

June 25, 2007

# Proposed Distribution Plan

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-11701

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In the Matter of	)
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INVESCO FUNDS GROUP, INC.	)
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Respondent.	)
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## OVERVIEW

This Distribution Plan (“Plan”) proposes a methodology for distributing to investors an amount equal to \$325 million, plus accumulated interest and possible payments associated with other distribution plans established at the direction of the Commission to distribute monies to those shareholders harmed by market timing and/or late trading of Invesco mutual funds by other entities or persons (“Other Plan Payments”) and from settlements with former Invesco employees, that were paid in settlement of administrative proceedings of the U.S. Securities and

Exchange Commission (“SEC” or Commission”) addressing market timing of mutual funds formerly advised by Invesco Funds Group, Inc. (“IFG”).<sup>1</sup>

On October 8, 2004, IFG consented to the entry of an Order Instituting Administrative and Cease-and-Desist Proceedings, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), without admitting or denying the Order’s findings. The Order found, among other things, that IFG entered into agreements that allowed certain individuals and entities (“Special Situations”) to make frequent trades in Invesco Funds advised by IFG during the period from at least 2001 through July 31, 2003, that were inconsistent with fund prospectuses and potentially harmful to Invesco Funds shareholders. In addition to entering into the market timing agreements described, from at least 2000 through July 2003 (“Relevant Period”), IFG typically did not take action to restrict the trading of Invesco Fund shareholders whom IFG knew were trading in excess of the four-exchange limit set forth in the Invesco Funds’ prospectuses (“Tolerated Timers”).

As described more fully below, the process of calculating the amounts to be distributed to investors and causing those distributions to be made from the IFG Fair Fund will be implemented through a “Twenty-Six Step Process.”

Pursuant to the Order, IFG agreed to pay \$325 million, of which \$110 million represents civil penalty and \$215 million represents disgorgement, into a Fair Fund (“IFG Fair Fund”) established under Section 308(a) of the Sarbanes-Oxley Act for the benefit of injured

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<sup>1</sup> *In the Matter of Raymond R. Cunningham*, Admin. Proc. No. 3-11702 (October 8, 2004), *In the Matter of Michael D. Legoski*, Admin. Proc. No. 3-11620 (August 30, 2004), *In the Matter of Timothy J. Miller*, Admin. Proc. No. 3-11619 (August 30, 2004), and *In the Matter of Thomas A. Kolbe*, Admin. Proc. No. 3-11618 (August 30, 2004).

shareholders which is currently on deposit with the U.S. Treasury (“Treasury”). Pursuant to the Order, AIM Advisors, Inc. (“AIM Advisors”), which had become the advisor to the mutual funds advised by IFG during the time period covered by the Order, retained “the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and the independent board members of the AIM Funds.” The Order directs “AIM Advisors [to] require ... that the Independent Distribution Consultant develop a Distribution Plan for the distribution of the monies ordered to be paid in ... paragraph IV.E.3. of the Order, and any interest or earnings thereon, according to a methodology developed in consultation with AIM Advisors and acceptable to the staff of the Commission and the independent board members of AIM Funds.” The Order further directs “IFG and AIM Advisors [to] cooperate fully with the Independent Distribution Consultant and [to] provide the Independent Distribution Consultant with access to IFG’s and AIM Advisors’ files, books, records, and personnel as reasonably requested for the review.”<sup>2</sup> As required by the Order, AIM Advisors has agreed to pay the “Independent Distribution Consultant’s compensation and expenses.”<sup>3</sup>

In accordance with the Order, AIM Advisors has retained Professor Gordon J. Alexander, who holds the John Spooner Chair in Investment Management in the Carlson School of Management at the University of Minnesota and is a former Academic Fellow at the Commission, as the Independent Distribution Consultant (“IDC”). This submission constitutes the Distribution Plan required by the Order. The IDC was assisted in preparing the Plan by CRA International, an economic, financial, and management consulting firm with 17 offices located in the United States and 13 offices located elsewhere in the world. Assistance was also provided by Arnold & Porter, a law firm with six offices located in the United States and two located

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<sup>2</sup> Order at ¶ 55.

