



On October 8, 2004, AIM Advisors and ADI 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, in relevant part, that AIM Advisors entered into ten agreements that allowed certain individuals and entities (“Agreement Timers”) to make frequent trades in AIM Funds advised by AIM Advisors during the period from January, 2001 through September, 2003 (“Relevant Period”), that were inconsistent with fund prospectuses and potentially harmful to shareholders of AIM Funds.

Pursuant to the Order, AIM Advisors and ADI agreed to pay \$50 million, of which \$30 million represents civil penalties and \$20 million represents disgorgement, into a Fair Fund (“AIM Fair Fund”) established under Section 308(a) of the Sarbanes-Oxley Act for the benefit of injured shareholders, which is currently on deposit with the U.S. Treasury (“Treasury”).

Pursuant to the Order, AIM Advisors 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.”<sup>1</sup> The Order directs “AIM Advisors [to] cooperate fully with the Independent Distribution Consultant and ... [to] provide the Independent Distribution Consultant with access to ... AIM Advisors’ files, books, records, and personnel as reasonably requested for the review.”<sup>2</sup> The Order also directs “AIM Advisors [to]... require ... the Independent Distribution Consultant develop a Distribution Plan for the distribution of the monies ordered to be paid in paragraphs IV.E.1. and IV.E.2 of the Order, ... and any interest or earnings thereon, according to

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<sup>1</sup> Order at ¶ 55.

<sup>2</sup> *Id.*

a methodology developed in consultation with AIM Advisors and acceptable to the staff of the Commission and the independent board members of AIM Funds.”<sup>3</sup> As required by the Order, AIM Advisors has agreed to pay the “Independent Distribution Consultant’s compensation and expenses.”<sup>4</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 overseas. The Plan is subject to approval by the Commission and the Commission will retain jurisdiction over the implementation of the Plan.

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 AIM Fair Fund will be implemented through a “Twenty-Five Step Process.”

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.aimfairfund.com>

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

<sup>4</sup> *Id.*

## ADMINISTRATION OF THE PLAN

### Appointment of an Administrator for the AIM 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>5</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>6</sup> Accordingly, AIM Advisors and the IDC have proposed that Boston Financial Data Services, Inc. serve as the administrator of the AIM 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 AIM Fair Fund; obtaining 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 AIM 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

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<sup>5</sup> *Id.* at ¶ 55d.

<sup>6</sup> *Id.*

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 AIM 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 AIM 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, \$50 million, plus accumulated interest and possible receipt of Other Plan Payments, is the maximum amount that will be under the Fund Administrator's limited control.

Deutsche Bank Trust Company Americas ("Bank"), where the AIM 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 AIM Fair Fund**

Pursuant to the Order, AIM Advisors made a payment of \$50 million on November 8, 2004 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 AIM Fair Fund are under the continuing jurisdiction and control of the Commission. The AIM Fair Fund is currently deposited at the BPD and will remain there until released to the QSF Escrow Account pursuant to a Commission order of disbursement in accordance with Step Fourteen below. This AIM 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. The distribution of Other Plan Payments, if any, is described in greater detail in a later section of this document.

The AIM 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 Fourteen below, and unless otherwise directed by the Commission, the Commission staff shall cause the balance in the AIM Fair Fund to be deposited in the QSF Escrow Account pursuant to a Commission order of disbursement. 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 AIM 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 AIM Fair Fund**

The Commission has appointed Damasco & Associates as the Tax Administrator of the AIM 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 AIM 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 Fifteen 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 AIM 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 paragraph 27 of

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<sup>7</sup> Order at ¶ 55.

the Order (“Agreement Timers”) and (2) former employees of AIM Advisors and ADI who were sanctioned by the Commission for their role in facilitating market timing agreements by others in AIM Funds (“Sanctioned Former Employees”).<sup>8</sup> A list of the funds in which market timing occurred is shown in Exhibit A. A list of Agreement Timers whose accounts will not receive a distribution from the AIM Fair Fund is attached hereto as Exhibit B.

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>9</sup>

### **Payment Calculation**

The method of calculation of the payment to each eligible investor account from the AIM 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>10</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

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<sup>8</sup> *In the Matter of Michael J. Cemo*, Admin. Proc. No. 3-11985 (July 18, 2005) and *In the Matter of Edgar M. Larsen*, Admin. Proc. No. 3-11986 (July 18, 2005).

<sup>9</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.

<sup>10</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.

