UNITED STATES OF AMERICA
Before the
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22165

In the Matter of

Invesco Distributors, Inc. and Invesco Advisers, Inc.,

Respondents.

Respondents Invesco Distributors, Inc. and Invesco Advisers, Inc.'s Motion to Amend Order Instituting Proceedings

Respondents Invesco Advisers, Inc. ("IAI") and Invesco Distributors, Inc. ("IDI," and with IAI "Respondents" or "Invesco"), by and through their undersigned counsel, Ropes & Gray LLP, hereby move pursuant to Rules 200(d)(1) and 154 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.154 and 201.200(d)(1), to amend the U.S. Securities and Exchange Commission's (the "SEC" or the "Commission") September 24, 2024 Order Instituting Administrative Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and 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 (the "Order").

In support of Respondents' motion, pursuant to Rule 154(a) of the Commission's Rules of Practice, Invesco concurrently files a brief in support of the motion, in addition to related attachments.

OS Received 02/05/2025

Dated: February 5, 2025

Respectfully submitted,

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I. Introduction

Respondents Invesco Advisers, Inc. ("IAI") and Invesco Distributors, Inc. ("IDI," and with IAI "Respondents" or "Invesco"), by and through their undersigned counsel, Ropes & Gray LLP, hereby move pursuant to Rules 200(d)(1) and 154 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.154 and 201.200(d)(1), to amend the U.S. Securities and Exchange Commission's (the "SEC" or the "Commission") September 24, 2024 Order Instituting Administrative Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and 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 (the "Order"). Invesco's Proposed Amended Order is attached hereto as Attachment A.

The Order was part of the Commission's three-year, industry-wide electronic communications sweep that has to date resulted in over 70 settlements and well over $2 billion in fines being imposed for violations of certain recordkeeping statutes and regulations (the "Electronic Communications Sweep"). Invesco seeks to amend the Order to align with the manner of resolution found in orders more recently entered by the Commission for twelve firms on January 13, 2025 (the "January 2025 Settlements"). *See Twelve Firms to Pay More Than $63 Million Combined to Settle SEC's Charges for Recordkeeping Failures*, SEC (Jan. 13, 2025), https://www.sec.gov/newsroom/press-releases/2025-6.

These settlements involved the same recordkeeping violations as the nearly 70 settlements that had come before, including Invesco's, but resolved those violations on significantly less prejudicial terms. The January 2025 Settlements marked a major departure in the SEC's approach in that they provided comparatively favorable settlement terms (*e.g.*, they do not require the settling firms to hire independent compliance consultants). These settlement terms were not offered to Invesco even though it cooperated extensively with the government in

resolving its matter, which started some six months after the cases that were recently resolved. Invesco settled its case on the terms reflected in the Order because it understood that senior management of the SEC had determined that all recordkeeping cases would be resolved with the same terms as previous cases. The terms imposed on Invesco have severely prejudiced Invesco and its shareholders as compared to the more favorable terms that the Gensler-led Commission approved in early January for nearly identical conduct.

Specifically, Invesco seeks to amend the Order in a targeted manner to: (i) remove all obligations related to the independent compliance consultant in favor of an internal audit review; (ii) remove the obligation to report certain discipline imposed on employees; and (iii) move any activities that Invesco will complete going forward to be voluntary undertakings. Each of these proposed modifications is entirely consistent with the January 2025 Settlements. For avoidance of doubt, Invesco is not seeking any reimbursement of or reduction in the $35 million civil monetary penalty, which it already paid in full compliance with the terms of the Order. The specific modifications sought by Invesco are instead designed to bring Invesco's settlement terms in line with the January 2025 Settlements, and are summarized below:[1]

September 24, 2024 Order	**Proposed Amended Order**
(i) Independent Compliance Consultant Shift to Internal Audit Review	
Section III., ¶7 The Commission staff uncovered Respondents' misconduct after commencing risk-based initiatives to investigate the use of off-channel and unpreserved communications at broker-dealers and registered investment advisers. Respondents have initiated a review of their recordkeeping failures and begun a program of remediation.	Modify the language as set forth below: The Commission staff uncovered Respondents' misconduct after commencing risk-based initiatives to investigate the use of off-channel and unpreserved communications at broker-dealers and registered investment advisers. Respondents have initiated a review of their recordkeeping failures and begun a program of remediation. ~~As set forth in the Undertakings~~

[1] A redline between the Proposed Amended Order (Attachment A) against the Order is also attached hereto as Attachment B.

