a fixed-income based

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listing standards that are, or will become, effective pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). If the Shares also trade on a Market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the Exchange Act.

<sup>3</sup> For purposes of this letter, Invesco ETFs are ETFs that seek to track the investment results (before fees and expenses) of an underlying index.

<sup>4</sup> Exchange-Traded Funds, SEC Rel. No. IC-33140, pp. 8-9 (June 28, 2018) (“ETF Proposing Release”) (“Because ETFs have characteristics that distinguish them from the types of investment companies contemplated by the Act, they require exemptions from certain provisions of the Investment Company Act in order to operate.”)

<sup>5</sup> ETF Proposing Release at n.14.

<sup>6</sup> Letter from James A. Brigagliano, Acting Assoc. Dir., Div. of Mkt. Regulation, SEC, to Stuart M. Strauss, Clifford Chance US LLP (Oct. 24, 2006) (“Equity Class Relief”). The equity class relief also provided relief from certain aspects of Rule 14e-5.

index (“Fixed-Income ETFs”),<sup>7</sup> and funds that track a mix of the two (“Combination ETFs”).<sup>8</sup>

Class relief from the 1934 Act Provisions was based on a variety of representations and conditions. As pertinent here, one of the representations was that the ETF would have a minimum creation unit size. For example, in two class relief letters, the staff noted that with respect to index-based ETFs, “ETF shares are to be issued and redeemed in creation unit aggregations of 50,000 shares or such other amount where the value of Creation Unit is at least \$1 million at the time of issuance.”<sup>9</sup>

Recently, the staff of the Division of Trading and Markets has considered whether the required minimum creation unit size is material to the previously granted relief. In an order granted to a number of ETFs that are sponsored, or will be sponsored in the future, by John Hancock Advisors, LLC or its affiliates, the SEC staff granted relief from Rule 10b-17 and Rules 101 and 102 under Regulation M pursuant to delegated authority. The incoming request letter noted that the ETFs at issue in the request would offer “at least 10,000 Shares or such other amount where the value of a Creation Unit is at least \$250,000” and noted that this deviation from the equity class relief letter necessitated further relief.<sup>10</sup> In granting that relief, the staff noted that:

We confirm that, consistent with the treatment of actively managed ETFs, so long as shares of an index-based ETF are continuously redeemed at NAV in creation unit size aggregations, the specific size and/or dollar value of such creation unit will not disqualify the fund’s reliance, with respect to Exchange Act Rule 10b-17 and Regulation M, on the Equity Class Relief Letter, provided that all of the other conditions set forth in the Equity Class Relief letter are met.<sup>11</sup>

This revised position of minimum sizing of creation units paralleled a similar liberalization previously adopted by the Division of Investment Management, which has indicated that the

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<sup>7</sup> Letter from James A. Brigagliano, Assoc. Dir., Div. of Mkt. Regulation, SEC, to Benjamin J. Haskin, Willkie Farr & Gallagher, LLP (April 9, 2007) (“Fixed-Income Class Relief”).

<sup>8</sup> Letter from Josephine Tao, Assist. Dir., Div. of Mkt. Regulation, SEC, to Domenick Pugliese, Paul, Hastings, Janofsky and Walker LLP (June 27, 2007) (“Combination Class Relief”).

<sup>9</sup> See Equity Class Relief and Fixed-Income Class Relief.

<sup>10</sup> See Letter to Josephine J. Tao, Asst. Dir. Div. of Trading and Mkts. from Kinga Kapuscinski, Assistant General Counsel, John Hancock Investments (Dec. 7, 2017).

