

EXHIBIT A



Report of the Independent Fiduciary
for the Settlement in
Cervantes v. Invesco Holding Company (US), Inc. et al.
(Civil Action No. 18-02551-AT (N.D. Ga.))

June 23, 2020

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I. Introduction

Fiduciary Counselors Inc. has been appointed as an independent fiduciary for the Invesco 401(k) Plan (the “Plan”) in connection with the settlement (the “Settlement”) reached in *Cervantes v. Invesco Holding Company (US), Inc. et al.* (the “Litigation” or “Action”), which was brought in the United States District Court for the Northern District of Georgia (the “Court”). Fiduciary Counselors has reviewed over 70 previous settlements involving ERISA plans.

II. Executive Summary of Conclusions

After a review of key pleadings, decisions and orders, selected other materials and interviews with relevant parties, Fiduciary Counselors has determined that:

- The Court preliminarily certified a class for settlement purposes, and in any event, there is a genuine controversy involving the Plan.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, the non-monetary consideration and the amount of any attorneys’ fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm’s-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption 76-1.
- All terms of the Settlement are specifically described in the written settlement agreement.
- The Settlement includes non-monetary consideration that is in the interest of the Plan’s participants and beneficiaries.

Based on these determinations about the Settlement, Fiduciary Counselors hereby approves and authorizes the Settlement on behalf of the Plan in accordance with Prohibited Transaction Exemption 2003-39 (“PTE 2003-39”).

III. Procedure

Fiduciary Counselors reviewed the Amended Complaint, the Motion to Dismiss, the Response to the Motion to Dismiss, the Reply to the Motion to Dismiss, the Order Dismissing the Amended Complaint, the Settlement, the Motion for Preliminary Approval and related papers, the Court's Order Preliminarily Approving Settlement, the Notice, and an email provided by Plaintiff's counsel showing current lodestar and expenses. In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the Settlement, the members of the Fiduciary Counselors Litigation Committee conducted separate telephone interviews with counsel for both Defendants and Plaintiff.

IV. Background

A. Procedural History of Case

Litigation.

Plaintiff Diego Cervantes brought this Action individually, on behalf of a class of all participants in the Plan between May 25, 2012 to the date of Final Judgment, and on behalf of the Plan, for breach of fiduciary duty and prohibited transactions under ERISA, as amended, 29 U.S.C. §1001, *et seq.* against the Defendants (Invesco Holding Company (US), Inc., Invesco LTD., Invesco National Trust Company, Invesco Advisers, Inc., Invesco Benefits Plan Committee, Suzanne Christensen, John Coleman, Washington Dender, Peter Gallagher, David Genova, Douglas Sharp, Ben Utt, Gary Wendler (eight members of the Benefits Plan Committee), Kevin M. Carome, Loren M. Starr (Carome and Starr were Invesco senior executive members of the Board of Directors), and John Does 1-20 (whose identities have not been determined but would purportedly include additional officers and employees of Invesco who were fiduciaries or parties in interest)).

Plaintiff alleges that Defendants breached their fiduciary duties of prudence and loyalty with respect to the Plan, and entered into prohibited transactions in violation of ERISA, to the detriment of the Plan and its participants and beneficiaries.

Plaintiff alleges that Defendants did not consider or act in the best interest of the Plan and its participants throughout the Class Period. Plaintiff alleges that Defendants put their interests before the Plan participants by treating the Plan as an opportunity to promote and generate fees from proprietary investment products offered by Invesco and its subsidiaries. Specifically, Plaintiff alleges that Defendants breached their fiduciary duties by: (i) loading the Plan with proprietary investment options; and (ii) restricting the investment options available to participants through a self-directed investment account so that participants were not permitted to purchase any exchange traded funds ("ETFs") other than those affiliated with Invesco. Plaintiff alleged that instead of engaging in a prudent process to benefit the interests of Plan participants, Defendants used Plan participants as a captive market for Invesco's proprietary investment products to benefit and enrich Invesco and its affiliates.