<sup>3</sup> *Id.*

overseas. The Plan is subject to approval by the Commission and the Commission will retain jurisdiction over the implementation of the Plan.

Pursuant to Commission Rule 1103 (17 C.F.R. §201.1103), notice of this Plan shall be published in the SEC Docket, on the Commission’s website, on the website listed immediately below, and in such other publications, if any, as the Commission or hearing officer may require.

<http://www.invescofairfund.com>

## **ADMINISTRATION OF THE PLAN**

### **Appointment of an Administrator for the IFG Fair Fund**

The Commission’s Order requires that the IDC submit a Plan for the “administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission’s Rules Regarding Disgorgement and Fair Fund Plans.”<sup>4</sup> The Order provides that “AIM Advisors shall require that the Independent Distribution Consultant, with AIM Advisors, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.”<sup>5</sup> Accordingly, AIM Advisors and the IDC have proposed that Boston Financial Data Services, Inc. serve as the administrator of the IFG Fair Fund (“Fund Administrator”).

The Fund Administrator, founded in 1973, is a third-party service provider that provides transfer agency services to over 145 fund companies. The Fund Administrator has extensive experience in both the settlement administration industry (over 11 years) and the mutual fund industry (over 30 years). Under the supervision of the IDC, the Fund Administrator will be responsible for, among other things: overseeing administration of the IFG Fair Fund; obtaining

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<sup>4</sup> *Id.* at ¶ 55d.

<sup>5</sup> *Id.*

accurate mailing information for shareholders; preparing accountings; cooperating with the Tax Administrator appointed by the Commission (described *infra*) in providing the information necessary to accomplish any income tax compliance, ruling, and advice work; distributing money from the IFG Fair Fund to shareholders in accordance with this Plan; setting up and staffing a call center to address shareholder questions or concerns regarding the distribution; and maintaining an informational website to address frequently asked questions and other information regarding the Plan. AIM Advisors will pay all fees and costs associated with the Fund Administrator's services.

The Fund Administrator is not a "Commission employee," and therefore Rule 1105(c) requires that "the administrator shall . . . obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission," but "the Commission may waive posting of a bond for good cause shown." AIM Advisors and the IDC propose that the bond requirement for the Fund Administrator be waived. Good cause exists to waive posting of a bond for several reasons: (1) the Fund Administrator will have no custody and restricted control of the IFG Fair Fund; (2) the distribution funds will remain at the U.S. Treasury Bureau of Public Debt ("BPD") until checks are prepared and are ready for mailing; (3) upon transfer from Treasury, the funds will be held in an escrow account (the "QSF Escrow Account," described *infra*) until presentation of a check or wire; (4) at the time a check is presented the funds will transfer to a controlled disbursement account at a bank (the "QSF Disbursement Account," described *infra*), and presented checks will be subject to "positive pay" controls before being honored by the bank; and (5) the Fund Administrator maintains adequate insurance coverage against loss. In lieu of bond, the Fund Administrator maintains, and will maintain until termination of the IFG Fair Fund, a Financial Institutions Bond (including a Computer Crime Policy) and Errors and

Omissions insurance. The financial strength of the primary insurers, as of the most recent renewal of the coverage, was rated “A+” by A.M. Best. The Financial Institutions Bond provides protection against employee dishonesty, forgery, or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment, or delivery of funds as a result of fraudulent input, preparation, or modification of computer instructions, data, or fraudulent electronic transmissions or communications. The Errors and Omissions insurance protects against errors and omissions committed by employees in the course of their performance of professional services. The Fund Administrator’s professional liability insurance protects against errors and omissions committed by employees of the Fund Administrator in the course of their performance of professional services. Documentation of coverage has been provided to the assigned Commission staff for review and that coverage has been deemed “not unacceptable.” Under the Plan, \$325 million, plus accumulated interest and possible receipt of Other Plan Payments and from settlements with former Invesco employees, is the maximum amount that will be under the Fund Administrator’s limited control.