As set forth in the Undertakings below, Respondents will retain an independent compliance consultant to review and assess Respondents' remedial steps relating to their recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.	~~below, Respondents will retain an independent compliance consultant to review and assess Respondents' remedial steps relating to their recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.~~
Section III., ¶35 (Independent Compliance Consultant)	Strike ¶35 a-c and replace with revised ¶35 as set forth below:[2] ~~35. Independent Compliance Consultant.~~ ~~a. Respondents shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by Respondents.~~ ~~b. Respondents will oversee the work of the Compliance Consultant.~~ ~~c. Respondents shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. Respondents shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:~~ 35. Internal Audit. Within one hundred eighty (180) days of the entry of this Amended Order, Respondents shall require that their Internal Audit function[3] initiate a separate audit(s), to be completed within three hundred and sixty-five

[2] What was ¶35 c.i-vii will remain but will now be labeled as ¶35 a-g.

	(365) days of the entry of this Amended Order, consisting of the following: [FN3]An independent compliance consultant may conduct the reviews and assessments described in Paragraph 35 in lieu of Respondents' Internal Audit function.
Section III, ¶35 d-j	Strike what was ¶35 d-j in their entirety.
Section III., ¶36 (One-Year Evaluation)	Strike what was ¶36 in its entirety.
Section III., ¶38 (Internal Audit)	Strike what was ¶38 in its entirety.
Section III., ¶40 (Deadlines)	Strike what was ¶40 in its entirety.
Section III., ¶41 (Certification) Respondents shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Nikolay V. Vydashenko, Assistant Regional Director, Division of Enforcement, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, TX 76102, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.	Modify the language as set forth below: Respondents shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings~~,~~ and provide written evidence of compliance in the form of a narrative~~, and be supported by exhibits sufficient to demonstrate compliance~~. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification ~~and supporting material~~ shall be submitted to Nikolay V. Vydashenko, Assistant Regional Director, Division of Enforcement, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, TX 76102, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings or within sixty (60) days of the Amended Order, whichever is later.

(ii) Reporting Employee Discipline	
Section III., ¶37 (Reporting Discipline Imposed)	Strike what was ¶37 in its entirety.
(iii) Compliance with Undertakings	
Section IV.D Respondents shall comply with the undertakings enumerated in paragraphs 35 to 41 above.	Strike what was Section IV.D in its entirety.

Invesco brings this Motion pursuant to Rules of Practice 154 and 200(d)(1), 17 C.F.R. §§ 201.154 and 201.200(d)(1), on the grounds that being denied an opportunity to reach a settlement on the terms afforded to the similarly situated firms that resolved analogous electronic communications matters in January 2025 is a new matter of fact and "subsequent development" that is fundamentally unfair and has severely prejudiced Invesco and its shareholders, and granting the requested modifications will not prejudice the Commission or the investing public. For these reasons, Invesco respectfully requests that the Commission grant this Motion.

II. Factual Background

On May 15, 2023, Invesco received document requests as part of the Commission's Electronic Communications Sweep (the "Inquiry"). From the outset of the Inquiry, Invesco cooperated in full and pursued a uniquely collaborative approach with the regional staff of the SEC's Fort Worth Office (the "Staff") that resulted in a settlement just over a year later in September 2024. Invesco's collaboration resulted in Invesco resolving its inquiry prior to other firms whose inquiries began well before Invesco's. For example, certain firms which first announced electronic communications inquiries in early November 2022, did not reach settlements until January 2025. *See, e.g.*, Reuters Article (Nov. 9, 2022), https://tinyurl.com/36kctx22.

Invesco repeatedly sought to avoid an independent compliance consultant and other remedies found in earlier settlements but came to understand that the SEC's position, as established by the then-current enforcement leadership in the Washington D.C. office and required by the Gensler-led Commission, was that all firms would receive essentially the same settlements. Invesco's belief in the position was justified given that up through the date of Invesco's settlement, there were nearly 70 settlements, all of which contained ordered remedies that included independent compliance consultants and a requirement to report to the SEC employee violations of recordkeeping policies and procedures. Even firms that self-reported their violations settled on these terms. However, the SEC's stance changed materially, as evidenced by the less prejudicial settlement terms provided to the January 2025 cohort of firms. This shift in approach has significantly impacted Invesco and its shareholders in a negative and unfair manner.