Defendants filed a motion to dismiss the amended complaint on October 5, 2018, and on September 25, 2019, the Court issued an opinion granting Defendants' motion to dismiss, without prejudice, and afforded Plaintiff leave to amend the complaint.

Settlement and Preliminary Approval.

As Plaintiff was working on the second amended complaint, the parties entered into arm's-length settlement discussions. On March 6, 2020, after numerous rounds of negotiations, the parties reached a settlement agreement.

Plaintiff filed a motion seeking preliminary approval of the Settlement on March 9, 2020. The Court granted that motion on April 3, 2020 and preliminarily approved the Settlement and scheduled a Fairness Hearing for August 7, 2020.

Objections.

July 17, 2020 is the date for Class Members to file objections to the Settlement. As of the date of this report, none had filed objections.

V. Settlement

A. Settlement Consideration

The Settlement provides for a Settlement Payment of \$3,470,000. The net amount of the Settlement Fund ("Net Settlement Amount"), after payment of administrative expenses, taxes, tax expenses, any attorneys' fees and expenses that the Court awards to Plaintiff's lawyers, and any incentive award to Plaintiff, will be allocated to Class Members according to a Plan of Allocation to be approved by the Court if and when the Court issues an order finally approving the Settlement.

The Settlement also provides for "non-monetary" relief in the form of prospective relief. Defendants agreed to modify the investment options offered through the Plan's self-directed investment account so that participants will be permitted to invest in non-proprietary ETFs, in addition to the proprietary ETFs offered to Participants during the Class Period.

B. Settlement Class

The Settlement defines the Settlement Class as follows:

all participants in the Invesco 401(k) Plan from May 25, 2012 to the date of the Final Judgment and Order of Dismissal with Prejudice (the "Class Period"). Excluded from the Class are Defendants and members of the Invesco Benefits Plan Committee.

The Court has preliminarily certified the Settlement Class, for settlement purposes only.

C. The Release

The Settlement defines Plaintiff's released claims as follows:

means any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, whether known or unknown (including Unknown Claims as defined herein), against any of the Released Parties with respect to the Plan:

- (a) that were asserted in the Action or could have been asserted in the Action, or that arise out of, relate to, are based on, or have any connection with any of the allegations, acts, omissions, purported conflicts, representations, misrepresentations, facts, events, matters, transactions, or occurrences asserted in the Action, whether or not pleaded in the Amended Complaint, including but not limited to those that arise out of, relate to, are based on, or have any connection with: (1) the selection, retention, and monitoring of the Plan's investment options and service providers, (2) the performance, fees, and other characteristics of the Plan's investment options and their specific share classes, (3) the Plan's fees and expenses, including without limitation fees and expenses associated with the provision of recordkeeping and subadvisory services, (4) the nomination, appointment, retention, monitoring, and removal of the Plan's fiduciaries, and (5) the approval by the Independent Fiduciary of the Settlement Agreement;
- (b) that would be barred by *res judicata* based on the Court's entry of the Final Judgment and Order of Dismissal with Prejudice;
- (c) that relate to the direction to calculate, the calculation of, and/or the method or manner of the allocation of the Net Settlement Fund pursuant to the Plan of Allocation; or
- (d) that relate to the approval by the Independent Fiduciary of the Settlement Agreement.

Plaintiff's Released Claims do not include (i) claims to enforce the Settlement Agreement, and (ii) claims for denial of benefits from the Plan.

The terms of the release, including the provision for the Independent Fiduciary to provide a release of claims by the Plan, are reasonable.

D. The Plan of Allocation

The Plan of Allocation will provide for the allocation of monies to Class Members. Payments to Class Members will be calculated as follows (providing Class Members with their pro rata share of the Net Settlement Fund):

- (a) A *Settlement Allocation Score* shall be calculated for each participant and will be the basis for each participant's settlement payment. A participant's *Settlement Allocation Score* is based on their account balance during the Class

Period and how that balance was allocated to the individual investment options in the Plan. First, the Settlement Administrator will calculate a participant's *Settlement Allocation Score* based on a total of each quarter's ending account balance. Each dollar invested in Proprietary Funds¹ equals four (4) points, and each dollar invested in Non-Proprietary Funds² equals one (1) point.³ The *Settlement Allocation Score* (or total points) is then used to determine a participant's *Average Settlement Allocation Score*. This average is calculated by taking the participant's quarterly *Settlement Allocation Scores* during the Class Period and dividing them by the number of quarters⁴ during the Class Period.