Deutsche Bank Trust Company Americas (“Bank”), where the IFG Fair Fund assets will be held during the check-cashing period, maintains, among other insurance, a Financial Institution Blanket Bond, and Errors and Omissions insurance coverage. The financial strength of the primary insurers, as of the most recent renewal of the coverage, was rated “A++” and “A+,” respectively, by A.M. Best. The Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data, exposure to loss, and internal company controls. The Bank’s limits are reviewed annually by its Board of Directors. Documentation of coverage has been provided to the assigned Commission staff for review and that coverage has been deemed “not unacceptable.” Furthermore, upon transfer from Treasury, funds will be held

in the QSF Escrow Account, described *infra*, separate from the Bank's assets, until presentation of a check or wire, at which time funds will be transferred to the QSF Disbursement Account, described *infra*, and presented checks or wires will be subject to "positive pay" controls before being honored by the Bank.

### **Control of the IFG Fair Fund**

Pursuant to the Order, AIM Advisors made a payment of \$163,657,534 on December 29, 2004 and made a further payment of \$170,936,643 on October 12, 2005, representing a total of \$334,594,177,<sup>6</sup> into an escrow account at Deutsche Bank Trust Company Americas ("Escrow Agent") to be invested in short-term United States Treasury Securities with maturities not to exceed six months. On September 29, 2005, the SEC issued an Order Directing Escrow Agent To Transmit Funds (the "September 29, 2005 Order") which directed that, upon the maturity of the securities held in the escrow account, the Escrow Agent transfer the monies in the escrow account to the Office of Financial Management at the SEC ("OFM"). In accordance with the September 29, 2005 Order, the Escrow Agent subsequently transferred all escrowed monies to OFM.

The assets of the IFG Fair Fund are under the continuing jurisdiction and control of the Commission. The IFG Fair Fund is currently deposited at the BPD and will remain there until released to the QSF Escrow Account in accordance with Step Fifteen below. This IFG Fair Fund will not receive additional funds, other than the interest from the funds on deposit at the BPD and possible payments made by Other Plan Payments and from settlements with former Invesco employees. The distribution of payments from Other Plan Payments is described in greater detail in a later section of this document.

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<sup>6</sup> This total amount consisted of \$215 million in disgorgement, a civil penalty of \$110 million, and \$9,594,177 in interest.

The IFG Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5. Upon approval of the Plan, the Fund Administrator, under the supervision of the IDC, shall establish an escrow account and a controlled disbursement account at the Bank in the name of and bearing the Taxpayer Identification Number of the QSF (the “QSF Escrow Account” and the “QSF Disbursement Account”, respectively, or together, the “QSF Accounts”). Following approval of the Plan and the IDC’s satisfaction of the requirements of Step Fifteen below, and unless otherwise directed by the Commission, the Commission staff shall cause the balance in the IFG Fair Fund to be deposited in the QSF Escrow Account. The Fund Administrator shall be the signer on the QSF Accounts, subject to the supervision of the IDC and the continuing jurisdiction and control of the Commission. The Fund Administrator shall authorize the Bank to provide QSF Account information to Damasco & Associates (“Tax Administrator”). The Fund Administrator shall use the assets and earnings of the IFG Fair Fund to provide payments to investors and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs associated with the QSF Accounts. The QSF Escrow Account shall be invested in direct obligations of the United States Government of a type and term necessary to meet the cash requirements of the payments to investors, tax obligations, and fees.

#### **Tax Obligations of the IFG Fair Fund**

The Commission has appointed Damasco & Associates as the Tax Administrator of the IFG Fair Fund pursuant to the March 10, 2006 Order Appointing Tax Administrator (Release No. 53468, Admin. Proc. File No. 3-11530). The IDC, Fund Administrator, and AIM Advisors will cooperate with the Tax Administrator in providing information necessary to accomplish income tax compliance, ruling, and advice work assigned to the Tax Administrator by the



Commission. The Tax Administrator will be compensated first by any earnings or interest of the QSF and second, if necessary, from the principal of the QSF. The Fund Administrator shall authorize the Bank to provide duplicate bank statements for the QSF Accounts directly to the IDC, the Tax Administrator, and Jeffery A. Cohen,, Assistant Regional Director, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, Texas 76102-6882.

The IDC, the Fund Administrator, and the Tax Administrator will not provide tax advice to any investors receiving distributions from the IFG Fair Fund. Access to any guidance issued by the Internal Revenue Service regarding the distribution will be provided along with the other information to investors described in Step Sixteen below.