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>11</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 measured by the Implementation Shortfall method.<sup>12</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 AIM Fair Fund, less any amount needed for tax and related expenses of the Tax Administrator (“Net AIM 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 AIM 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 AIM Fair Fund will exceed the amount of harm, as calculated through the above method, investor accounts will receive an amount greater than the quantifiable

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<sup>11</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.

<sup>12</sup> See, for example, A. Perold, “The Implementation Shortfall: Paper versus Reality,” *Journal of Portfolio Management*, Spring 1988.

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 AIM 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, (i) to allocate and distribute such payments in accordance with this Plan, or (ii) to allocate and distribute such payments in accordance with the instructions of the administrators of those plans ("Other Plan Administrators"). Any distribution of any Other Plan Payments by the Net AIM 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 Twelve. If the payment to investors has already been calculated when the Other Plan Payments 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 AIM 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 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 AIM Fair Fund will be implemented through the following “Twenty-Five 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 AIM 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 and Eight 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 AIM 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 Twelve below.

All provisional distributions that might be made to Agreement Timer Accounts, referred to in paragraph 27 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 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 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,

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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.

<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.

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, Fund Administrator, AIM Advisors, or ADI;

(c) To receive the distribution of settlement proceeds, at the time of distribution, as described in Step Fourteen, 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 to the omnibus account-holder and not to the Commission, IDC, Fund Administrator, AIM Advisors, or ADI; 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, Fund Administrator, AIM Advisors, or ADI.

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

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<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 Fifteen below.



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 Eight.** 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 Nine.** Under the IDC's direction, the Consolidated Master Database will be verified.

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

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

**Step Twelve.** 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

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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.

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 Thirteen, the distribution amounts determined by the application of the Allocation Algorithm combined with this Gross-Up Algorithm will be the Final Distribution Amounts.

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

**Step Fourteen.** The Fund Administrator will implement an address identification process for all transparent accounts, whether the account is originally an AIM 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 AIM 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

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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.

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 AIM 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.

**Step Fifteen.** 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 AIM 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 Fourteen 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 AIM Fair Fund directly to its investors in accordance with Step Seven above or any omnibus account that was otherwise not identified in the outreach process described in Step Seven above will have the option to contact the Fund Administrator to request a further communication that describes steps the recipient should take in light of its status as an omnibus or collective account-holder.<sup>19</sup> For any omnibus account held at a registered broker-dealer that receives a distribution of \$1,000 or more, these options are:

(a) Distribution of the proceeds to beneficiaries in the ratios that would be determined through the application of the Allocation Algorithm described in this Plan. Account-holders who

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<sup>19</sup> The omnibus communication is necessary because there may be opaque omnibus accounts within omnibus accounts that are disclosed to the IDC and the Fund Administrator, and there may be omnibus account-holders who have declined to provide necessary account and address information.

elect this alternative will be provided with information sufficient to allow the coding of the necessary computer algorithm;

(b) Provision of all necessary data to the Fund Administrator so that the Fund Administrator will be able to apply the Allocation Algorithm described in this Plan to the distribution amount already allocated to that omnibus account. Any recipient who elects this option will be required to notify the Fund Administrator within 30 days of the mailing of the letter describing these alternatives, and will be required to provide the necessary data in machine-readable form within a reasonable time period, but no more than 60 days following that notification.<sup>20</sup> Under this option, the Fund Administrator will perform the required calculations but the omnibus account-holder will be responsible for the actual distribution.<sup>21</sup> Before receiving allocated distribution amounts, the omnibus account-holders electing this alternative will be required to certify in writing to the Fund Administrator that they will distribute the proceeds to beneficiaries in accordance with this Plan;

(c) Application of any distribution technique that the omnibus account-holder, 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 to the omnibus account-holder and not to the Commission, IDC, the Fund Administrator, AIM Advisors, or ADI; or

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<sup>20</sup> This alternative will be available only for accounts that, based on the data available, the IDC was unable to identify as omnibus accounts and that have distributions of \$1,000 or more.

<sup>21</sup> With regard to requests that AIM Advisors bear the expenses associated with further distributions, the IDC will cooperate with all such requests as reasonable, and on a case-by-case basis, subject to the limitation that the IDC will not, absent extraordinary circumstances, agree to the expenditure of an amount that will exceed the amount of the distribution. These costs will be limited to the costs incurred by working through the Fund Administrator. Research or other costs incurred by the omnibus account-holders will be considered reimbursable only to the extent that those costs are commercially reasonable.

- (d) Return the check to the Fund Administrator or simply elect not to cash the check.

Either alternative will cause those funds to be added to the Residual Account described below.

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, the Fund Administrator, AIM Advisors, or ADI.