- (b) The Settlement Administrator will determine the settlement payment for each participant by calculating each such participant's *pro rata* share of the Net Settlement Fund (the net amount available to distribute to all participants). A participant's *pro rata* share of the Net Settlement Fund is determined by comparing the participant's *Average Settlement Allocation Score* to the sum of *Average Settlement Allocation Scores* for all participants.

Class Members who are Active Plan participants, will have their payments deposited into their Plan account in accordance with their investment elections for new contributions. Active Plan participants who not made any such elections will have their payments invested in the Plan's qualified default investment alternative.

Class Members who are a beneficiary entitled to receive payments on behalf of a Class Member will receive their payment under the Settlement directly in the form of a check. Class Members who are an alternate payee entitled to receive payments on behalf of a Class Member pursuant to a Qualified Domestic Relations Order will receive their payment of the Settlement (pursuant to the terms of their Qualified Domestic Relations Order) directly in the form of a check.

¹ "Proprietary Funds" means the following funds, regardless of share class: Invesco American Franchise (formerly Invesco Van Kampen American Franchise), Invesco American Franchise Trust, Invesco Balanced-Risk Allocation Trust, Invesco Core Plus Fixed Income Trust (formerly Invesco Core Fixed Income Trust), Invesco Developing Markets, Invesco Diversified Dividend, Invesco Diversified Dividend Trust, Invesco Dynamics, Invesco Emerging Market Equity Trust, Invesco Equity Real Estate Securities Trust, Invesco Floating Rate, Invesco Growth and Income (formerly Invesco Van Kampen Growth and Income), Invesco Growth and Income Trust, Invesco High Yield, Invesco International Equity Trust, Invesco International Growth Equity Trust, Invesco International Growth Trust, Invesco Mid Cap Growth, Invesco Mid Cap Growth Trust, Invesco Retire Trust 500 Index (formerly Invesco S&P 500 Index Trust), Invesco Small Cap Growth, Invesco Stable Value Trust, Invesco Stock Fund, Invesco US Quantitative Small Value Trust, and Invesco US REITs Trust.

² "Non-Proprietary Funds" means the following funds, regardless of share class: Artisan Mid Cap Value, DFA Inflation-Protected Securities, LASSO Long&Short Strategic Opportunities, PIMCO Real Return, SSgA Global Equity ex U.S. Index NL SF, SSgA REIT Index NL SF, SSgA Russell Large Cap Growth Index NL SF (formerly SSgA Russell 1000 Growth Index), SSgA Russell Large Cap Value Index NL SF (formerly SSgA 1000 Value Index), SSgA S&P Midcap R Index NL SF (formerly SSgA Mid Cap Index), SSgA US Bond Index NL SF (formerly SSgA Passive Bond Market Index Index), SSgA US Inflation Protected Bond Index NL (formerly SSgA Treasury Inflation Protected Securities Index), Victory Sycamore Established Value, SSgA US Aggregate Bond Market Index, and the Schwab Personal Choice Retirement Account.

³ Mathematically stated, each quarterly *Settlement Allocation Score* calculation is as follows: (Proprietary Funds quarter ending balance * 4) + (Non-Proprietary Funds quarter ending balance).

⁴ Partial quarters at the beginning of the Class Period are weighted by the percentage of days in the quarter.

Class Members who are Inactive participants (including those that are a Beneficiary or an Alternate Payee of such a Class Member), will receive a payment under the Settlement directly in the form of a check. Inactive participants do not have to submit a claim to receive a payment under the Settlement. Inactive participants may receive their settlement payment through a rollover to a qualified retirement account by submitting a Former Participant Rollover Form 10 days before the Fairness Hearing (August 7, 2020).

