UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6770 / November 8, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22306

In the Matter of **INVESCO ADVISERS, INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Invesco Advisers, Inc. ("Invesco" or the "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

<u>Summary</u>

1. Between approximately April 2020 and July 2022 (the "Relevant Period"), Invesco made misleading statements concerning the company-wide percentage of assets under management

(“AUM”) by it and its affiliates that was “ESG integrated,” a term that Invesco used to indicate the incorporation of environmental, social, and governance (“ESG”) considerations into investment decision making processes. Invesco made these statements in presentations to the boards of directors of funds it advised, in proposals to prospective clients, and in certain marketing materials.

2. By the fall of 2019, Invesco believed that incorporating ESG considerations into its portfolio management activities globally was of commercial importance. An internal analysis completed by senior ESG team members indicated that, company-wide, at least $370 billion in AUM were “at risk” of clients moving the assets to another firm, prompting Invesco to accelerate its “ESG integration” effort. Consistent with its effort to market its ESG capabilities, Invesco made claims to certain clients and potential clients about the percentage of firmwide AUM at Invesco that was “ESG integrated.” Invesco also included the percentage of company-wide ESG-integrated AUM in its publicly available ESG Investment Stewardship Reports, which described “ESG integration” as including “ESG considerations as an influence in investment decision making,” “[b]road and systematic ESG integration taking place at a strategy level and across the process,” and “[c]onsideration of financially material ESG aspects.” The claimed percentage of AUM that was ESG integrated varied from 70% to 94% during the Relevant Period.

3. These percentages counted Invesco’s passive ETFs, which contained a substantial portion of Invesco’s AUM, as ESG integrated, which was misleading as many of the ETFs could not consider ESG factors in making investment decisions because they were passive strategies that did not follow an ESG-related index. This included Invesco’s largest ETF, the Invesco QQQ Trust—an index product designed to track the 100 largest non-financial companies traded on the Nasdaq exchange.

4. Moreover, Invesco had no comprehensive set of written policies and procedures concerning how Invesco would determine the percentage of firmwide AUM that was ESG integrated. For a period of time during the Relevant Period, the percentage of firmwide AUM that was determined by the ESG team to be ESG integrated was based on analysis assessing investment teams’ general ESG integration approach rather than analysis at a fund or strategy level. Further, with respect to passive ETFs following a non-ESG index, ESG considerations could not be “an influence in investment decision making.”

Respondent

5. **Invesco Advisers, Inc.** is a Delaware corporation with its principal place of business in Atlanta, Georgia. Invesco has been registered with the Commission as an investment adviser since December 30, 1988. In its Form ADV filed on April 24, 2024, Invesco reported that it had over 37,000 clients and approximately $746 billion in regulatory AUM, including managing over 450 pooled investment vehicles that collectively hold over $580 billion in regulatory AUM. Invesco Group Services, Inc. is the sole owner of Invesco Advisers, Inc., and Invesco Ltd. is the ultimate parent of the company. Invesco Ltd. is publicly traded, with its shares listed on the New York Stock Exchange under the symbol “IVZ.”

Facts

The Relevance of "ESG Integration" to Invesco's Business

6. By November 2019, Invesco believed that identifying the use of ESG considerations across its global investment platform was a commercial imperative. Invesco's internal analysis concluded that interest in ESG integration had grown at an unprecedented rate. The Europe, Middle East, and Africa ("EMEA") market was most affected, as revisions to the European regulatory framework would require enhanced sustainability-related disclosures for products and mandatory integration of sustainability risks in financial market participants' investment decision-making processes. Invesco was also receiving requests for proposal ("RFP") inquiries asking about ESG integration. For example, an August 2019 due diligence questionnaire from a client based in the United States included an inquiry concerning Invesco's "integration of ESG criteria into your investment philosophy and/or your product suite." An internal analysis from 2019 completed by senior ESG team members stated that 30% of Invesco's AUM worth $370 billion was "at risk" given increased interest in ESG integration.

Statements to Clients and Potential Clients in Presentations, RFP Responses, and Advertisements

7. Between approximately April 2020 and July 2022, Invesco made statements in documents that were not specific to any of its funds or investment strategies concerning Invesco's firmwide ESG integration and the percentage of its AUM that was ESG integrated based on its evolving internal framework and approach.

8. In an April 2020 presentation to representatives of the U.S. registered funds it advised, Invesco described its "[c]ommitment to ESG," noting that it had an "[e]volving and committed approach to ESG integration with over 94% of AUM currently integrating ESG at minimum levels with a scale of approaches depending on asset class." In that same presentation, Invesco represented that 87% of Invesco's assets had "minimal but systematic" ESG integration, with another 6% of assets that were "systematic and fully integrated."