<sup>11</sup> Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to Certain Index-Based ETFs Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M, SEC Rel. No. 34-82234 (Dec. 7, 2018), n.4 (“John Hancock Order”)

SEC staff has “no objection if [ETFs] issue shares...in large aggregations (“Creation Units”) that are smaller than the Creation Units described in the Applications (i.e., Creation Units less than 50,000 shares).”<sup>12</sup>

The staff’s position in the John Hancock Order was, however, of limited applicability on its face. The statement applied only to ETFs that rely on the Equity Class Relief. The relief did not, on its face, extend to ETFs that rely on the Fixed-Income Class Relief or Combination Class Relief. We believe that the reasoning used in the John Hancock Order is of equal applicability to those ETFs that rely on the Fixed-Income Class Relief or the Combination Class Relief. As a result, this letter is asking the staff to provide no-action relief to allow Fixed-Income ETFs and Combination ETFs to rely on the Fixed-Income Class Relief and Combination Class Relief, respectively, even though the creation unit size may be less than 50,000 shares or such other amount where the value of Creation Unit is less than \$1 million at the time of issuance.

This Letter is divided into five parts. Part II contains a brief description of the Trusts. Part III contains a discussion of the dissemination of information regarding the Shares. Part IV contains the request for relief, and Part V is the conclusion.

## II. Description of the Trusts

### A. The Trusts and the Invesco ETFs

As pertinent here, the current Trusts are comprised of the Invesco Exchange-Traded Fund Trust, the Invesco Exchange-Traded Fund Trust II, and the Invesco India Exchange-Traded Fund Trust (each, a Massachusetts business trust), and the Invesco Exchange-Traded Self-Indexed Fund Trust (a Delaware Statutory Trust).<sup>13</sup> Each of the Trusts has multiple series that operate as either Equity ETFs, Fixed-Income ETFs, or Combination ETFs. Invesco acts as investment adviser to each Invesco ETF. Each Invesco ETF intends to qualify annually and to elect to be treated as a regulated investment company under the Internal Revenue Code of 1986, as amended. Each Invesco ETF seeks to track the investment results (before fees and expenses) of

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<sup>12</sup> See SPDR Series Trust (pub. avail. June 24, 2015).

<sup>13</sup> Invesco also sponsors and advisers two additional trusts, the Invesco Actively Managed Exchange-Traded Fund Trust and the Invesco Actively Managed Exchange-Traded Commodity Fund Trust (the “Active Trusts”). The Active Trusts are not subject to this request because they can rely on certain relief and interpretations that are not conditioned on minimum creation unit size. See Order Granting a Limited Exemption from Exchange Act Rule 10b-17 to Certain Actively Managed Exchange-Traded Funds Pursuant to Exchange Act Rule 10b-17(b)(2), SEC Rel. No. 34-67215 (June 19, 2012) (granting conditional relief from Rule 10b-17 to “any issuer of an actively managed ETF” not based on creation unit size); Staff Legal Bulletin No. 9 (Frequently Asked Questions About Regulation M) (providing guidance under Rule 101 and 102 of Regulation M for actively managed ETFs that is not conditioned on creation unit size).

an underlying index (the “Underlying Index”), as more fully described in their respective prospectuses.

The Invesco ETFs operate as exchange-traded funds (“ETFs”) in reliance on exemptive relief granted by the Securities Exchange Commission (the “Commission” or the “SEC”) through the Division of Investment Management pursuant to delegated authority. The Invesco ETFs’ distributor is Invesco Distributors, Inc. (“Distributor”).

The Shares of each Invesco ETF are listed on a national securities exchange and trade at market prices that may differ to some degree from the net asset value (“NAV”) of the Shares. Unlike conventional mutual funds, as described further below, the Invesco ETFs issue and redeem Shares on a continuous basis, at NAV, only in Creation Units of 50,000 Shares or such other amount where the value of a creation unit is at least \$1 million at the time of issuance.

#### B. The Advisor, Distributor and Authorized Participants

##### 1. Advisor

The Advisor acts as each Invesco ETF’s investment adviser pursuant to an investment advisory agreement with the respective Trust, on behalf of the Invesco ETFs (each, an “Advisory Agreement”). The Advisor, located at 3500 Lacey Road, Suite 700, Downers Grove, Illinois 60515, is registered with the Commission as an investment adviser. Pursuant to each Advisory Agreement, the Advisor manages the investment and reinvestment of each Invesco ETF’s assets and administers the affairs of the Invesco ETFs to the extent requested by, and subject to the supervision of, the Board of Trustees of that Trust (the “Board”).

