INITIAL DECISION RELEASE NO. 1032
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17003

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	INITIAL DECISION
PETER J. EICHLER, JR.	:	July 8, 2016

APPEARANCES: Gary Y. Leung for the Division of Enforcement, Securities and Exchange Commission

Peter J. Eichler, Jr., *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Peter J. Eichler, Jr., from the securities industry. He was previously enjoined against violations of the antifraud provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on December 14, 2015, pursuant to Sections 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The proceeding is a follow-on proceeding based on *SEC v. Aletheia Research and Management, Inc.*, No. 12-cv-10692 (C.D. Cal. May 11, 2015), *appeal pending*, No. 15-55887 (9th Cir.), in which Eichler was enjoined against violations of the antifraud provisions of the Exchange and Advisers Acts. In accordance with leave granted, the Division of Enforcement (Division) filed a motion for summary disposition, pursuant to 17 C.F.R. § 201.250(a); Eichler filed an opposition, dated March 15, 2016; and the Division a reply, dated April 5, 2016.

This Initial Decision is based on the pleadings and Eichler's January 20, 2016, Declaration in Response to January 12, 2016, Order to Show Cause, as well as his March 28, 2016, Supplemental Declaration and his April 6, 2016, Declaration in Response to SEC's Reply

Brief.[1] There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which he was enjoined were decided against him in the civil case on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Eichler was enjoined against violations of the antifraud provisions in *SEC v. Aletheia Research and Management, Inc.* The Division urges that he be barred from the securities industry. Eichler opposes this.

C. Procedural Issues

1. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the court's orders in *Aletheia Research and Management, Inc.*, and of Financial Industry Regulatory Authority, Inc. (FINRA), records as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *pet. for review denied*, 575 F. App'x 1 (D.C. Cir. 2014).

2. Collateral Estoppel

It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, by consent, or after a trial. *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *1-2 & n.1, *7 (Jan. 21, 1998) (injunction entered by summary judgment); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *10 (Feb. 4, 2008) (injunction entered by consent), *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn.13-14 (Oct. 12, 2007) (injunction entered after trial), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997); *see also Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *2-10, *22-30 (July 25, 2003). In proceedings based on injunctions entered by consent, the Commission considers, and does not permit the respondent to contest, the allegations of the injunctive complaint. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *26-27.

Nor does the pendency of an appeal preclude the Commission from action based on an injunction. *See Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423,

[1] The latter two documents are accepted *nunc pro tunc*. Although unauthorized, they are accepted in light of the facts that Eichler is *pro se* and that they were submitted relatively contemporaneously with authorized filings and did not affect the timely resolution of the proceeding.

at *10 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 (Sept. 17, 1992). If Eichler is successful in overturning his injunction, he can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).[2]

II. FINDINGS OF FACT

Eichler was enjoined, on consent, in *SEC v. Aletheia Research and Management, Inc.*, from committing violations of Exchange Act Section 10(b) and Rule 10b-5 and of Advisers Act Sections 201(1), 206(2), and 206(4) and Rule 206(4)-8(a) on November 7, 2013. *SEC v. Aletheia Research and Mgmt., Inc.*, ECF No. 32. In his November 4, 2013, Consent, Eichler affirmatively stated that "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, [he] understands that he shall not be permitted to contest the factual allegations of the complaint in this action." *Id*., ECF No. 31-1 at 5. Further, he stated that he "understands and agrees to comply with . . . the Commission's policy 'not to permit a defendant . . . to consent to a judgment . . . that imposes a sanction while denying the allegations . . . in the complaint.'" *Id*., ECF No. 31-1 at 5. Finally, he agreed he "will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis" and "hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint." *Id*., ECF No. 31-1 at 5. On May 11, 2015, the court ordered Eichler to pay disgorgement of $1,655,923 plus prejudgment interest of $41,749.35 and to pay a third-tier civil penalty of $1,655,923. *Id.*, ECF Nos. 71, 72.

Facts underlying *SEC v. Aletheia Research and Management, Inc.*, are set forth in the Commission's complaint and are as follows: Aletheia was a registered investment adviser, and Eichler was its chairman, CEO, and chief investment officer. At its peak, Aletheia had more than $10 billion in assets under management. Its clients were primarily institutional investors, pension funds, endowments, foundations, and high net worth individuals. Eichler had full discretionary authority over all Aletheia client accounts and was solely responsible for all investment decisions. Among its business activities, Aletheia managed accounts for certain of its

[2] *See Jilaine H. Bauer, Esq.*, Securities Act of 1933 Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, reversed and remanded district court's judgment that was basis for OIP); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that was basis for OIP); *Evelyn Litwok*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012) (dismissing follow-on proceeding after court of appeals, while petition for review was pending before Commission, reversed certain convictions and vacated and remanded other convictions, all of which were basis for OIP); *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012) (vacating bar issued in follow-on administrative proceeding where court of appeals, after Commission had issued bar order, vacated criminal conviction that was basis for proceeding).