We note that some of the firms in the recent batch of settlements were negotiating a resolution with the SEC enforcement staff at or about the same time that Invesco was negotiating its resolution with the Staff according to public reports and SEC filings. *See, e.g.*, WSJ Article (May 28, 2024), https://tinyurl.com/yc589r8b (indicating that several firms in the January 2025 cohort appear to have been discussing matters relating to the electronic communications sweep in or before May 2024). Invesco was actively negotiating a potential settlement with the Staff during the summer of 2024 and received from the Staff a draft order instituting proceedings on July 19, 2024.

Invesco's Order requires the firm to retain, at its own expense, an independent compliance consultant to conduct a "comprehensive compliance review" related to various aspects of Invesco's electronic communications compliance program, including policies and

procedures, training, surveillance, technological solutions, and disciplinary framework. Invesco has already retained this consultant and expects to incur substantial expense for these services. Per the terms of the Order, the consultant must submit to the Commission two reports. The Order also requires Invesco to report to the Commission for a period of two years any discipline imposed on employees for violations of Invesco's policies regarding the preservation of electronic communications.

Separately, because the Order asserts a willful violation and failure to supervise under Exchange Act Section 15(b) and imposes, via Section IV.D, ongoing undertakings that are "still in effect," IDI (Invesco's broker-dealer) has worked with the Financial Industry Regulatory Authority ("FINRA") to complete a continuing membership application. *See* FINRA Regulatory Notice 09-19 (Apr. 9, 2009) ("With respect to disqualifications arising solely from findings specified in Exchange Act Section 15(b)(4)(D) or (E) by the SEC . . . a member shall file [a continuing membership application] with RAD ***if the sanction is still in effect*** . . ") (emphasis added); *see also Frequently Asked Questions on FINRA's Eligibility Proceedings for Firms Participating in the SCSD Initiative*, FINRA (last visited Feb. 5, 2025), https://www.finra.org/rules-guidance/oversight-enforcement/decisions/scsd-eligibility-faq ("For disqualifications involving willful violations of the federal securities laws, FINRA typically requires its member firms to file Form MC-400A [a continuing membership application] **only if** the sanction is still in effect.") (emphasis in original). In connection with this process, IDI was required by FINRA to consent to a heightened plan of supervision. This heightened plan of supervision imposes for several years additional requirements beyond those contained in the Order, well beyond the requirements in the January 2025 Settlements, and will result in Invesco's shareholders bearing additional costs of compliance.

During the Inquiry, Invesco understood that certain aspects of the Order were non-negotiable, including the ordered remedy requiring the engagement of an independent compliance consultant, as they were standard features of the Electronic Communications Sweep as determined by leadership in the Division of Enforcement. On this basis, Invesco negotiated in good faith to resolve the matter on the terms offered by the Staff. However, just three months after entering the Order, the Commission recently approved a series of radically different and less onerous settlements for similarly situated firms.

In a marked departure from the Order and the nearly 70 settlements that came before, the January 2025 Settlements do not require respondents—some of the largest financial institutions in the world—to comply with *any* undertakings. In contrast to nearly all prior settlements, the January 2025 Settlements do not include, in Section IV, language ordering that respondents comply with various enumerated undertakings.[3] The requirement to retain an independent compliance consultant, which Invesco has already expended tremendous resources towards, was struck entirely and replaced by a narrower wholly internal review that does not require any reports to be submitted to the SEC. The January 2025 Settlements likewise omit the requirement that respondents report to the Commission any discipline for employee violations of firm policies regarding the preservation of electronic communications, much less for a period of two years as required in Invesco's Order. Further, the broker-dealers in the January 2025 Settlements are not required under FINRA's rules to complete a continuing membership application, because they

[3] Of the nearly 70 settlements before January 2025, we have found just one that does not include the Section IV requirement to comply with the undertakings. *See* Order Instituting Administrative Cease-and-Desist Proceedings (J.P. Morgan), Exchange Act Release No. 93807 (Dec. 17, 2021).

are not subject to any sanctions "still in effect" and therefore are not required to adhere to onerous heightened supervision plans, such as the one that FINRA imposed on IDI.

While Invesco is not seeking to modify the $35 million civil monetary penalty, which it has already paid in full, it is worth noting that the firms settling as part of the January 2025 Settlements will pay drastically lower penalties on both an absolute and relative basis. Invesco understood that firm size was an important factor in determining the penalty amount. *See* Remarks at SEC Speaks 2024, SEC (Apr. 3, 2024), https://www.sec.gov/newsroom/speeches-statements/sanjay-wadhwa-sec-speaks-2024-04032024. However, the fines imposed on the firms included in the January 2025 Settlements suggest that was not the case. For example, while Invesco paid a fine of $35 million, Charles Schwab paid a penalty of just $10 million even though Charles Schwab's 2023 revenue was over three times that of Invesco's reported revenue.