##### 2. Distributor and Authorized Participants

The Board has appointed the Distributor, a broker-dealer registered under the Exchange Act and a member of the Financial Industry Regulatory Authority, Inc., to act as the distributor and principal underwriter of the Shares. The Distributor distributes Shares on an agency basis. The Board may appoint a different distributor in the future. Only entities that have entered into an agreement (a “Participant Agreement”) with the Distributor to become “authorized participants” (“APs”) may place orders with the Distributor to purchase or redeem Creation Units, as described below.

#### C. Shares

As described in subparts II.D. through II.F. below, each Invesco ETF issues and redeems its Shares in Creation Units. Shares are not individually redeemable securities of an Invesco ETF. The initial NAV of Shares is established at a level convenient for trading purposes.

Purchasers of Creation Units are able to unbundle the Creation Units into the individual Shares comprising such Creation Unit and sell them on a regulated exchange.

#### D. Purchasing Shares

The Trusts issue Shares of the Invesco ETFs at NAV only in Creation Units and only to or through APs. Creation Unit transactions to purchase Shares are typically conducted in exchange for the deposit or delivery of in-kind securities constituting a substantial replication of the securities included in the Invesco ETF's Underlying Index and/or cash.

Individual Shares of an Invesco ETF may only be purchased and sold in secondary market transactions through brokers. Shares are listed for trading on the applicable exchange (the Listing Exchange) and, because Shares may trade at market prices rather than NAV, Shares of an Invesco ETF may trade at a price greater than, at, or less than NAV.

#### E. Procedures Applicable to Purchases of the Invesco ETFs

The consideration for purchase of Creation Units of an Invesco ETF consists of (i) a designated portfolio of securities determined by the Advisor (the "Deposit Securities") per each Creation Unit constituting a substantial replication of the securities included in the Underlying Index or (ii) cash in lieu of all or a portion of the Deposit Securities together with, in each case, an amount of cash - the "Cash Component" - computed as described below.<sup>14</sup> Together, the Deposit Securities (including the cash in lieu amount) and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of an Invesco ETF.

The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the Deposit Amount (as defined below). The Cash Component is an amount equal to the difference between the NAV of Shares (per Creation Unit) and the market value of the Deposit Securities and/or cash in lieu of all or a portion of the Deposit Securities (the "Deposit Amount"). If the Cash Component is a positive number (i.e., the NAV per Creation Unit exceeds the Deposit Amount), the Authorized Participant delivers the Cash Component. If the Cash Component is a negative number (i.e., the NAV per Creation Unit is less than the Deposit Amount), the Authorized Participant receives the Cash Component.

The Invesco ETF's custodian ("Custodian"), through the National Securities Clearing Corporation ("NSCC"), makes available on each business day, prior to the opening of business of the Listing Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the

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<sup>14</sup> In addition to the Cash Component, the consideration may include administrative or other transactional fees as set forth in the respective Invesco ETF's statement of additional information.

required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for each Invesco ETF.

In order to be eligible to place orders with the Distributor and to create a Creation Unit of an Invesco ETF, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the “Clearing Process”), a clearing agency that is registered with the Commission; or (ii) a participant that uses the facilities of The Depository Trust Company (“DTC,” and such participant, a “DTC Participant”). (Participating Parties and DTC Participants are collectively referred to as APs.)

All orders to create Creation Units, whether through the Clearing Process (through a Participating Party) or outside the Clearing Process (through a DTC Participant), must be received by the Distributor no later than the closing time of the regular trading session on the New York Stock Exchange (“NYSE”) (ordinarily 4:00 p.m., Eastern Time) (“Closing Time”) in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of an Invesco ETF as next determined on such date after receipt of the order in proper form. In the case of custom orders, the order must generally be received by the Distributor no later than 3:00 p.m., Eastern Time, on the trade date.