We find the Plan of Allocation to be reasonable, including the use of quarterly account balances, the relative weighting of investments in Proprietary Funds and in Non-Proprietary Funds, and the provisions for payments to current participants, former participants, beneficiaries and alternate payees. They are cost-effective, put the allocations of current participants in their Plan accounts, and allow others to elect a rollover or receive a direct cash payment.

E. Attorneys' Fees, Litigation Expenses and Service Award

Class Counsel intends to seek an award of attorneys' fees in an amount up to 33% or \$1,145,100 of the Settlement Amount. Class Counsel will also seek reimbursement for all reasonable litigation costs and expenses, plus interest on both amounts.

In this case, the due date for the motion in support of attorneys' fees is July 3, 2020, which is after the due date of the report of the Independent Fiduciary, June 15, 2020. Therefore, we were not able to review the attorneys' fee request filing before writing this report. However, we requested and Plaintiff's counsel provided supporting information for the attorneys' fees and related litigation expenses. Per an email from Plaintiff's counsel, the total lodestar to date was \$1,174,439.45, which would produce a current lodestar multiplier of 0.98 if the requested \$1,145,100 in attorneys' fees were awarded.

In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases. In light of the work performed, the result achieved, the litigation risk assumed by Plaintiff's counsel, and the combination of the percentage and the lodestar multiplier, Fiduciary Counselors finds the requested attorneys' fees to be reasonable.

In addition to the attorneys' fee award, Plaintiff's counsel stated that they will seek reimbursement for expenses in the amount of \$85,610.50 representing consultants, attorney service fee, legal research and messenger expenses. Fiduciary Counselors finds the request for expenses to be reasonable.

Furthermore, Class Counsel seek an incentive award of \$5,000 for Plaintiff Cervantes, who took on the risk of litigation and committed to spend the time necessary to bring the case to conclusion. The award is within the range of similar awards in ERISA cases. Additionally, the award is not material in comparison to the total Settlement amount and is reasonable.

VI. PTE 2003-39 Determination

As required by PTE 2003-39, Fiduciary Counselors has determined that:

- **The Court preliminarily certified the Litigation as a class action for settlement purposes.** Thus, the requirement of a determination by counsel regarding the existence of a genuine controversy does not apply. Nevertheless, we have determined that there is a genuine controversy involving the Plan. Based on the Amended Complaint, the motion to dismiss, the supporting and opposing memoranda, and the filing in support of preliminary approval of the settlement, we find that there is a genuine controversy involving the Plan within the meaning of the Department of Labor Class Exemption, which the Settlement will resolve.
- **The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.**

Plaintiff filed a class action complaint against Defendant Invesco Holding Company (US), Inc. and the other Defendants on behalf of a class of Plan participants alleging that Invesco breached its fiduciary duties and committed prohibited transactions under ERISA by including investment options in the Plan that are affiliated with Invesco. Specifically, Plaintiff alleged that Defendants breached their fiduciary duties by, among other things, including Invesco-managed investment options in the Plan and failing to engage in a prudent process to monitor the Plan's investment options. Invesco denied Plaintiff's claims of wrongdoing or liability against it, and asserted that its conduct was lawful.

Continued litigation against Defendants posed substantial risks that would make any recovery uncertain. Indeed, the Court had already dismissed the amended complaint in connection with Defendants' motion to dismiss. While the Court provided Plaintiff with leave to amend, there was a substantial risk that the second amended complaint would not have cured the deficiencies identified by the Court. Furthermore, even if Plaintiff were able to address the Court's pleading concerns, he faced considerable risks and expenses in litigating the case. To prove his claims, Plaintiff would need to rely extensively on several expert witnesses for analysis of key issues. Each expert's testimony would be critical to demonstrating Defendants' liability, as well as damages, and the conclusions of each expert would be hotly contested at trial. If, for some reason, the Court determined that even one of Plaintiff's experts should be excluded from testifying at trial, Plaintiff's case would become more difficult to prove.