Despite settling for the same violations as Invesco, the firms settling in January 2025 were afforded drastically less prejudicial settlement terms that were not made available to Invesco. *Compare* Order, ¶ 22 ("Overall, personnel sent and received numerous off-channel communications involving other Invesco personnel, as well as external participants in the securities industry."), *with* Order Instituting Administrative Cease-and-Desist Proceedings (Santander), Exchange Act Release No. 102171 (Jan. 13, 2025), ¶ 19 ("Overall, personnel sent and received numerous off-channel communications involving other personnel, Respondent's brokerage customers, and/or other participants in the securities industry."). In fact, Invesco's implementation of a corporate device program prior to the commencement of the Inquiry distinguished Invesco's compliance program from firms settling in January 2025. *See* Order, ¶ 34 ("During the entirety of the Relevant Period [January 2020 – September 2024], Respondents provided certain personnel with firm-issued devices that included technology that enabled the

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capture, retention, and archiving of communications (including text messages) sent and received on those devices through firm-approved applications."). Notwithstanding its more comprehensive compliance program and uniquely collaborative approach with the Staff that led to an accelerated resolution of the Inquiry, Invesco was offered more prejudicial terms.

III. Argument

The Commission should amend the Order in accordance with Invesco's request under Rule of Practice 200(d)(1), which allows the Commission to amend an order instituting proceedings "to include new matters of fact or law." 17 C.F.R. § 201.200(d)(1) ("Upon motion by a party, the Commission may, at any time, amend an order instituting proceedings to include new matters of fact or law."). The Commission has stated that such amendments should be "freely granted, subject only to the consideration that other parties should not be surprised, nor their rights prejudiced." Rule of Practice Comment (d) to Rule 200, 60 Fed. Reg. 32738, 32757 (June 23, 1995) (citing *In the Matter of Carl L. Shipley*, Release No. 419 (June 21, 1974)). "Where amendments to an order instituting proceedings are intended . . . to conform the order to the evidence or to take into account subsequent developments which should be considered in disposing of a proceeding . . . the Commission has authority to amend the order." 60 Fed. Reg. at 32757.

This permissive approach to granting modifications, particularly in the face of unfair treatment, is consistent with Rule of Practice 100(c)'s general directive that "[t]he Commission, upon its determination that to do so would ***serve the interests of justice*** and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary." 17 C.F.R. § 201.100(c) (emphasis added); *see also* Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission, 69 Fed. Reg. 13166,

13169 (Mar. 18, 2004) (explaining that Rule 100(c) was being adopted to "make explicit the Commission's authority to order a variation . . . based on the Commission's determination that to do so would serve the interests of justice."). The Commission's wide latitude to modify existing orders is further supported by its ability to, under Rule of Practice 400, 17 C.F.R. §201.400, "on its own motion, direct that any matter be submitted to it for review . . . ."

There is ample precedent that weighs in favor of the Commission granting Invesco's motion to amend the Order to bring the Order in line with similarly situated respondents. For example, in a prior sweep that the Commission previously conducted relating to improper market-timing and late trading behavior, several firms settled with the Commission and agreed to various undertakings. *See* SEC, *Performance and Accountability Report (2005)* at 37 (describing the Commission's "risk-targeted examination sweeps" in 2005 for assessing "compliance problems associated with market timing and late trading."). However, the settled orders evolved over time and firms subject to prejudicial undertakings as compared to similarly situated respondents who later settled on modified terms sought to align their undertakings with those of similarly situated firms. *See, e.g.*, *In the Matter of Millenium Partners et al.*, Release No. 34-78364 at 2 (July 19, 2016) (recognizing that the respondent in that matter had "support[ed] its request by noting that . . . [the Commission has, among other things,] agreed to eliminate similar undertakings in other administrative proceedings related to market timing and other actions."). The Commission found "it appropriate to grant [the respondent's] motion" in such cases. *Id.*

As is the crux of Invesco's request here, the respondents in the market timing actions were relieved of their obligations relating to compliance consultants. *See, e.g.*, *In the Matter of Inviva, Inc. & Jefferson Nat'l Life Ins. Co.*, Release No. 9021 at 2 (Apr. 1, 2009) (granting amendment of an order to remove the requirement that a third party conduct a compliance review

every other year); *In the Matter of Franklin Advisers, Inc.*, Release No. 2906 at 2 (July 20, 2009) (granting an amendment to "relieve [the firm] of the obligation to continue to have a third party periodically review its compliance controls."); *In the Matter of Putnam Inv. Mgmt.*, Release No. 3600 at 2 (May 3, 2013) (granting amendment of an order to remove various ongoing obligations, including to "undergo a compliance review by a third party at least once every other year.").

