

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

**SECURITIES EXCHANGE ACT OF 1934**  
Release No. 52055 / July 18, 2005

**INVESTMENT COMPANY ACT OF 1940**  
Release No. 26991 / July 18, 2005

**ADMINISTRATIVE PROCEEDING**  
File No. 3-11985

<p><b>In the Matter of</b></p> <p><b>MICHAEL J. CEMO,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Michael J. Cemo (“Respondent” or “Cemo”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

**III.**

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

## Overview

A. This is a proceeding against Michael J. Cemo, former president, CEO and a director of AIM Distributors, Inc. (“ADI”), based on his role in authorizing or permitting certain market timing agreements, spanning January 2001 through September 2003 (the “relevant period”), within certain portfolios of the AIM mutual fund complex (“AIM Funds”). By authorizing or permitting the market timing, Cemo caused AIM Advisors, Inc. (“AIM Advisors”) to breach its fiduciary duty to AIM Funds. Additionally, the timing agreements contravened AIM Funds’ prospectus disclosures relating to market timing activities.

B. Market timing includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can harm other mutual fund shareholders because it can dilute the value of their shares if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund’s investment portfolio and can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

C. Under the market timing agreements, AIM Advisors, through Cemo and others, permitted certain investors (“market timers”) to make excessive exchanges and redemptions in select AIM Funds portfolios. In total, 10 market timing agreements were authorized or permitted. One agreement negotiated by Cemo expressly required the market timer to invest “sticky assets” in AIM Funds (i.e., a long-term investment within a particular portfolio).

D. The market timing agreements financially benefited AIM Advisors in that AIM Advisors realized additional advisory fees from the timed funds and sticky assets under its management. The fact that AIM Advisors had reason to believe that the assets invested in AIM Funds pursuant to the market timing agreements, while increasing AIM Advisors’ advisory fees, could be traded in a manner detrimental to AIM Funds, presented a conflict of interest between AIM Advisors and AIM Funds. AIM Advisors failed to disclose the conflict of interest to the board of directors of AIM Funds or to the AIM Funds’ shareholders, thereby breaching AIM Advisors’ fiduciary duty to AIM Funds.

E. The market timing agreements were also inconsistent with the disclosures made in AIM Funds’ prospectuses. According to the prospectuses, AIM Funds’ shareholders were limited to a maximum of 10 exchanges or five “roundtrip trades” (i.e., exchanges into and out of a portfolio) per calendar year, for the express reason that excessive short-term trading or market timing activity may be detrimental to mutual fund performance. AIM Funds reserved the right to reject exchanges by shareholders who had not yet reached the 10-exchange limit if it determined that the trading activity was excessive or constituted market timing activity. A reasonable implication of the prospectus language was that AIM Funds did not permit market timing. The authorized market timing was, in fact, detrimental to AIM Funds’ performance, and therefore to its shareholders, for the reasons set forth in paragraph III. B., above.

## Respondent

F. Cemo was the president, CEO and a director of ADI, the principal underwriter for AIM Funds, until he retired on December 31, 2003. Cemo had been employed in the securities industry for more than 30 years, and had been with AIM Funds since 1988. Cemo has no disciplinary history with the Commission.

## Related Entities

G. AIM Advisors, a Delaware corporation headquartered in Houston, Texas, has been registered with the Commission as an investment adviser since November 22, 1976. AIM Advisors serves as the primary investment adviser for AIM Funds. AIM Advisors is a subsidiary of AMVESCAP PLC, a UK holding company whose American Depositary Receipts are listed on the New York Stock Exchange.

H. ADI, a Delaware corporation headquartered in Houston, Texas, has been registered with the Commission as a broker-dealer since February 1977. ADI is the primary distributor and principal underwriter for AIM Funds. ADI is also a wholly-owned subsidiary of AMVESCAP PLC.

## Facts

### **Cemo's Knowledge of, and Role in Approving, Agreements with Market Timers**

I. During the relevant period, Cemo was president, CEO and a director of ADI. In those capacities, Cemo was responsible for the overall management of the investment product sales and marketing activity of ADI, including the marketing of the AIM Funds. Cemo also made presentations to AIM Funds' board of directors relating to AIM Advisors' efforts to reduce market timing activity in AIM Funds. In addition, Cemo read and was familiar with AIM Funds' market timing policy as set forth in its prospectuses.

J. AIM Advisors and ADI generally tried to detect, deter, and prevent market timing in AIM Funds. AIM Advisors and ADI rejected far more proposals from market timers than they accepted, and most of the rejected proposals involved more money and more exchanges than the money and exchanges provided for in the market timing agreements. Cemo was involved in AIM Advisors' and ADI's efforts to restrict and limit market timing, including personally ordering that stop codes be placed on certain accounts and canceling, or threatening to cancel, a broker-dealer's selling agreement in order to protect the AIM Funds from market timers.