For any omnibus account-holder who receives less than \$1,000, the options include:

- (a) Application of any distribution algorithm that the recipient, 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 to the omnibus account-holder and not to the Commission, IDC, the Fund Administrator, AIM Advisors, or ADI; or

- (b) Return the check to the Fund Administrator or simply elect not to cash the check.

Either alternative will cause those funds to be added to the Residual Account described below.

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, the Fund Administrator, AIM Advisors, or ADI.

### **Retirement Accounts**

Retirement Accounts are accounts of any "employee benefit plan", as defined in Section 3(3) of ERISA, which is not (1) an Individual Retirement Account, including a traditional IRA, a Roth IRA, a SEO IRA, a SARSEO IRA, or a SIMPLE IRA, or (2) a Section 403(b)(7) custodial account under a program not established or maintained by an employer, whether or not the employee benefit plan is subject to Title 1 of ERISA.

Retirement Accounts are held in trust by a trustee, and the trust is the legal owner of the shares. Under this plan, plan fiduciaries and intermediaries (as those terms are discussed in the Field Assistance Bulletin No. 2006-01) require that Retirement Accounts distribute the monies received in accordance with their legal, fiduciary, and contractual obligations and consistent with guidance issued by the Department of Labor, including but not limited to, Department of Labor Field Assistance Bulletin No. 2006-01, April 19, 2006.

An intermediary to one or more Retirement Accounts may allocate the distribution it receives pursuant to the Distribution Plan to or among eligible Retirement Accounts participating in an omnibus account administered by such intermediary according to the procedures set for in Step 3 above, provided, however, that for the purposes of such allocation each Retirement Account itself (and not the individual plan participant) shall be treated as beneficial owner.

The fiduciary of a Retirement Account receiving such a distribution should distribute it pursuant to one of the following four alternatives (which are not necessarily the only methods available for plan fiduciaries to follow in allocating amounts received by or on behalf of Retirement Accounts pursuant to this Plan):

- (1) Plan fiduciaries may allocate the distribution amount *pro rata* (based on total account balance) among the account of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
- (2) Plan fiduciaries may allocate the distribution amount *per capita* among the accounts of all persons who are currently participants in the Retirement Account (whether or not they are currently employees)

- (3) Plan fiduciaries may allocate the distribution amount to current and former participants in the Retirement Plan using the algorithm developed by the IDC. The IDC will make the algorithm available to plan fiduciaries.
- (4) To the extent that none of the three preceding alternatives is administratively feasible, plan fiduciaries may, to the extent permitted by the Retirement Account, use the distribution amount to pay the reasonable expenses of administering the plan.

**Step Sixteen.** The Fund Administrator will provide customer support and a communications program which will become active by the time the first distribution occurs. These services will include a toll free number and a website to the public. The Commission retains the right to review and approve any material posted on the website.

**Step Seventeen.** Returned mail and checks will be handled as follows:

(a) All mail returned by the United States Postal Service (“USPS”) for which a new forwarding address has been provided by the USPS will be immediately repackaged and sent to the new address. The Consolidated Master Database will be updated with the new address;

(b) All mail returned by the USPS for the first time, without a new forwarding address, will be coded as returned mail, the check will be voided, and current account information forwarded to the Research Firm for address research. If a new address is found, that address will be added to the Consolidated Master Database and a new check will be issued. If no new address is found, the original check will remain voided. Additional efforts to identify the addresses of recipients will be conducted to the extent the IDC believes such further efforts are



commercially reasonable taking into account the costs of further research and the amount to be distributed, which as a general matter, should not exceed the amount to be distributed;

(c) All mail returned by the USPS from a second attempt mailing for which a new forwarding address has been provided by the USPS will be immediately repackaged and sent to that new address. The Consolidated Master Database will be updated with the new address; and

(d) All mail returned by the USPS from a second attempt mailing, without a new forwarding address, will be coded as returned mail and the check will be voided. Additional efforts to identify the addresses of recipients will be conducted to the extent the IDC believes such further efforts are commercially reasonable taking into account, among other factors, the costs of further research in comparison to the amount to be distributed.

**Step Eighteen.** Under the IDC's direction, Steps Fourteen through Seventeen will be verified.

**Step Nineteen.** The IDC shall declare the implementation of the Distribution Process complete 120 days after completing the last mailing required pursuant to the protocol described in Step Seventeen. This 120-day period is deemed to include the 90-day period during which a check is valid plus a 30-day grace period.

**Step Twenty.** The value of all checks not cashed, returned distributions, distributions to account-holders who cannot be identified, and interest accrued on these accounts after the end of the 120-day period described in Step Nineteen will be contributed to or remain in the Residual Account at the Bank.