**Standard of Care of IDC and Fund Administrator**

The IDC and the Fund Administrator, and/or each of their designees, agents and assistants, shall be entitled to rely on any Orders issued in this proceeding by the Commission, the Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any person other than the Commission or the QSF for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission is caused by such party's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Plan. This paragraph is an expression of the IDC's and the Fund Administrator's standard of care and is not intended, nor should it be deemed to be, a representation to or an indemnification of the IDC or the Fund Administrator or their designees, agents and assistants by the Commission or the QSF, nor should this paragraph preclude the Commission or the QSF from seeking redress from IDC or the Fund Administrator in accordance with the rules and regulations of the Commission and the QSF.

## **DISTRIBUTION PLAN AND PROCEDURES**

### **Eligible Investors**

The Order requires that the IDC develop a distribution plan that “provides for investors to receive, from the monies available for distribution in order of priority, (i) their proportionate share of losses suffered by the funds due to market-timing, and (ii) a proportionate share of advisory fees paid by funds that suffered such losses during the period of such market timing.”<sup>7</sup> Investors eligible to receive a share of the IFG Fair Fund are those investors who held shares in the mutual funds in which market timing occurred on the days on which such market timing occurred during the Relevant Period, except (1) identified timers referred to in paragraphs 6 and 17 of the Order (“Special Situations”), (2) certain of those market timers referred to in paragraph 25 of the Order as “Tolerated Timers,” as described below, and (3) former employees of IFG who were sanctioned by the Commission for their role in facilitating market timing agreements by others in IFG Funds (“Sanctioned Former Employees”). A list of the funds in which market timing occurred is shown in Exhibit A.

A list of Special Situations whose accounts will not receive a distribution from the IFG Fair Fund is attached hereto as Exhibit B. Those Tolerated Timers who made more than four exchanges out of any single fund in any 12-month period (“Certifying Accounts”) will be eligible to receive a share of the IFG Fair Fund only under conditions outlined in Step Seven.

The payments to be made to those investors harmed by improper market timing activity will be computed and distributed on an account-by-account basis, aggregating by identical owner where legally appropriate and practical.<sup>8</sup>

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<sup>7</sup> Order at ¶ 55.

<sup>8</sup> The ability to aggregate by owner will be limited due to information availability. The IDC will determine the extent to which efforts will be made to identify common ownership of accounts based on the estimated costs and benefits of the activities required to do so.

## Payment Calculation

The method of calculation of the payment to each eligible investor account from the IFG Fair Fund is intended to result in a restoration of the impaired value of the investment of the eligible investor account in the affected mutual funds. Some of this impaired value is susceptible to calculation, while some of this impaired value is not. The methods of calculation are intended to fairly estimate the impaired value that each investor has suffered as a result of market timing and to make a payment in that amount. In the view of the IDC, empirical analysis of the timing transactions at issue in this proceeding indicates that, on the specific facts of this case, there are two separate components of harm suffered by eligible investors – dilution of investment returns and excess transaction costs incurred.<sup>9</sup> A fair and reasonable method for determining the dilution of investment returns caused by the trading described in the Order is to calculate the difference in the actual return of the fund and the estimated return of the fund “but for” the market timing trades addressed by the Order, taking into account the distortion in cash balances resulting from those trades.<sup>10</sup> A fair and reasonable method for determining excess transaction costs is to (1) identify incremental portfolio trading volume (investments and disinvestments) executed by each fund’s portfolio manager in reaction to the market timing trades addressed by the Order, and (2) calculate the cost of that incremental portfolio trading volume, including both the direct cost of brokerage commissions and fees and the indirect costs of executed trades as

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<sup>9</sup> Potential causes of shareholder harm also considered include: tax costs due to increased portfolio trading; costs resulting from “flight of capital” caused by public disclosure and ultimate settlement of the market timing allegations; use of T+1 accounting; and higher administrative costs. Analysis by the IDC indicated the harm attributable to these causes, if any, was immaterial, and thus is not considered in the Plan.