K. In his role as ADI's highest placed officer, Cemo authorized or permitted certain market timing agreements. To obtain Cemo's authorization or permission for a proposed market timing agreement, employees of AIM Advisors' transfer agent, orally or via e-mail, presented the proposals to Cemo. The proposals typically included the market timer's proposed number of exchanges, the portfolio(s) involved, and the dollar amounts to be timed. Cemo then authorized

or rejected the proposed agreement. In doing so, Cemo considered, among other things, the amounts proposed for timing compared with the size of the impacted portfolio(s).

L. In one instance, Cemo negotiated and approved an agreement for a market timer to trade up to an aggregate \$13 million in up to 24 exchanges per year in certain AIM Funds portfolios. This agreement included the market timer's promise to maintain a \$26 million investment in five of the six AIM Funds portfolios that were the subject of the market timing agreement (a so-called "sticky assets" arrangement). The agreement also allowed the same timer to transfer up to \$30 million, in up to 12 exchanges per year, in another group of accounts.

M. Cemo knew or should have known that the assets invested in AIM Funds pursuant to the market timing agreements would increase AIM Advisors' advisory fees. Cemo further knew or should have known that the market timing assets could be traded in a manner harmful to AIM Funds. Market timing's foreseeable benefit to AIM Advisors, and foreseeable detriment to AIM Funds, posed a conflict of interest between AIM Advisors and AIM Funds that was not disclosed to AIM Funds' board of directors or shareholders. By virtue of this undisclosed conflict of interest, AIM Advisors breached its fiduciary duty to AIM Funds, and Cemo was a cause of the breach.

**Although AIM Funds' Prospectuses Prohibited Market Timing,  
Certain Investors Were Permitted to Engage in Market Timing**

N. During the same period that AIM Advisors entered into agreements with market timers, AIM Funds' prospectuses stated:

You are limited to a maximum of 10 exchanges per calendar year because excessive trading or market timing activity can hurt fund performance. If you exceed that limit, or if an AIM Fund or distributor determines, in its sole discretion, that your short-term trading is excessive or that you are engaging in market timing activity, it may reject any additional exchange orders. An exchange is the movement out of (redemption) one AIM Fund and into (purchase) another AIM Fund.

O. Throughout the relevant period, AIM Advisors and ADI provided prospectuses to shareholders and prospective shareholders of AIM Funds. The prospectuses were included in AIM Funds' registration statements filed with the Commission.

P. Based on his role in authorizing or permitting certain market timing agreements, Cemo knew that the number of exchanges granted to certain market timers exceeded 10 per calendar year. Cemo knew or should have known that AIM Advisors' arrangements that he authorized or permitted allowing market timing rendered the statements filed with the Commission inaccurate and he did not correct those statements, allowing further misleading filings to be made. Cemo was generally aware that market timing could harm mutual fund

performance, and was advised in e-mails from portfolio managers that market timing activity was negatively impacting AIM Funds' performance. Finally, Cemo knew or should have known that AIM Advisors failed to conduct analysis sufficient to determine whether the trading pursuant to the market timing agreements was harming AIM Funds' performance.

### **Violations**

Q. As a result of the above-described conduct, Cemo:

1. willfully<sup>1</sup> aided and abetted and caused AIM Advisors' violations of Section 206(2) of the Advisers Act. Section 206(2) prohibits an investment adviser from engaging in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon clients or prospective clients. A violation of Section 206(2) may be established by a showing of negligence. SEC v. Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992). Specifically, Cemo permitted arrangements whereby favored AIM Funds shareholders engaged in market timing, notwithstanding the market timing prohibition in AIM Funds' prospectuses and AIM Funds' policy of prohibiting market timing. In addition, Cemo was a cause of AIM Advisor' failure to disclose the conflict of interest posed by the arrangements to the AIM Funds' board of directors;

2. caused AIM Advisors' and ADI's violations of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, pertaining to certain prohibited transactions involving registered investment companies and their affiliated persons; and

3. caused AIM Advisors' violations of Section 34(b) of the Investment Company Act, in that he caused AIM Advisors to make untrue statements of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein facts necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Cemo's Offer. Accordingly, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, it is hereby ORDERED that:

A. Cemo cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act and Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder;

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<sup>1</sup> "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

B. Cemo be, and hereby is, suspended from association with any broker or dealer for nine months from the date of this Order;

C. Cemo be, and hereby is, prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter for a period of nine months from the date of this Order; and

D. Cemo shall, within 30 days of the entry of the Order, pay a civil penalty in the amount of \$125,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Michael J. Cemo as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Harold F. Degenhardt, Fort Worth District Office, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, Texas 76102-6882.

By the Commission.

Jonathan G. Katz  
Secretary