BLB&G Bernstein Litowitz Berger & Grossmann LLP

Invesco Mutual Fund Fraud Litigation

COURT: United States District Court for the District of Maryland
CASE NUMBER: 04-cv-00814
CLASS PERIOD: 12/05/1998 - 11/24/2003

Following a hearing on May 3, 2004 in the massive mutual fund litigation, the United States District Court for the District of Maryland appointed BLB&G client the City of Chicago Deferred Compensation Plan as Lead Plaintiff in the securities fraud class action against Invesco Funds Group, Inc. ("Invesco") and others.

On March 1, 2006, the Court sustained the Consolidated Amended Class Action Complaint, allowing the case to move forward against certain defendants.

Summary of Allegations: The complaint in this litigation alleges that Invesco and certain of its senior executives were aware of, engaged in and facilitated "timing" trades in the Invesco Funds: a money-making act involving short-term trading in and out of a mutual fund. The technique is designed to exploit inefficiencies in the way mutual fund companies price their shares by allowing certain customers to trade shares at distorted prices that no longer reflect the true value of the fund. As a result, those few customers permitted to engage in market timing typically reap huge profits, the cost of which is borne primarily by the long-term investors in the relevant fund.

The public filings issued by the Defendants assured investors that Invesco discouraged mutual fund timing, expressly limiting investors to "four exchanges out of each Fund per twelve-month period" and that "[e]ach Fund reserves the right to reject any exchange request, or to modify or terminate the exchange policy, if it is in the best interests of the Fund." In reality, however, the Defendants not only routinely entered into timing arrangements with various select investors, they also developed formal policies for approving and monitoring these arrangements, which were referred to at Invesco as "Special Situations." Pursuant to Invesco's "Special Situations," dozens of select investors were exempted from the company's written policy of allowing only four exchanges out of funds in a twelve-month period. Defendants kept the Special Situations program secret by prohibiting any documentation of the timing arrangements and concealing the program's existence from investors. On December 2, 2003, the Securities and Exchange Commission ("SEC") and the Office of the New York Attorney General filed complaints against Invesco and Raymond Cunningham, President and Chief Executive Officer of Invesco, alleging that they permitted certain investors to trade billions of dollars in and out of the Invesco Funds. The SEC and New York State investigations uncovered that dozens of select investors in the Invesco funds were permitted to market time. In fact, the investigations concluded that "Invesco's senior management approved and institutionalized these arrangements until Invesco became a center for fund timers, who pumped billions of dollars of timing trades through its funds." Invesco agreed to a cease and desist order with the SEC, New York Attorney General and Colorado Attorney General as a result of the market timing conduct at issue.

Defendants were acutely aware of the detriment market timing had on the legitimate shareholders. For example, an internal Invesco study acknowledged that the timing activity hurts the funds of other investors, diluting the value of their shares, to underwrite the spectacular returns enjoyed by Canary and the other "Special Situations" Invesco had allowed into the funds. According to the study, Invesco funds with "heavy timing flows" produced returns between .75% and 1% lower than non-timed funds. In an internal February 12, 2003 e-mail, defendant Timothy Miller acknowledged that timing activity was "costing our legitimate shareholders significant performance."

Further, a January 15, 2003 Memorandum from Jim Lummanick, Invesco's Chief Compliance Officer, to Raymond Cunningham, Invesco's CEO and COO, admitted, among other things, that illegal trading: (1) "has a negative impact on performance" because portfolio managers increase their use of cash to deal with large exchanges; (2) causes "negative tax consequences," which "adds insult to injury for long-term shareholders, since they suffer potentially lower returns and an extra tax burden;" (3) distort the investment style of mutual funds in order to accommodate illegal trading; and (4) the high volume of activity increases the risk that portfolio managers will make errors. Nevertheless, Defendants continued to engage in "Special Situations" with select customers and actively encouraged market timing of the Invesco Funds. As further alleged in the complaint, various brokers and financial institutions also participated in the market timing schemes, to the detriment of ordinary investors.

In addition to the profits from their market timing, according to the New York State investigation, Invesco also made illegal gains by charging ordinary investors in excess of $160 million in management fees while breaching their fiduciary duties to those very same investors. None of the above detailed material information was disclosed to the members of the Class during the Class Period.

On May 20, 2010, the Court preliminarily approved proposed settlements, totaling $20,455,400, that would resolve this litigation. On October 25, 2010, the Court entered Judgments granting final approval to the settlements and entered separate Orders granting Plaintiffs' Counsel's application for an award of attorneys' fees and expenses and approving the Plan of Allocation of the settlement proceeds.

The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Case Documents

- June 30, 2010 - Long-Form Notice
- June 10, 2010 - Mailing Notice
- May 19, 2010 - Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings in the Invesco/AIM Sub-Track
- September 29, 2004 - Consolidated Amended Class Action Complaint