**Step Twenty-One.** Under the IDC's direction, the balance in the Residual Account will be verified.

**Step Twenty-Two.** Under the IDC's direction, the Fund Administrator will work with the Tax Administrator to determine if the amount reserved for taxes and related expenses is sufficient. Any excess funds will be placed in the Residual Account. If the reserved amount has been exhausted before resolving all taxes and related expenses, any remaining amounts for taxes and related expenses will be taken from the Residual Account.

**Step Twenty-Three.** Under the IDC's direction, the Fund Administrator will allocate the balance remaining in the Residual Account among the funds listed in Exhibit A in the same proportion as the amount of harm originally calculated on a fund-by-fund basis in Step Ten, ignoring any fund that, on balance, benefited from the actions of the market timers.

**Step Twenty-Four.** Under the IDC's direction, the Residual Account allocation calculations and distributions into the fund will be verified. Once all taxes and related expenses have been paid, the Fund Administrator, under the IDC's direction, will transfer funds from the Residual Account to the funds listed in Exhibit A. All settlement funds, including accrued interest as of the date of the implementation of this step, will then be fully distributed.

**Step Twenty-Five.** Under the IDC's direction, the distributions from the Residual Account in Step Twenty-Four will be verified. Upon distribution of the funds, the Fund Administrator shall make arrangement for the final payment of taxes and Tax Administrator fees and shall submit a final accounting to the Commission. While the distribution is being implemented, the Fund Administrator will file an accounting during the first ten days of each calendar quarter, and will submit a final accounting for approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator.

The Distribution Fund shall be eligible for termination after all of the following have occurred: (1) the Final Accounting by the Administrator has been submitted and approved by the


Commission, and (2) all taxes and fees have been paid. Staff shall seek an order from the Commission to (1) approve the Final Accounting; (2) approve sending the remaining residual amount to the United States Treasury after the final tax payment has been made; and (3) authorize the Secretary of the Commission, upon receipt of notice from the staff assigned to this matter that all funds have been expended, to terminate the Plan and dismiss the Plan Administrator.

**Extensions and Amendments**

For good cause shown, the Commission's Staff may approve an extension of any of the procedural dates set forth in this Plan.

The IDC will inform the Commission staff of any material changes in the Plan, and will obtain approval from the Commission prior to their implementation. If material changes are required, this Plan may be amended upon the motion of AIM Advisors, the Fund Administrator, or the Commission.

Submitted on June 25, 2007

By:   
Gordon J. Alexander, Ph.D.  
Independent Distribution Consultant for AIM  
Advisors, Inc. and AIM Distributors, Inc. Fair Fund

## **NOTICE OF PROPOSED FAIR FUND DISTRIBUTION PLAN**

In accordance with 17 C.F.R. 201.1103 of the Rules, notice of the final version of this Plan shall be published in the *SEC Docket*, on the Commission website, on the Respondent's website, and in such other publications as the Commission may require.

Any person or entity wishing to comment on the Plan must do so in writing to the Commission within 30 days of the publication date of this Plan:

1. by U.S. mail, to the Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090;
2. by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Comments submitted by e-mail or by the Commission's website should include Administrative Proceeding File Number 3-11701 in the subject line. Comments received will be made publicly available. Persons should submit only information that they wish to make publicly available.

**Exhibit A**

**AIM Funds  
Funds With Market Timing Activity**

**Fund Name**

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International Growth  
Global Aggressive Growth  
Euroland Growth  
Global Growth  
European Growth  
Real Estate  
Asia Pacific Growth  
Limited Maturity Treasury  
High Yield  
Developing Markets  
High Income Municipal  
Capital Development  
Global Income  
Dent Demographic Trends  
Charter  
Global Trends  
Mid Cap Core Equity  
Strategic Income  
Short Term Bond  
Global Utilities  
Blue Chip  
Weingarten  
Small Cap Growth  
Emerging Growth  
Small Cap Equity  
Large Cap Growth  
Large Cap Basic Value  
Japan Growth

**Exhibit B**

**AIM Funds  
Listing of Market Timing Agreements<sup>1</sup>**

**Representative Name**

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Hank Loughran  
Michael Sassano  
Housel/Schrum  
Jim Matway  
Steve Zatkan  
Eddie Stern / Michelle Brugman  
Max Silver  
DJ Sta. Ana  
James Doolan / Chris O'Donnell  
Jeffery Doerr

Notes:

1. The names listed above are account representatives acting as an agent on behalf of unnamed account holders