<sup>10</sup> This approach was first described in J. Greene and C. Hodges, “The Dilution Impact of Daily Fund Flows on Open-Ended Mutual Funds,” *Journal of Financial Economics*, May 8, 2001 and subsequently in J. Greene and C. Ciccotello (2006), “Mutual Fund Dilution from Market Timing Trades,” *Journal of Investment Management*, 4(1), 42-66.

measured by the Implementation Shortfall method.<sup>11</sup> The computed economic impact of market timing trades (gains and losses) are then netted for investor accounts within each fund and across funds, aggregated by owner where practical.

The Order contemplates that the entire IFG Fair Fund, less any amount needed for tax and related expenses of the Tax Administrator (“Net IFG Fair Fund”), be distributed to investors. To achieve this result, the IDC has developed an Allocation Algorithm which, when applied as described below, will calculate the percentage share of the Net IFG Fair Fund that should be distributed to each investor who was harmed by the market timing trades that the Commission found wrongful. The Allocation Algorithm is based on the harm computed for each individual investor account in comparison to the total harm computed for all investor accounts. Since the amount of the Net IFG Fair Fund will exceed the amount of harm, as calculated through the above method, investor accounts will receive an amount greater than the quantifiable harm attributable to the improper market timing. This additional amount will represent a return of advisory fees.

#### **Application of Payment from Other Plans**

In the event that the Net IFG Fair Fund receives any Other Plan Payments prior to the calculation of the payments to investors, the IDC is authorized, at the IDC’s discretion, to allocate and distribute such payments in accordance with: (i) this Plan, or (ii) the instructions of the administrators of those plans (“Other Plan Administrators”). Any distribution of any Other Plan Payments by the Net IFG Fair Fund shall be subject to the policies incorporated into this Plan, including the limitations on distributions of any *de minimis* amount, as described in Step Thirteen. If the payment to investors has already been calculated when the Other Plan Payments

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<sup>11</sup> See, for example, A. Perold, “The Implementation Shortfall: Paper versus Reality,” *Journal of Portfolio Management*, Spring 1988.

are received, the IDC shall cause the Other Plan Payments to be added to a residual account (“Residual Account”), or in such other manner that the IDC determines to be appropriate and consistent with the purposes of this Plan. In the event that Other Plan Administrators direct the Net IFG Fair Fund to distribute any Other Plan Payments in a manner that the IDC determines to be inconsistent with the purposes of this Plan, the IDC, subject to the approval of the Commission, is authorized to make such adjustments to the proposed distribution of the Other Plan Payments as the IDC shall determine to be consistent with this Plan and appropriate in light of the circumstances.

Based on the facts of this case, in the view of the IDC, investors will be compensated consistent with the terms of the Order.

#### **Claims Process**

This Plan provides that the calculation of amounts to be distributed to investors will be based on records obtained from IFG, AIM Advisors, and certain other entities that are shareholders of record. Accordingly, investors need not submit a claim in order to be considered for a distribution, and no claims procedure will be implemented.

The analysis in this Plan applies only to the specific facts of this case. Nothing herein should be construed as expressing any view regarding any other set of facts or any other matter that might come before the Commission.

#### **Distribution Process**

The process of calculating the amounts to be distributed to investors and causing those distributions to be made from the Net IFG Fair Fund will be implemented through the following “Twenty-Six Step Process.” With regard to the timing of the distribution process, the Tax Administrator has obtained a Private Letter Ruling from the Internal Revenue Service regarding tax information and reporting treatment of distributions from the IFG Fair Fund (“IRS Ruling”).

No money shall be distributed pursuant to this Plan prior to (i) final approval of the Plan by the Commission, (ii) expiration of the period for intermediary data collection as described in Steps Seven through Nine below and (iii) completion by the Fund Administrator and the IDC of final calculations and associated validations for each investor as described below. Provided these conditions have been met, the Fund Administrator will use its best efforts to start the distribution within two weeks after the latest of the events described in (i) through (iii), *supra* and to complete the distribution within four months of the distribution start date or such time as the last portion of the Net IFG Fair Fund is transferred to the QSF Escrow Account, as applicable.