customers, its officers and employees, and two hedge funds. From at least mid-August 2009 through November 2011, Eichler placed approximately 4,791 options trades for an aggregate investment of $238.9 million on behalf of these accounts. He did not allocate the trades to particular accounts until after the trades were executed, in some cases after the options position had closed (when the profit or loss on the trade was certain). Eichler allocated a disproportionate share of the unprofitable trades to the hedge funds and a disproportionate share of the profitable trades to favored accounts, including his own accounts and Aletheia's proprietary account. Trades allocated after the options position was closed and the profit or loss known are referred to as "perfect information" trades. With respect to perfect information trades allocated to Eichler and Aletheia, close to 100% were profitable, and Eichler and Aletheia realized approximate trading profits of $945,000 and $243,000, respectively. Only 31.67% of the perfect information trades allocated to the hedge funds were profitable, and the hedge funds lost approximately $69,000 on perfect information trades. *SEC v. Aletheia Research and Mgmt., Inc.*, ECF No. 1.

The court found that "Eichler acted with a high degree of scienter, that Eichler's cherry-picking was not an isolated occurrence, that future violations would likely occur if Eichler is not ultimately subjected to an industry bar, and that Eichler's assurances against future violations are insincere." *SEC v. Aletheia Research and Mgmt., Inc.*, ECF No. 71 at 5. The court was influenced by the fact that Eichler had previously been sanctioned.[3] In assessing the penalty, the court was "extremely skeptical of Eichler's claimed poor financial condition." *Id*., ECF No. 71 at 6.

The Aletheia transactions were reviewed and approved by others, such as compliance personnel. Jan. 20 Decl. at 2. Most of the individuals, including Eichler, who profited from the perfect information trades were also partners of the disfavored hedge funds. March 28 Decl. at 2. Eichler has not engaged in the securities industry since October 2013, around the time of his Consent in *SEC v. Aletheia Research and Management, Inc*. Jan. 20 Decl. at 2; Apr. 6 Decl. at 1-2.

Eichler suggests that *SEC v. Aletheia Research and Management, Inc.*, was the result of a conspiracy against him:

> Finally, the SEC has continued to avoid any discussion of Mr. Joseph Boskovich and his son Joe Jr. both former employees of Aletheia and their stealing and appropriation of Aletheia clients and intellectual property and ther conspiracy to destroy Aletheia and me, and to start their illicit enterprise-"Old West Investment". Joe Boskovich Sr. shortly after being terminated from

[3] *See Aletheia Research and Management, Inc.*, Exchange Act Release No. 64442, 2011 SEC LEXIS 1637 (May 9, 2011), a settled administrative proceeding in which Eichler was ordered to cease and desist from violations of Advisers Act Sections 204(a) and 206(4) and Rules 204-2(a)(12) and 206(4)-2(a); censured; and ordered to pay a civil money penalty of $100,000. Additional sanctions were imposed on Aletheia and on Roger B. Peikin, who was Aletheia's second largest owner, CCO, CFO, and general counsel. In the instant proceeding Eichler blames Peikin for the violations in the 2011 proceeding. Jan. 20 Decl. at 3.

> Aletheia flew to the East Coast and spent five hours on a bus ride with then head of the SEC Congressman Christopher Cox. I should have the right to defend myself. I have a right to and the Court must understand what went on between the Boskoviches and Congressman Cox. Both Mr Boskovich Sr. and Mr Joe Boskovich Jr. have given sworn testimony admitting the theft of almost all of Alethia's information through theft and computer fraud. This Court does not have all the information it needs to render a fair and accurate decision. I hereby demand the ability to understand the depth and breadth of the conspiracy to destroy me, and also if this significant conspiracy-that extended to many Aletheia employees- prevented my Compliance officers and other legal and operational people from giving me proper-or any- advice.

March 28 Supp. Decl. at 2.[4] Further, Eichler states, "[t]he entire action brought by the SEC rests on a falsehood." *Id*. at 1. He reiterates:

> the illicit meeting [is] evidence of a Poisonous Vine that infects the subsequent actions against me [and is] evidence of a conspiracy against me. . . . I also know that the SEC staff in Los Angeles was working with a number of Aletheia employees who *should* have been giving me proper guidance and counsel but instead were actively working to harm and mislead me.

Apr. 6 Decl. at 2. Eichler also maintains that the complaint in *SEC v. Aletheia Research and Management, Inc*., incorrectly computed the transactions, thus inflating the damages claim and making him look worse. Jan. 20 Decl. at 2; March 28 Suppl. Decl. at 1.

No consideration has been given to Eichler's allegations concerning an illicit meeting, a conspiracy, or incorrect computations. As pointed out above, Respondent cannot relitigate issues that were decided against him in *SEC v. Aletheia Research and Management, Inc*. Eichler's means of challenging the result is through an appeal to the Court of Appeals for the Ninth Circuit, which he is pursuing. *See Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 SEC LEXIS 3125 at *10-11 & n.19 (Dec. 2, 2005). Further, any challenge to the propriety of the staff's conduct should be brought before the court in which that case was heard. *See Harold F. Harris*, Exchange Act Release No. 53122, 2006 SEC LEXIS 68, at *23 (Jan. 13, 2006).