A fixed administrative fee (the “Creation Transaction Fee”) is applicable to each purchase transaction regardless of the number of Creation Units purchased in the transaction, and may include a multiple of the fixed fee under certain circumstances, payable to the transfer agent. Additionally, for creations effected principally for cash, the Advisor may charge additional fees on behalf of the Invesco ETF. To the extent an Invesco ETF permits or requires APs to substitute cash in lieu of Deposit Securities, the Advisor may also set these additional “cash-in-lieu fees.” The cash-in-lieu fees will be negotiated between the Advisor and the AP and are charged to defray the transaction cost to an Invesco ETF of buying (or selling) Deposit Securities, to cover spreads and slippage costs and to protect existing shareholders.

To the extent contemplated in the applicable Participant Agreement, Shares of an Invesco ETF may be issued in advance of receipt of all Deposit Securities subject to various conditions, including an undertaking by the AP to deliver the missing Deposit Securities as soon as possible, which undertaking will be secured by the delivery and maintenance of collateral.

#### F. Procedures Applicable to Redemptions of the Invesco ETFs

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Invesco ETF through the Custodian and only on a business day. The Custodian, through the NSCC, makes available prior to the opening of business on the Listing Exchange (currently 9:30 a.m., Eastern Time) on each business day,

the identity of the Fund Securities (defined below) that is applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day.

Unless cash redemptions are permitted or required for the Invesco ETF, the redemption proceeds for a Creation Unit generally consist of a portfolio of securities (“Fund Securities”) as announced on the business day of the request for redemption received in proper form - plus or minus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the “Cash Redemption Amount”), less the applicable Redemption Transaction Fee (defined below) and, if applicable, any cash-in-lieu fees. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the difference plus the applicable Redemption Transaction Fee and, if applicable, any operational processing and brokerage costs, transfer fees or stamp taxes, is required to be made by or through an AP by the redeeming shareholder.

Orders to redeem Creation Units through the Clearing Process must be delivered through an AP that has executed a Participant Agreement. Investors other than APs are responsible for making arrangements for a redemption request to be made through an AP. An order to redeem Creation Units of an Invesco ETF is deemed received by the Trust on a particular date (the “Transmittal Date”) if: (i) such order is received by the Custodian not later than the Closing Time on the Transmittal Date; and (ii) all other procedures set forth in the Participant Agreement are properly followed.

Orders to redeem Creation Units outside the Clearing Process must be delivered through a DTC Participant that has executed the Participant Agreement. A DTC Participant who wishes to place an order for redemption of Creation Units to be effected outside the Clearing Process does not need to be a Participating Party, but such orders must state that the DTC Participant is not using the Clearing Process and that redemption of Creation Units will instead be effected through transfer of Shares directly through DTC. An order to redeem Creation Units outside the Clearing Process is deemed received by the Trust on the Transmittal Date if (i) such order is received by the transfer agent not later than 4:00 p.m., Eastern time on such Transmittal Date; (ii) such order is accompanied or followed by the requisite number of Shares, which delivery must be made through DTC and the compensating cash payment, if any, owed to the Invesco ETF, to the Custodian no later than 11:00 a.m., Eastern time on the contractual settlement date; and (iii) all other procedures set forth in the Participant Agreement are properly followed.

A fixed redemption transaction fee (the “Redemption Transaction Fee”) is applicable to each redemption transaction regardless of the number of Creation Units redeemed in the transaction (and the transfer agent may charge up to four times the base amount under certain circumstances), and cash-in-lieu fees may be charged as well. Investors also bear the costs of transferring the Fund Securities from the Trust to their account or on their order. A shareholder

may request a cash redemption in lieu of securities; however, an Invesco ETF may, in its discretion, reject any such request.

### III. Dissemination of Information Regarding the Shares

#### A. Dissemination of Information about Deposit Securities and Fund Securities

As discussed above, the names and required number of shares of the Deposit Securities and Fund Securities to be tendered in connection with the issuance or redemption, respectively, of Shares of Creation Units is made available on each business day prior to the opening of trading.