Furthermore, even if Plaintiff was permitted to proceed with discovery, there would remain significant hurdles to proving liability or even proceeding to trial. For instance, Defendants strenuously disputed that they did anything wrong and hotly contested the investment alternatives listed in the complaint by Plaintiff. Defendants maintained that Invesco was permitted to include proprietary funds in the Plan. Even though Plaintiff identified investment alternatives that had better cumulative returns, Defendants argued

that those alternatives did not consistently outperform the proprietary funds every year during the Class Period. Thus, Defendants would have argued that the Invesco funds were prudent and that looking at cumulative returns is a hindsight analysis and should be disregarded. At minimum, Defendants may have been able to raise serious issues of fact that would have rendered a favorable verdict for Plaintiff highly uncertain. These and other defenses to Plaintiff's claims could be credited at summary judgment or at trial.

The process would have been complex and time consuming, with any recovery for Class Members delayed substantially and reduced by substantial additional litigation expenses and potentially additional attorneys' fees.

The size of the settlement is \$3,470,000, a fair and reasonable recovery given the results in numerous similar cases in the last several years, the defenses that Defendants would have asserted, the risks involved in proceeding to trial, and the possibility of reversal on appeal of any favorable judgment. Plaintiff's damages expert calculated maximum recoverable damages to be approximately \$4,427,541.00, so the cash settlement amount is a substantial 78.37% of potential damages.

Given the substantial expense and risk involved in further litigation, the difficulty in prevailing on the merits and establishing damages, and the delay that would have resulted in providing any relief to the Class if the matter had been prolonged through trial and appeal, the amount of the Settlement of \$3,470,000 is reasonable.

Fiduciary Counselors finds the scope of the release and attorneys' fees and expenses to be reasonable. In addition, the Plan of Allocation and requested incentive award to the Plaintiff are reasonable.

- **The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.** As indicated in the finding above, Fiduciary Counselors determined that Plaintiff's counsel obtained a favorable agreement from Defendants in light of the challenges in proving the underlying claims. The agreement also was reached after arm's-length negotiations.
- **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.** Fiduciary Counselors found no indication the Settlement is part of any broader agreement between Defendants and the Plan.
- **The transaction is not described in Prohibited Transaction Exemption 76-1.** The Settlement did not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans, the subject of PTE 76-1.
- **All terms of the Settlement are specifically described in the written settlement agreement.**

- **The inclusion of consideration other than immediate cash payments in the Settlement meets the requirements of PTE 2003-39.** In addition to the cash payment, the Settlement provides for prospective relief designed to address one of the issues raised in the Action. Defendants agreed to modify the investment options offered through the Plan's self-directed investment account so that participants will be permitted to invest in non-proprietary ETFs, in addition to the proprietary ETFs offered to Participants during the Class Period. This non-monetary consideration is specifically described in the Settlement. Including the non-monetary consideration was more beneficial to participants and beneficiaries than an all-cash settlement would have been. The non-cash consideration rules were not intended to preclude settlement provisions intended to address on a prospective basis the issues that gave rise to the litigation. The non-cash consideration does not include non-cash assets, so the requirements related to non-cash assets do not apply.
- **Acknowledgement of fiduciary status.** Fiduciary Counselors has acknowledged in its engagement that it is a fiduciary with respect to the settlement of the Litigation on behalf of the Plan.
- **Recordkeeping.** Fiduciary Counselors will keep records related to this decision and make them available for inspection by the Plan's participants and beneficiaries as required by PTE 2003-39.
- **Fiduciary Counselors' independence.** Fiduciary Counselors has no relationship to, or interest in, any of the parties involved in the litigation, other than the Plan, that might affect the exercise of our best judgment as a fiduciary.

Based on these determinations about the Settlement, Fiduciary Counselors (i) authorizes the Settlement in accordance with PTE 2003-39; (ii) approves and authorizes the settlement of Released Claims (as defined in the Settlement) on behalf of the Plan; and (iii) gives a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan. Fiduciary Counselors also has determined not to object to any aspect of the Settlement.

Sincerely,


Stephen Caflisch
Senior Vice President & General Counsel