In this case, the "subsequent development" is the Commission's willingness to settle the same violations on drastically less prejudicial terms that were not made available to Invesco just three months earlier. This type of unfair and disparate treatment of similarly situated respondents raises concerns similar to those that have been addressed in the courts. *See, e.g.*, *Gupta v. S.E.C.*, 796 F. Supp. 2d 503, 514 (S.D.N.Y. 2011) (denying SEC's motion to dismiss plaintiff's equal protection claims on the grounds that "there is already a well-developed public record of [plaintiff] being treated [by the SEC] substantially disparately from 28 essentially identical defendants . . ."). Invesco's proposed modifications simply seek to place Invesco in the same position as the firms that settled recordkeeping violations in January 2025. Despite cooperating extensively with the Staff to resolve the same recordkeeping violations at issue in the January 2025 Settlements, during the same general time that several of the firms involved in the January 2025 Settlements were negotiating a resolution for those violations, Invesco is being forced to comply with onerous conditions that other firms are not. This plainly does not "serve the interests of justice."

There is no meaningful difference between the nature of Invesco's recordkeeping violations and the other firms' conduct. A comparison of the Order to the January 2025 Settlements confirms this. In fact, in many cases, it is clear that Invesco undertook more

substantial efforts to comply with applicable recordkeeping requirements than peers that were offered more beneficial settlement terms. Specifically, while Invesco adopted a corporate device program that resulted in the capture of text communications ***prior to*** the initiation of the Inquiry, certain respondents in the January 2025 Settlements did not. Invesco's cooperation throughout the Inquiry militates in favor of Invesco being afforded an opportunity to settle on the same terms as the firms settling in January 2025.

The Commission has highlighted the importance of cooperation in the context of the Electronic Communications Sweep. For example, in April 2024, when Invesco was in the midst of the Inquiry, the SEC recognized that in the context of the Electronic Communications Sweep "[f]irms that do not self-report can still receive credit based on their cooperation with ENF staff during our investigation." *See Remarks at SEC Speaks 2024, supra*. Invesco's collaborative approach from the outset, as informed by public pronouncements underscoring the value of cooperation, enabled the Staff to resolve the Inquiry in just over a year. Many of the firms that settled in January took nearly twice as long to reach a resolution, yet clearly benefited from their delay.

Invesco's requested modifications will not prejudice the Commission or the investing public. As to the Commission, these are settled administrative proceedings and, thus, there are no upcoming hearing or hearing-related deadlines that will be impacted. Additionally, Invesco has demonstrated its clear commitment to abiding by its obligations under the Order by timely paying its $35 million civil penalty and identifying, retaining, and commencing significant work with an independent compliance consultant in accordance with the specific terms and deadlines set by the Order. There is nothing to indicate that Invesco would not comply with the Order if modified in accordance with its request.

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Invesco's requested modifications would also not prejudice other parties' rights. To the contrary, a denial of the request to amend the Order would severely prejudice Invesco's shareholders as they would ultimately incur the substantial cost associated with the independent compliance consultant as well as indirect costs associated with FINRA's heightened plan of supervision. These are costs that shareholders of the similarly situated public companies who were parties to the January 2025 Settlements have been able to avoid.

IV. Conclusion

For the foregoing reasons, Invesco respectfully requests that the Commission amend the Order as requested.

Dated: February 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & 201.151, I certify that I filed this document using the eFAP system; I further certify that, on **February 5, 2025**, a copy of **Respondents Invesco Distributors, Inc. and Invesco Advisers, Inc.'s Motion to Amend Order Instituting Proceedings** was served via electronic mail on the following:

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Counsel for Respondents Invesco Distributors, Inc. and Invesco Advisers, Inc.

CERTIFICATE OF COMPLIANCE

In accordance with Rule of Practice 151(e), 17 C.F.R. § 201.151(e), I certify that on February 5, 2025, I have omitted any sensitive personal information, as required by Rule of Practice 151(e)(3) from this filing.

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INVESCO'S INDEX OF ATTACHMENTS

Attachment	Description
A	Invesco's Proposed Amended Order
B	Redline between the Proposed Amended Order (Attachment A) against the Order, dated September 24, 2024