#### B. Dissemination of Information about the Invesco ETF's Portfolio Securities

The prices of the Invesco ETF's portfolio securities ("Portfolio Securities") is readily available from, as applicable, the relevant Listing Exchange, other markets, automated quotation systems, and other sources, such as independent pricing services. In addition, Invesco publishes the prior day's holdings of each Invesco ETF on its website each trading day prior to the market opening.

#### C. Dissemination of Information about Shares

The Invesco ETFs' website (the "Website") also contains the following information on a per Share basis for each Invesco ETF: (i) the prior business day's NAV, the closing market price, the mid-point of the bid-ask spread at the time of calculation of the NAV (the "Bid/Ask Price"), and a calculation of the premium or discount of the Bid-Ask Price at the time of calculation of the NAV against such NAV; and (ii) data displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, Invesco publishes the prior day's holdings of each Invesco ETF on its website each trading day prior to the market opening. The Website also displays the Invesco ETF's Prospectus and additional quantitative information that is updated on a daily basis.

### IV. Request for Relief

The Fixed-Income Class Relief provides exemptive and/or no-action or interpretive relief with respect to Rule 10b-17 under the 1934 Act, and Rules 101 and 102 of Regulation M under the 1934 Act to any ETF that meets the criteria set forth in that relief. The Fixed-Income Class Relief sets forth six criteria that a Fixed-Income ETF must meet in order to rely upon the relief. These are:

1. The Fixed-Income ETF shares are issued by an open-end investment company or unit investment trust registered with the Commission under the Investment Company Act;
2. The Fixed-Income ETF shares are listed and traded on a national securities exchange or on a facility of a national securities association that has obtained approval from the Commission pursuant to Section 19(b) of the Exchange Act of a rule change regarding the listing and trading of Shares on a national securities exchange or on a facility of a national securities association (or that is relying on Rule 19b-4(e) to list and trade Shares);
3. The Fixed-Income ETF seeks to: (i) provide investment results that correspond to the performance of a particular Underlying Index; (ii) exceed the performance of a particular Underlying Index by a specified multiple; or (iii) to correspond to the inverse of the performance of a particular Underlying Index by a specified multiple;
4. The Underlying Index must consist of only Fixed-Income Securities;
5. The Fixed-Income ETF shares must be issued and redeemed in Creation Unit Aggregations of 50,000 shares or such other amount where the value of a creation unit is at least \$1 million at the time of issuance; and
6. The intra-day proxy value of the Fixed-Income ETF per share and the value of the Underlying Index must be publicly disseminated by a major market data vendor during the trading day.<sup>15</sup>

Each of the Invesco ETFs that are Fixed-Income ETFs meet all of the criteria of the Fixed-Income Class Relief set forth above. However, Invesco is seeking relief to permit Invesco ETFs to have the flexibility to purchase and redeem their Shares at NAV in creation unit size aggregations that differ from Condition 5's limits without being bound by a specific size and/or dollar value of such creation. All creation unit sizes will be set in aggregations by each Invesco ETF at a size best designed to facilitate the purchase and sales activities of the Invesco ETF to ensure an efficient arbitrage mechanism. That amount will be fully disclosed in a Trust's registration statement. Moreover, as noted above, each of the Invesco ETFs that are Fixed-Income ETFs will meet Conditions 1, 2, 3, 4 and 6 of the Fixed-Income Class Relief.<sup>16</sup>

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<sup>15</sup> The Combination Class Relief does not contain express conditions, rather it simply requires the equity portion of a fund to comply with the Equity Class Relief and the fixed-income portion of a fund to comply with the Fixed-Income Class Relief.

<sup>16</sup> In the Combination Class Relief, the SEC staff indicated that it will not recommend enforcement action if the fixed-income sleeve of a Combination ETF meets the conditions set forth in the Fixed-Income Class Relief and the equity sleeve of the Combination ETF meets the conditions set forth in the Equity Class Relief. Prior to guidance provided by the John Hancock Order, both the Equity Class Relief and the Fixed-Income Class Relief required an identical minimum creation unit size. In light of the additional guidance provided by the John Hancock Order, a Combined Fund would be able to disregard the minimum creation unit size required by the Equity Class Relief, but would have to comply with the remaining minimum creation unit size set forth in the

With respect to Condition 5, Invesco believes that allowing Invesco ETFs the flexibility to purchase and redeem their Shares at NAV in creation unit size aggregations that differ from Condition 5's limits without being bound by a specific size and/or dollar value of such creation would facilitate a robust and effective arbitrage mechanism for the Invesco ETFs. Further, Invesco hereby represents that: (a) it anticipates that the arbitrage mechanism will be facilitated by the transparency of the Invesco ETFs' portfolios to the extent required by any relevant exemptive relief, the liquidity of securities held by the Invesco ETFs and the ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges; (b) the Invesco ETFs will meet each of the conditions of the Fixed-Income Class Relief, excluding the size required for Creation Unit aggregations and the minimum value of a Creation Unit at the time of change (or issuance); (c) the Invesco ETFs will invest in securities that the Advisor believes will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges; (d) Invesco believes that arbitrageurs will be able to take advantage of price variations between the Invesco ETFs' market price and their respective NAVs; and (e) under normal circumstances, the market price of the Shares should not vary substantially from the Invesco ETFs' respective NAVs.

As noted previously, the staff of the Division of Trading and Markets has stated that "consistent with the treatment of actively managed ETFs, so long as shares of an index-based ETF are continuously redeemed at NAV in creation unit size aggregations, the specific size and/or dollar value of such creation unit will not disqualify the fund's reliance, with respect to Exchange Act Rule 10b-17 and Regulation M, on the Equity Class Relief Letter, provided that all of the other conditions set forth in the Equity Class Relief Letter are met." We are unaware of any policy differences that would apply to fixed-income ETFs that should deny similar treatment than what currently is provided under the Fixed-Income Class Relief.

In light of the fact that the Invesco ETFs will comply with the other conditions of the Fixed-Income Class Relief Letter and will continually redeem their shares in creation unit size aggregations at NAV, we believe that the Trusts' approach and reasoning is materially similar to that outlined by the staff in footnote 4 to the John Hancock Order. For the reasons set forth above, we request that the staff provide no-action relief with respect to Rules 10b-17 and Rules 101 and 102 of Regulation M to permit the Invesco ETFs to rely on the Fixed-Income Class

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Fixed-Income Class Relief. Eliminating the minimum creation unit size from the requirements of both the Equity Class Relief and the Fixed-Income Class Relief will allow a Combination ETF to comply with the remaining Equity Class Relief conditions with respect to its equity sleeve and to comply with the remaining Fixed-Income Class Relief conditions with respect to its fixed-income sleeve, in each case disregarding the minimum creation unit size. As a result, the Invesco ETFs that are Combination ETFs will comply with the requirements of the Combination Class Relief, other than the requirement of a minimum creation unit size.

Ms. Josephine J. Tao, Esq.  
September 20, 2018  
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Relief and the Combination Class Relief so long as shares of Invesco ETFs are continuously redeemed at NAV and all of the other conditions of the relevant class relief letter are met.<sup>17</sup>

V. Conclusion

Based on the foregoing, Invesco respectfully request that the Division of Trading and Markets grant the requested no-action relief clarifying that the Invesco ETFs may rely on previously granted class relief letters that provide relief from the requirements of Rule 10b-17 under the 1934 Act and Rules 101 and 102 of Regulation M under the 1934 Act notwithstanding the fact that the Invesco ETFs propose to deviate from the specified creation unit size set forth in those letters.

Should you have any questions, please call me at (202) 507-5154 or Alan Goldberg at (312) 964-3503.

Very truly yours,



Eric S. Purple

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<sup>17</sup> Invesco also requests confirmation that a Combination ETF may continue to rely on the Combination Relief if it complies with the Equity Class Relief conditions (as clarified by the John Hancock Order) with respect to its equity sleeve, and complies with the Fixed-Income Class Relief conditions (as clarified by the relief requested in this letter) with respect to its fixed-income sleeve.