**Step One.** AIM Advisors, subject to the IDC's supervision and in cooperation with the Fund Administrator, will compile a Shareholder Database that contains all relevant data in AIM Advisors' custody and control for those accounts that held shares of mutual funds in which the market timing described in the Order occurred during the Relevant Period. This Shareholder Database will include account data for three types of accounts: direct accounts, transparent omnibus accounts, and opaque omnibus accounts. A direct account is an account where the identity of the account-holder is known to AIM Advisors and is not an omnibus account held by a broker or other financial intermediary. An omnibus account is an account in which a financial institution serving as an intermediary is the shareholder of record and holds securities on behalf of the actual beneficial owners. An omnibus account is transparent if AIM Advisors has access to records identifying the actual beneficial owners and is opaque if AIM Advisors does not have access to such records. The Shareholder Database will also include information relating to known closed accounts. The Shareholder Database will contain information sufficient to allow the application of the Allocation Algorithm for all investors who are known to AIM Advisors, including investor account holdings for each mutual fund at issue during the Relevant Period.

**Step Two.** Under the IDC's direction, the Shareholder Database will be verified for accuracy.

**Step Three.** Under the IDC's direction, the Allocation Algorithm will be applied to the Shareholder Database to generate a set of provisional distribution ratios and corresponding provisional distribution amounts. The distribution amounts are provisional in that they will be adjusted in Steps Four through Thirteen below.

All provisional distributions that might be made to Special Situation accounts, referred to in paragraphs 12 through 17 of the Order and identified by name in Exhibit B attached hereto, and Sanctioned Former Employees, will be set to zero throughout the distribution process.

**Step Four.** Under the IDC's direction, the calculations in Step Three will be verified for accuracy.

**Step Five.** Under the IDC's direction, AIM Advisors and the Fund Administrator will categorize all accounts as either direct or omnibus accounts. The omnibus accounts will then be categorized according to whether they are opaque or transparent. AIM Advisors and the Fund Administrator will identify all known opaque omnibus accounts with provisional distributions of \$1,000 or more.

**Step Six.** Under the IDC's direction, the categorization of the accounts will be verified for accuracy.

**Step Seven.** Not later than 30 days after Commission final approval of the Plan, the Fund Administrator will, subject to IDC supervision, contact all Certifying Accounts that the IDC has determined may be eligible for a distribution.<sup>12</sup> For each Certifying Account, the Fund Administrator will mail a letter with certification forms substantially the same as the letter and

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<sup>12</sup> As discussed *supra*, Certifying Accounts are those Tolerated Timers (as described in paragraph 25 of the Order) who made more than four exchanges out of any single fund in any 12-month period.

forms attached in Exhibit C. Such Certifying Accounts will be eligible for payment only if the account-holder certifies to the IDC that timing activity did not take place in the account by returning the signed Individual Account Certification Form (“IAC Form”) to the Fund Administrator postmarked no later than 45 days from the date of the letter. Failure to respond by the end of the 45-day period will result in no distribution being made to such a Certifying Account. Distributions that would otherwise have been made to any Certifying Account which fails to return an appropriately signed IAC Form within the 45-day period shall be set to zero throughout the subsequent steps of the distribution process. Since it is possible that some of the Certifying Accounts are omnibus accounts that were not detected in Step Five, an Omnibus Account Certification Form (“OAC Form”) will also be attached to the letter. The OAC Form must be signed and returned postmarked within the 45-day period by any omnibus account that is a Certifying Account in order for the account to be eligible for payment.

**Step Eight.** Not later than 30 days after Commission approval of the Plan, the Fund Administrator will, subject to IDC supervision, contact all known opaque omnibus intermediaries with provisional distributions of \$1,000 or more to provide distribution options for their review. For any omnibus account held at a registered broker-dealer that receives a distribution of \$1,000 or more, these options are:

(a) To exercise commercially reasonable best efforts to provide all data necessary to allow the intermediaries’ accounts to be treated for purposes of this Plan as though they are transparent accounts held at AIM Advisors.<sup>13</sup> The Fund Administrator shall request address information, and, if necessary, additional transaction information, for all underlying shareholders of each omnibus account, which information is necessary to implement the distribution process

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<sup>13</sup> In considering whether efforts are “commercially reasonable,” the IDC shall consider all costs related to the gathering and utilizing of such data and the size of the distribution to be made.



as described below.<sup>14</sup> Because omnibus account-holders may consider this information commercially sensitive, the data will be maintained exclusively by the Fund Administrator subject to commercially reasonable assurances of confidentiality, and AIM Advisors will not have access to the data. AIM Advisors will reimburse opaque omnibus account-holders for commercially reasonable expenses incurred in gathering and providing the necessary data, subject to the limitation *inter alia* that the amount of reimbursement will in no event exceed the aggregate amount of the provisional distribution;<sup>15</sup>

(b) To distribute the proceeds to beneficiaries in the ratios that would be determined through the application of the Allocation Algorithm described in this Plan. Opaque omnibus intermediaries who elect this alternative will be provided with information sufficient to allow the coding of the necessary computer algorithm. By electing this option, the omnibus account-holder acknowledges that the beneficial owner's sole recourse in the event of a dispute or complaint is to the omnibus account-holder and not to the Commission, IDC, IFG, Fund Administrator, or AIM Advisors;

(c) To receive the distribution of settlement proceeds, at the time of distribution, as described in Step Fifteen, and subsequently apply any distribution technique that the opaque omnibus intermediary, in the exercise of its reasonable discretion, deems to be consistent with its fiduciary or other legal obligations. By electing this option, the omnibus account-holder acknowledges that the beneficial owner's sole recourse in the event of a dispute or complaint is

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<sup>14</sup> The requested data will relate only to the first generation of account-holders (that is, account-holders whose beneficial interest is apparent from the records of the intermediary). In cases where account-holders in omnibus accounts are themselves omnibus accounts, the Fund Administrator will not seek account-holder information relating to the beneficiaries of such omnibus accounts.

<sup>15</sup> For a discussion of the treatment of opaque omnibus accounts that decline to provide the necessary data or for whom the expense of gathering and providing the necessary data are viewed as not being commercially reasonable, see the discussion at Step Sixteen below.

to the omnibus account-holder and not to the Commission, IDC, IFG, Fund Administrator, or AIM Advisors; or

(d) To request that settlement proceeds not be distributed. By electing this option, the omnibus account-holder acknowledges that the beneficial owner's sole recourse in the event of a dispute or complaint is to the omnibus account-holder and not to the Commission, IDC, IFG, Fund Administrator, or AIM Advisors.

The Fund Administrator will maintain records of its efforts to obtain the cooperation of opaque omnibus account-holders and of the responses they receive to these efforts. The Fund Administrator will communicate the date by which data for the opaque omnibus account-holders must be provided. Opaque omnibus account-holders that are unresponsive or cannot supply the necessary data will, for the purpose of this Plan, be treated as direct accounts and will receive no further assistance from the IDC in connection with any distribution to underlying holders.

The Fund Administrator will not contact any opaque omnibus intermediary who is estimated to receive a settlement distribution payment less than \$1,000.

**Step Nine.** Not later than 90 days after Commission approval of the Plan, and after the expenditure of reasonable efforts by AIM Advisors and the Fund Administrator to obtain the requested data from opaque omnibus account-holders, the reasonableness of which will be determined by the IDC, the data obtained from the omnibus account-holders will be combined with the data contained in the Shareholder Database to create the Consolidated Master Database. Accounts with identical owners will be identified and combined as a single entry by summing the computed harm<sup>16</sup> amounts for each account.

**Step Ten.** Under the IDC's direction, the Consolidated Master Database will be verified.

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<sup>16</sup> The amount of computed harm for any individual account or an account owner may be either positive or negative.

**Step Eleven.** Under the IDC's direction, the Allocation Algorithm will be applied to the Consolidated Master Database to generate new provisional distributions.