9. Invesco also made representations regarding the percentage of firmwide AUM that was ESG integrated to prospective clients. For example, in a presentation titled "Invesco ESG approach and capabilities" provided to a large U.S. wealth management firm on June 9, 2020, Invesco touted "Our Commitment to ESG," calling itself "A Trusted Partner in Responsible Investment" and noting "90% of AUM integrating minimum ESG levels." Invesco made similar representations to other prospective clients in June, July, and August 2020.

10. In addition to making representations regarding the percentage of firmwide AUM that was ESG integrated to specific clients and prospective clients, Invesco made similar representations to a broader audience. In its 2020 ESG Investment Stewardship Report, published in April 2021, Invesco represented: "Currently we are at 75% Invesco aspires to 100% ESG integration across all investment capabilities by 2023." A footnote stated that "Invesco uses an internal framework to measure the level of ESG considerations as an influence in investment decision making" and that "approximately 75% of Invesco's investment teams have attained the ESG integration level defined as minimal but systematic integration." The 2020 ESG Investment

Stewardship Report stated that "ESG integration" included "ESG considerations as an influence in investment decision making" and further describes "ESG integration" to be "[b]road and systematic ESG integration taking place at a strategy level and across the process."

11. In its 2021 ESG Investment Stewardship Report, published in July 2022, Invesco further described ESG integration as including "[c]onsideration of financially material ESG aspects." The 2021 ESG Investment Stewardship Report further stated, under the heading "ESG integration," "[w]e integrate financially material ESG considerations across our investment platform, taking into account critical factors that help deliver strong outcomes for clients." Invesco noted that "investment teams responsible for managing approximately 85% of Invesco's AUM have attained the ESG integration level defined as minimal but systematic integration."

12. Both the 2020 and 2021 ESG Investment Stewardship Reports fit within the definition of "advertisements" under the then-applicable Advertising Rule. Both reports were communicated to more than one person, as they were available on Invesco's website, and the two reports offered Invesco's investment advisory services with regard to securities.

13. The statements to clients and prospective clients described above and in the ESG Investment Stewardship Reports did not specifically relate to any funds or investment strategies.

The Stated Percentage of ESG-Integrated AUM Was Overstated

14. The aforementioned representations Invesco made concerning the percentage of AUM that was ESG integrated were overstated.

15. *First*, a substantial portion of the investment strategies that Invesco counted as ESG integrated could not consider ESG factors in making investment decisions because they were passive strategies that did not follow an ESG index. While Invesco publicly stated ESG integration meant "ESG considerations as an influence in investment decision making," Invesco counted all of its ETFs—including passive ETFs that followed a non-ESG index—as ESG integrated. For example, Invesco's QQQ ETF—an index product that tracks the 100 largest non-financial companies traded on the Nasdaq exchange, which, at the time Invesco was making the representations described above included approximately $180 billion in AUM—was included in the calculation. Between 2020 and 2022, passive ETFs represented approximately one-third of Invesco's AUM. Invesco overstated the percentage of AUM that was ESG integrated because the percentage included all ETFs, irrespective of whether the ETF followed an ESG strategy.

16. Invesco employees, including certain senior members of the ETFs and Index Strategies group, recognized the potential issue arising from counting all ETFs as ESG integrated. Until mid-2021, certain senior members of the ETFs and Index Strategies group were unaware that Invesco's ESG team had classified all ETFs, including passive ETFs that did not follow an ESG strategy, as ESG integrated. Those individuals raised questions and concerns regarding the classification of all ETFs as ESG integrated, noting that identifying passive ETFs as ESG integrated presents potential commercial challenges. Writing in July 2021, one member of the ETF and Index Strategies team noted that for passive strategies, which constituted over one-third of Invesco's AUM, Invesco had "not been hired in these products to express an ESG tilt." Certain

employees proposed refining Invesco's previously announced goal of having 100% of its AUM ESG integrated so that the goal would only pertain to actively managed strategies or ESG-specific ETFs, but that change was not made.