III. CONCLUSIONS OF LAW

Eichler has been been enjoined "from engaging in or continuing any conduct or practice in connection with . . . the purchase of sale of any security" within the meaning of Sections

[4] Former Chairman Cox left office on January 20, 2009. Joseph Boskovich was associated with Aletheia from September 2001 to July 2008. *See* Joseph Michael Boskovich BrokerCheck Report at 4, http://brokercheck.finra.org (last visited July 6, 2016). Joseph Boskovich, Jr., was associated with Aletheia from August 2003 to September 2008. *See* Joseph Michael Boskovich, Jr., BrokerCheck Report at 4, http://brokercheck.finra.org (last visited July 6, 2016).

15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act.

IV. SANCTION

As the Division requests, a collateral bar will be ordered.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. §§ 78*o*(b)(6)(A), 80b-3(f). The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *4-5. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

Eichler argues that the sanction requested by the Division is too harsh. He points to the sanction discussed in settlement negotiations between the Division and himself and to the relatively light sanction imposed, by settlement, on the well-known hedge fund operator, Steven A. Cohen.[5] However, these are settlements, and it goes without saying that settlements are not precedent, as the Commission has stressed many times.[6]

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[5] *See Steven A. Cohen*, Advisers Act Release No. 4307, 2016 WL 97336 (Jan. 8, 2016) (imposing a two year supervisory bar and undertakings on Cohen).

[6] *See Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987, at *10-11 (Oct. 22, 1996) (citing *David A. Gingras*, Exchange Act Release No. 31206, 1992 SEC LEXIS 2537, at *20 (Sept. 21, 1992), and cases cited therein); *Robert F. Lynch*, Exchange Act Release No. 11737, 1975 SEC LEXIS 599, at *12 (Oct. 15, 1975) (citing *Samuel H. Sloan*, Exchange Act Release No. 11376, 1975 SEC LEXIS 1742, at *12 n.24 (Apr. 28, 1975)); *Haight & Co. Inc.*, Exchange Act Release No. 9082, 1971 SEC LEXIS 436, at *68-69 (Feb. 19, 1971); *Sec. Planners Assocs., Inc.*, Exchange Act Release No. 9421, 1971 SEC LEXIS 1035, at *13-14 (Dec. 17, 1971); *see also Michigan Dep't of Natural Res. v. FERC*, 96 F.3d 1482, 1490 (D.C. Cir. 1996) and cases cited therein (settlements are not precedent).

The fact that others may have been involved in the misconduct does not relieve Eichler from responsibility. *See James J. Pasztor*, Exchange Act Release No. 42008, 1999 SEC LEXIS 2193, at *15-18, *25-29 (Oct. 14, 1999) (supervisor held liable for registered representative's execution of violative directed trades; supervisor had tried to stop the trading but was overruled by broker-dealer's owner who was friendly with the customer); *Charles K. Seavey*, Advisers Act Release No. 2119, 2003 SEC LEXIS 716, at *12-14, *19-20 (Mar. 27, 2003) (associated person found liable where investment adviser required him to sign materially misleading letter), *aff'd*, 111 F. App'x. 911 (9th Cir. 2004).

As described in the Findings of Fact, Eichler's conduct was egregious and recurrent, over a period of two years, and involved a high degree of scienter, as found by the court. His occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could resume engaging in the securities industry. The violations are neither recent nor distant in time. Consistent with a vigorous defense of the charges against him, Eichler has not recognized the wrongful nature of his conduct. The court in *SEC v. Aletheia Research and Management, Inc.* found that Eichler profited greatly at the cost of direct financial harm to other investors. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). A conviction involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

The Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *29-30. Indeed, from 1995 to the present, there have been over thirty-five litigated follow-on proceedings based on antifraud injunctions in which the Commission issued opinions, and all of the respondents were barred[7] – at least thirty-five unqualified bars and three bars with the right to reapply after five years.[8] Further, in every such case that followed the statutory provision of collateral bars, the Commission imposed a collateral bar rather than an industry-specific bar, reasoning that the antifraud provisions of the securities laws apply broadly to all securities-

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[7] The pre-Dodd-Frank cases imposed industry-specific bars, such as a bar from association with an investment adviser on a respondent who had been associated with an investment adviser at the time of his violation.

[8] Those three were *Richard J. Puccio*, 1996 SEC LEXIS 2987, *Martin B. Sloate*, Exchange Act Release No. 38373, 1997 SEC LEXIS 524 (Mar. 7, 1997), and *Robert Radano*, Advisers Act Release No. 2750, 2008 SEC LEXIS 1504 (June 30, 2008). The Commission's opinions do not make clear the factors that distinguished these cases from those in which unqualified bars were imposed, but there is little difference between a "bar" and a "bar with the right to reapply in five years."

related professionals and violations demonstrate unfitness for future participation in the securities industry, even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42-43 (Dec. 13, 2012).

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, PETER J. EICHLER, JR., IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.[9]

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge

[9] Thus, Eichler will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Exchange Act Section 15(b)(6)(A), (C).