**Step Twelve.** Under the IDC's direction, the calculations in Step Eleven will be verified.

**Step Thirteen.** Under the IDC's direction, a *de minimis* distribution amount will be set at \$10. In order to implement this *de minimis* distribution amount, AIM Advisors and the Fund Administrator will apply the Gross-Up Algorithm. Under the Gross-Up Algorithm, the new provisional distributions will be ranked in descending order of their size. AIM Advisors and the Fund Administrator will calculate the total amount of the provisional distributions of less than \$10 (the "Aggregate *de minimis* Distribution"), and will then provisionally redistribute the Aggregate *de minimis* Distribution in sequence to the accounts with the largest provisional distributions less than \$10, sequentially assigning a distribution of \$10 to each account until the Aggregate *de minimis* Distribution is depleted. The Gross-Up Algorithm will thus leave unchanged all provisional distributions of \$10 or more, and will cause certain account-holders with provisional distributions of less than \$10 to receive distributions that have been grossed up in order to equal the *de minimis* distribution amount. This procedure will also cause the *de facto de minimis* provisional distribution amount to be less than \$10. Subject to verification in Step Fourteen, the distribution amounts determined by the application of the Allocation Algorithm combined with this Gross-Up Algorithm will be the Final Distribution Amounts.

**Step Fourteen.** Under the IDC's direction, the calculations in Step Thirteen will be verified for accuracy.

**Step Fifteen.** The Fund Administrator will implement an address identification process for all transparent accounts, whether the account is originally an IFG account or an account whose information is provided by a cooperating omnibus provider. The Fund Administrator will

compare all addresses for open registered account-holders to the current data files at DST Systems, Inc. (“DST”)<sup>17</sup> for any changes and updates that may have occurred after the original file was created by DST for IFG in March of 2004. The Consolidated Master Database will then be updated to reflect any new address information. The Fund Administrator will send all addresses for closed accounts to a suitable research firm<sup>18</sup> (“Research Firm”), in order to obtain a valid, current address for each former account-holder where possible. In order to increase the quality of this information, the Fund Administrator will require the Research Firm to conduct a search on a date as close to the mail date as is commercially reasonable. The Research Firm will use a name, past address, and phone number or Social Security number to obtain current addresses. The Consolidated Master Database will be updated with the new address information.

In order to distribute the Net IFG Fair Fund, the IDC will submit a validated list of payees and payment amounts, with personal identifying information redacted, to the assigned Commission staff, who will obtain an order from the Commission to authorize disbursement pursuant to Rule 1101(b)(6). The payees and amounts will be validated at the IDC’s direction. The validation will state that the list was compiled in accordance with the Plan and provides all known information necessary to make disbursement to each payee. Unless otherwise directed by the Commission, the Commission staff will obtain an order directing disbursement that releases funds from the BPD to the QSF Escrow Account at the Bank established by the Fund Administrator based upon the validated list and representation by the Fund Administrator that the checks and wire transfers will be issued to the validated payees within the next five business days.

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<sup>17</sup> DST is a publicly traded information processor that, among other services, provides mutual fund shareowner and unit trust recordkeeping systems.

<sup>18</sup> A suitable research firm will be selected by the Fund Administrator, subject to approval of AIM Advisors and the IDC.

**Step Sixteen.** The Fund Administrator or AIM Advisors will cause a check to be mailed, or in limited instances, a wire sent, to all identified accounts within five business days of the Bank receiving custody of the Net IFG Fair Fund into the QSF Escrow Account from the BPD. The Fund Administrator will mail the check to the payee's last known address as determined in Step Fifteen above. All checks shall bear a stale date 90 days from the date of issue. The IDC shall require the use of a positive payment system to honor checks as they are presented for payment, consistent with limitations as to date and time.

All payments shall be preceded or accompanied by a letter or other written communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that checks will be void after 90 days; (c) the name of any person or entity to contact, to be used in the event of any questions regarding distribution; and (d) a request that any recipient who is an omnibus or collective account-holder contact the Fund Administrator for further instructions. Any such communication to recipients shall be submitted to the assigned Commission staff for prior review and approval. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from an SEC Fair Fund.

**Omnibus Accounts Not Previously Identified**

Any omnibus account-holder that did not provide the Fund Administrator with data necessary for the Fund Administrator to distribute the Net IFG Fair Fund directly to its investors in accordance with Steps Seven and Eight above or any omnibus account that was otherwise not identified in the outreach process described in Steps Seven and Eight above will have the option to contact the Fund Administrator to request a further communication that describes steps the