17. *Second*, even though Invesco stated that its ESG-integrated investment strategies had a "minimal but systematic" level of ESG integration, it had an evolving internal framework and did not have written policies and procedures governing what should be considered ESG integrated. As a result, Invesco's approach to classifying strategies as ESG integrated changed throughout the Relevant Period. For a portion of the Relevant Period, Invesco's representations regarding the percentage of its AUM that was ESG integrated were based on one employee's "heatmap," which assessed various investment teams' ESG-related practices. Based on the investment teams' responses to a set of questions, discussions with the investment teams, and the employee's understanding of the teams' practices, the employee then categorized all of the AUM managed by that team as ESG integrated or not ESG integrated, without conducting any strategy-by-strategy analysis as to whether the investment team used ESG factors in investment decision-making. Later during the Relevant Period, the basis for Invesco's representations changed to a survey in which assets under management were evaluated at a strategy level. As a result of those changes to its internal framework, the percentage of ESG integrated AUM varied, with figures in excess of 90% reported during the earliest part of the Relevant Period followed by percentages in the range of 70% to 85%.

18. *Third*, Invesco's justification for the integration of its passive ETFs is at odds with the public statements Invesco made in the ESG Investment Stewardship Reports. Invesco justified its classification of passive ETFs as ESG integrated solely on the basis of two factors: its index oversight practice and its proxy voting policy. Invesco had an index oversight process that applied to these passive ETFs, to evaluate the index provider's technological capabilities and operational resilience, including issues related to cyber security risk, key man risk, the ESG attributes and practices of the index provider, and whether the index rebalanced in a manner in-line with investors' expectations. Invesco's approach focused on the operations of the index provider and not how it selected the underlying securities in the index in which clients' funds were being invested. The ESG team also considered Invesco's proxy voting policy, which applied to all of its strategies that held equity securities and governed how securities held in passive ETFs would be voted. Specifically, equity securities held in passive ETFs would, if the same securities were also held in an actively managed strategy, follow the voting of the active strategy. The active manager generally would apply ESG factors in voting the shares to the extent those ESG factors were financially material and would also participate in ESG-related engagements as relevant. When a given equity security was not held by an active strategy, the passively held shares were voted following Invesco's default proxy voting policy, pursuant to which there was no active consideration on a vote-by-vote basis as to whether ESG factors were financially material to the investment. This approach for the non-overlap situations was inconsistent with Invesco's disclosure in the 2021 ESG Investment Stewardship Report stating that ESG integration included "consideration of financially material ESG aspects."

Invesco Failed to Adopt and Implement Reasonably Designed Policies and Procedures

19. Invesco failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. Specifically,

notwithstanding Invesco making representations to clients and prospective clients regarding the percentage of firmwide AUM that was ESG integrated, Invesco never adopted a written policy that defined "ESG integration," even though that was a term it used in public facing documents. As such, Invesco lacked policies and procedures to ensure AUM was appropriately classified on an aggregated level as ESG integrated and to confirm that the basis for including AUM within the bucket of ESG integrated assets, including the AUM held in passive ETFs, was correct. As a result, Invesco overstated the percentage of firmwide AUM that was ESG integrated to clients and prospective clients.

Violations

20. As a result of the conduct described above, Invesco willfully[1] violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from "engag[ing] in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

21. As a result of the conduct described above, Invesco willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder, which makes it a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) of the Advisers Act to, among other things, directly or indirectly publish, circulate or distribute an advertisement which contains any untrue statement of material fact, or which is otherwise false or misleading. The rule was replaced by the Marketing Rule with an effective date of May 4, 2021 and a compliance date of November 4, 2022. The ESG Stewardship Reports at issue pre-dated the Marketing Rule's November 4, 2022 compliance date.

22. As a result of the conduct described above, Invesco willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

23. As a result of the conduct described above, Invesco willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to "make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor

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[1] "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material from a required disclosure in violation of Section 207 of the Advisers Act).

in the pooled investment vehicle; or [o]therwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." A showing of negligence is sufficient to establish a violation of Section 206(4) of the Advisers Act or Rule 206(4)-8 thereunder; proof of scienter is not required. *Steadman*, 967 F.2d at 647.

Cooperation

24. In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff. Throughout the investigation, Invesco voluntarily met with the Commission staff on multiple occasions and cooperated to provide factual summaries of relevant information.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Invesco shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1, 206(4)-7 and 206(4)-8 thereunder.

B. Invesco is censured.

C. Invesco shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $17.5 million to the Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request.

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Invesco Advisers, Inc. as Respondent in these proceedings, and the file number of the proceedings; a copy of the cover letter and check or money order must be sent to Stephen E. Donahue, Assistant Director, Asset Management Unit, Securities and Exchange Commission, Suite 900, 950 East Paces Ferry Road NE, Atlanta, GA 30326, or such other address as the Commission staff may provide.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary