

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9989 / December 14, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 76642 / December 14, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4291 / December 14, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31935 / December 14, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-15842

In the Matter of

**TOTAL WEALTH MANAGEMENT,
INC., JACOB KEITH COOPER,
NATHAN MCNAMEE, AND
DOUGLAS DAVID SHOEMAKER**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934, SECTIONS 203(e), 203(f) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940
AS TO RESPONDENT TOTAL WEALTH
MANAGEMENT, INC.**

I.

On April 15, 2014, the Securities and Exchange Commission (“Commission”) instituted proceedings pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Respondents Total Wealth Management, Inc. (“Total Wealth”), Jacob Keith Cooper, Nathan McNamee, and Douglas David Shoemaker.

II.

Total Wealth, through its Court-appointed Receiver Kristen Janulewicz, 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 them and the subject matter of these proceedings, which are admitted, Total Wealth consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, as set forth below.

III.

On the basis of this Order and Respondent Total Wealth’s Offer, the Commission finds¹ that:

A. SUMMARY

1. This proceeding involves misconduct by Total Wealth, a registered investment adviser; Jacob Keith Cooper (“Cooper”), its co-founder, sole owner, and CEO; Nathan McNamee (“McNamee”), its former president and chief compliance officer; and Douglas David Shoemaker (“Shoemaker”), its co-founder and former chief compliance officer. The respondents engaged in this conduct in connection with investments made in the unregistered Altus Capital Opportunity Fund, LP (“Altus Capital Opportunity Fund”) and a series of unregistered fund of funds referred to as the “Altus Portfolio Series” (collectively, with the Altus Capital Opportunity Fund, the “Altus Funds”).

2. Starting in at least 2009, Total Wealth and Cooper breached their fiduciary duties to their clients and investors through a fraudulent scheme to collect, and conceal their receipt of, undisclosed revenue sharing fees derived from investments they recommended to their clients. Total Wealth, Cooper, McNamee, and Shoemaker each received undisclosed revenue sharing fees, which were funneled through entities created by the individuals to mask their receipt of the fees. In addition, Total Wealth and Cooper materially misrepresented to investors and clients the extent of the due diligence conducted on the investments they recommended. Total Wealth also violated the custody rule by failing to obtain annual audits from an independent public accountant subject to regular inspection by the Public Company Accounting Oversight Board (“PCAOB”).

3. McNamee, a former investment adviser representative with Total Wealth and former registered representative, and Shoemaker, a current investment adviser representative with Total Wealth and former registered representative, aided, abetted, and caused Total Wealth’s and Cooper’s violations. McNamee and Shoemaker, who knew about the revenue

¹ The findings herein are made pursuant to the Offers of Settlement of Total Wealth, and are not binding on any other person or entity in this or any other proceeding.

sharing arrangements and the related misrepresentations, likewise failed to fully disclose those arrangements to clients. Cooper and McNamee also aided, abetted, and caused Total Wealth's custody rule violation.

B. RESPONDENTS

4. Total Wealth is a California corporation with its principal place of business in San Diego, California. Total Wealth registered with the Commission as an investment adviser on November 25, 2009, and as of April 2014 had approximately \$90.2 million under management in 481 client accounts. Total Wealth is the owner and managing member of Altus Management and the investment adviser to the Altus Capital Opportunity Fund and the Altus Portfolio Series Funds. On February 12, 2015, Kristen Janulewicz was appointed Permanent Receiver of Total Wealth in the matter captioned *Securities and Exchange Commission v. Total Wealth Management, Inc., et al.*, Case No. 15-cv-226 BAS (DHB), pending in the United States District Court for the Southern District of California.

5. Cooper resides in Washington, Utah. He is the co-founder, sole owner, and CEO of Total Wealth. He previously held Series 6 and 63 licenses. Cooper was a registered representative and associated with three broker-dealers and another investment adviser from 2001 through 2005. He resigned from Sun America Securities, Inc. in 2005. In 2007, Sun America reported the receipt and settlement of a customer complaint that Cooper forged signatures on account application paperwork and failed to explain the difference between variable life products versus mutual fund products. Thereafter, he co-founded Total Wealth with Shoemaker.

6. McNamee resides in Haslemere, England and previously resided in Hurricane, Utah. He was an investment adviser representative with Total Wealth from 2009 to 2013. He served as Total Wealth's president beginning in early 2011 and its chief compliance officer beginning in May 2011. McNamee previously held Series 7, 63, and 66 licenses. McNamee was a registered representative of Financial Telesis, Inc., a registered broker-dealer, from December 2009 through December 2010.

7. Shoemaker resides in San Diego, California. He is the co-founder, former chief compliance officer (until 2011), and a current investment adviser representative of Total Wealth. Shoemaker holds a Series 65 license and previously held Series 6 and 63 licenses. Shoemaker was a registered representative and associated with the same broker-dealers and investment adviser as Cooper from 2001 through 2005.

C. OTHER RELEVANT ENTITIES

8. Altus Capital Management, LLC ("Altus Management") is a Delaware limited liability corporation with its principal place of business in San Diego, California. Altus Management is the general partner to the Altus Capital Opportunity Fund and the Altus Portfolio Series. Altus Management has never registered with the Commission in any capacity and has no disciplinary history with the Commission.

9. The Altus Capital Opportunity Fund is a Delaware limited partnership and an unregistered fund of funds. It first filed a Form D on January 25, 2010 claiming exemption from

registration under Rule 506 of Regulation D of the Securities Act and an exclusion from the definition of “investment company” in Section 3(c)(1) of the Investment Company Act.

10. Altus Conservative Portfolio Series, LP, Altus Focused Growth Portfolio Series, LP, Altus Income Portfolio Series, LP, Altus Growth Portfolio Series, LP, Altus Moderate Growth Portfolio Series, LP, and Altus Moderate Portfolio Series, LP are a family of Delaware limited partnerships. They are a series of unregistered funds of funds referred to as the “Altus Portfolio Series” (collectively, the “Altus Portfolio Series Funds”). The Altus Portfolio Series Funds filed Forms D in 2011 claiming exemption from registration under Rule 506 and Section 3(c)(1) of the Investment Company Act.

11. Capita Advisors, Inc. (“Capita”) is a California corporation with its principal place of business in San Diego, California. Capita purports to be a consulting company, and was founded and is operated solely by McNamee. Capita has never registered with the Commission in any capacity and has no disciplinary history with the Commission.

12. Financial Council, Inc. (“Financial Council”) is a California corporation with its principal place of business in San Diego, California. Financial Council purports to be a consulting company, and was founded and is operated solely by Shoemaker. Financial Council has never registered with the Commission in any capacity and has no disciplinary history with the Commission.

13. Pinnacle Wealth Group, Inc. (“Pinnacle”) is a California corporation with its principal place of business in San Diego, California. Pinnacle purports to be a consulting company, and was founded and is operated solely by Cooper. Pinnacle has never registered with the Commission in any capacity and has no disciplinary history with the Commission.

D. FACTUAL ALLEGATIONS

1. Background of the Altus Funds

14. Total Wealth, which was founded by Cooper and Shoemaker, is an investment adviser to the Altus Funds. Total Wealth is also the owner and managing member of Altus Management, which is the general partner to the Altus Funds.

15. Cooper organized the Altus Capital Opportunity Fund in late 2009 in order to allow Total Wealth clients to pool their money to meet the mandatory minimum investment requirement for funds for which they otherwise might not qualify.

16. Two years later, in 2011, Cooper established the Altus Portfolio Series Funds, a series of pooled investment funds. The Altus Funds – Altus Capital Opportunity Fund and the Altus Portfolio Series Funds – invested their assets in other funds, which were selected by Cooper. The Altus Capital Opportunity Fund and the Altus Portfolio Series Funds held many of the same investments.

17. Cooper, Shoemaker, and McNamee made all of the investment decisions and recommendations for their respective Total Wealth clients, including those who invested in the Altus Funds. These clients paid for this advice based on the amount of assets that were being

managed. As the CEO and owner of Total Wealth, Cooper directly benefited from the fees Total Wealth received.

18. Total Wealth identified potential new clients through paid weekly radio broadcasts, existing client referrals, webinars, the company website, and meet-and-greets through a local speaker's bureau or a free lunch. Prior to the formation of the Altus Capital Opportunity Fund, existing Total Wealth clients could choose to place their investment funds directly in the offerings recommended by the respondents.

19. Starting in 2010, Total Wealth, Cooper, Shoemaker, and McNamee began advising their preexisting clients to transfer their individual investments to the Altus Capital Opportunity Fund. At the same time, they also began offering the Altus Capital Opportunity Fund to new Total Wealth clients and later, in 2011, they began offering the Altus Portfolio Series Funds to Total Wealth clients.

20. Cooper, McNamee, and Shoemaker met with potential investors prior to accepting them as clients of Total Wealth or as investors in the Altus Funds. As investment adviser representatives, they then prepared written investment recommendations and discussed them with their prospective clients. Total Wealth provided clients with prospective investor packets and brochures, including a packet designed specifically for prospective investors in the Altus Funds. The packet frequently included an executive summary of the fund, which was created and approved by Cooper, who solicited input from McNamee and Shoemaker. Total Wealth also provided the executive summary to potential investors who participated in its client webinars.

21. Investors in the Altus Funds typically received an offering memorandum, a limited partnership agreement, and a subscription agreement. In May 2011, when McNamee became the chief compliance officer, he "signed off" on all material provided to prospective investors. The funds' offering memoranda state that Altus Management will "adhere" to the provisions of the Investment Advisers Act. The offering memoranda also specifically state, in all capital letters, that "provisions referenced to [Altus Management] . . . may also be deemed to apply, and should be read to apply equally to [Total Wealth], and vice versa where relevant."

22. In May 2011, McNamee also assumed responsibility for verifying that all investors received the current Form ADV for Total Wealth. Shoemaker signed the firm's Forms ADV for Total Wealth in 2009 and 2010, Cooper signed the Forms ADV for Total Wealth in 2011, and McNamee signed the Forms ADV for Total Wealth thereafter.

23. Once a client invested in one of the Altus Funds, Altus Management had the discretion to buy and sell that client's holdings without notice. Total Wealth clients who invested directly in the Altus Funds typically did not receive offering documents regarding the underlying investments held by the Altus Funds. Instead, they received statements directly from the Altus Funds (via Total Wealth), and the only offering memorandum that they may have seen are those of the Altus Funds themselves. As a result, there was little to no transparency provided to investors that would allow them to evaluate the merit of the underlying holdings of the Altus Funds or whether Total Wealth possessed any relationship to those entities. As of April 2014, approximately 75% of Total Wealth's clients were invested in one or more of the Altus Funds. Likewise, approximately 75% of Total Wealth's clients were individuals.

24. As of April 2013, the Altus Capital Opportunity Fund had a gross asset value of approximately \$43.5 million held for 86 beneficial owners. As of February 2013, the Altus Portfolio Series Funds collectively held gross assets of approximately \$10.9 million.

2. Total Wealth's Revenue Sharing Fee Arrangements

25. Starting in at least February 2008, prior to the creation of the Altus Capital Opportunity Fund, Total Wealth had revenue sharing arrangements in place with several investment funds. Under these agreements, these other funds paid Total Wealth a fee when Total Wealth placed its clients' investments in those funds. Cooper signed all of the revenue sharing agreements on behalf of Total Wealth.

26. Total Wealth paid Cooper, McNamee, and Shoemaker a portion of the revenue sharing fees it received. Through written agreements signed by McNamee and Shoemaker, Total Wealth agreed to pay each person 70%-80% of the revenue sharing fees earned for every Total Wealth client he placed into the underling funds. Cooper received his revenue sharing fees without the use of a written agreement.

27. About the same time that the Altus Capital Opportunity Fund was established, Cooper formed Pinnacle, and he advised Shoemaker and McNamee to form Financial Council and Capita, respectively.

28. Pinnacle, Financial Council, and Capita (the "Side Entities") received in their bank accounts the revenue sharing fees paid to their respective owners, and these Side Entities performed virtually no consulting work. Typically, Cooper, McNamee and Shoemaker funneled their revenue sharing payments through the Side Entities. For the collection of revenue sharing fees, Cooper simply paid money directly from Total Wealth to Pinnacle. McNamee and Shoemaker issued invoices on behalf of their Side Entities, and these invoices frequently characterized the fees as something other than revenue sharing fees, concealing the true nature of the fees paid. For example, in 2010, Financial Council, Shoemaker's entity, consistently submitted invoices to Pinnacle, Cooper's entity, for "consulting fees" even though Shoemaker did not do any consulting work.

a. The Failure to Disclose the Revenue Sharing Fees and the Conflict of Interest Resulting from These Arrangements

29. Total Wealth and Cooper made materially false misrepresentations and omissions to their clients about the revenue sharing arrangements, the fees received under these arrangements, and the payment of these fees to Cooper, McNamee and Shoemaker.

30. The disclosures in all of the Altus Funds' offering memoranda and, beginning in 2009, in Total Wealth's Form ADV Part II, Schedule F (later known as Part 2A) merely informed clients that Total Wealth "may" receive revenue sharing fees. But these disclosures failed to inform Total Wealth clients that Total Wealth already was receiving revenue sharing fees and failed to inform the investors about the sources, recipients, amounts and duration of the fees. This language appears in all of Total Wealth's subsequent Forms ADV, including those filed with the Commission.

31. Specifically, Total Wealth's Forms ADV filed March 28, 2011, August 23, 2011, May 2, 2012, February 26, 2013, April 5, 2013, and May 22, 2013 were false when filed. The Parts 2A of the Forms ADV falsely stated that Total Wealth "may have arrangements with certain Independent Managers whereby the Adviser receives a percentage of the fees charged by such Independent Managers." The Forms ADV also do not otherwise disclose the revenue sharing fees nor do they contain any reference to the Side Entities or these entities' affiliations with Total Wealth.

32. Like the Forms ADV, the Altus Funds' offering memoranda also failed to adequately disclose the revenue sharing arrangements. What little disclosure there is about the arrangements is buried in the memoranda and fails to disclose that Total Wealth routinely earned such fees. For example, page 60 of the Altus Capital Opportunity Fund memorandum states: "Some Private Funds *may* pay the General Partner or its affiliates a referral fee or a portion of the management fee paid by the Private fund to its general partner or investment adviser, including a portion of any incentive allocation" (emphasis added). Moreover, the existence, rate or prevalence of actual revenue sharing fee arrangements is not listed among the "other fees & expenses" identified in the "Summary of the Offering" placed at the beginning of the memoranda.

33. The respondents also did not disclose the existence, amount or extent of the revenue sharing fees paid to the respondents in other documents and communications.

34. The disclosures also failed to adequately disclose that Total Wealth already had a significant number of revenue sharing agreements in place. For example, according to the Altus Capital Opportunity Fund's audited financial statements, the fund had over \$34 million in investments in fiscal year 2010. Of that amount, \$31.7 million – or about 92% – was invested in entities that had revenue sharing agreements with Total Wealth.

35. Investors viewed the revenue sharing fees as material and would not have invested with Total Wealth if they knew that most of the funds in which the Altus Funds invested were, in turn, paying revenue sharing fees to Total Wealth. Moreover, several of these funds that paid revenue sharing fees were new enterprises and did not have any performance history making them riskier investments. Total Wealth's undisclosed financial incentive (in the form of the revenue sharing arrangements) to invest in such new and untested enterprises was material.

36. Also, many of the underlying investment funds that paid revenue sharing fees to Total Wealth had multi-year "lock-up" periods or set terms that prevented investors from withdrawing their money. So once invested, even if investors had learned about the revenue sharing fees, they would not have been able to obtain their funds.

37. The revenue fee sharing arrangement also created a clear conflict of interest for Total Wealth and Cooper. By receiving these fees for investing their clients into certain funds, Total Wealth and Cooper had an incentive to make those investments regardless of the performance of the underlying fund or the appropriateness of the investment. In fact, Total Wealth and Cooper had a persistent and pervasive practice of recommending and making investments in the underlying funds that paid revenue sharing fees. Doing so created extensive conflicts of interest that Total Wealth and Cooper had a duty to disclose fully.

38. Total Wealth and Cooper did not adequately disclose these conflicts of interest, which affected their ability to provide unbiased advice to their clients to invest in the Altus Funds. Total Wealth and Cooper breached their fiduciary duties to their clients by failing to adequately disclose the material information about the revenue sharing fee arrangements and the conflicts of interest posed by these arrangements.

39. McNamee and Shoemaker aided and abetted Total Wealth's and Cooper's failure to adequately disclose the material information about the revenue sharing fee arrangements, and they aided and abetted Total Wealth's and Cooper's failure to disclose Total Wealth's and Cooper's conflicts of interest that resulted from these arrangements. McNamee and Shoemaker also aided and abetted Total Wealth's and Cooper's breaches of fiduciary duty. As officers of Total Wealth and holders of several securities licenses, McNamee and Cooper knew, or were reckless in not knowing, that Total Wealth and Cooper had fiduciary responsibilities to their clients.

40. McNamee and Shoemaker knew about the revenue sharing agreements. They received a portion of Total Wealth's revenue sharing fees as a result of agreements that they signed with Total Wealth. McNamee and Shoemaker reviewed the brochures, offering memoranda, statements, Forms ADV and other materials that Total Wealth provided to its clients. McNamee formally signed off on these materials after he replaced Shoemaker as chief compliance officer in 2011. McNamee and Shoemaker also met with prospective clients and investors, prepared investment recommendations for those clients, sold the Altus investments to clients, and collected their portion of the revenue sharing fees. But they failed to disclose the truth about the revenue sharing agreements to investors. As a result, McNamee and Shoemaker substantially assisted Total Wealth and Cooper's failure to sufficiently disclose the fee arrangements and the resulting conflicts.

b. The Scheme to Mislead Investors about the Revenue Sharing Fees

41. The respondents devised and orchestrated a fraudulent scheme to collect and conceal their receipt of revenue sharing fees through their Side Entities. The respondents structured the Altus Funds and their disclosures so the clients investing in the Altus Funds would not know that those funds held risky investments paying revenue sharing fees back to the respondents.

42. The respondents took several steps in furtherance of the scheme. In December 2008, Total Wealth hired a compliance consultant with fifteen years of experience in the industry. But Total Wealth fired him after he had prepared early versions of the Form ADV that more fulsomely disclosed the revenue sharing fee arrangements. In fact, although the consultant knew about the revenue sharing fee agreements and asked Shoemaker to see copies of the agreements, the respondents never provided them to him and the consultant never saw the agreements. Nonetheless, the consultant prepared an October 2009 version of Total Wealth's ADV Part II, Schedule F that stated that Total Wealth "routinely purchases a certain type of security . . . [and] has entered into solicitation agreements with the firms offering the investment product and as a result of placing the client in those investment products, the Adviser may

receive a percentage of the investment advisory fees charged by the firm.” Total Wealth filed this Schedule F with its Form ADV in October 2009.

43. After the consultant drafted this language disclosing the revenue sharing arrangements, Total Wealth fired him on or around October 2009. Shortly thereafter, Total Wealth hired a rookie compliance consultant with little relevant experience. Then, Total Wealth’s May 2010 Schedule F, and all subsequent Forms ADV and accompanying schedules and parts, omitted the language recommended by the fired consultant. Total Wealth filed the regulatory replacement to the Schedule F, Part 2A (known as the “firm brochure”) in March 2011 along with its Form ADV. The March 2011 Part 2A, and all subsequent Forms ADV and Parts 2A, falsely stated only that Total Wealth “may” have revenue sharing arrangements.

44. Meanwhile, in November 2009, McNamee and Shoemaker, through Capita and Financial Council respectively, began issuing invoices to Cooper that concealed the revenue sharing fees. These false invoices charged “consulting fees” even when the entities performed virtually no consulting work. These false invoices disguised the flow of income from the revenue sharing fees.

45. Also, around the same time that Total Wealth hired the new compliance consultant, it hired a fund administrator to assist with the newly-formed Altus Fund. Like the new compliance consultant, the accountant for the administrator was inexperienced, having no prior experience doing investment fund portfolio accounting. Later, in early to mid-2010, the administrator encountered difficulties obtaining the documents and information from Total Wealth, the Altus Funds, and their underlying funds that were necessary to prepare timely and reliable statement information for Altus Fund investors. On November 30, 2010, Total Wealth terminated its relationship with the fund administrator and subsequently hired an administrator in the Bahamas.

46. In addition, in July 2010, Total Wealth began preliminary discussions with an auditor about auditing the Altus Capital Opportunity Fund. Total Wealth was required to comply with the Custody Rule. 17 C.F.R. §275.206(4)-2 (the “Custody Rule”). As part of its compliance with the Custody Rule, Total Wealth was required to comply with Sections 206(4)-2(a)(2), (3), and (4) unless it availed itself of the audit exception by obtaining an annual audit from an auditor subject to regular PCAOB inspection. When the proposed new auditor emailed a draft engagement letter to Cooper, it included an excerpt from the SEC’s “Staff Responses to Questions About the Custody Rule” regarding audits of pooled investment vehicles and the Custody Rule, which reiterated the rule’s requirement that the auditor needed to be subject to regular PCAOB inspection. Total Wealth then elected not to hire that auditor.

47. Instead, in late 2010, Total Wealth hired an unqualified accountant (the “Auditing Firm”) to audit the Altus Capital Opportunity Fund. The owner and sole individual associated with the Auditing Firm did not verify that he or his firm was subject to regular PCAOB inspection, only that he and his firm were subject to “oversight.” As a result, the Auditing Firm could not fulfill Total Wealth’s obligation under the Custody Rule to have audits performed by an auditor subject to regular PCAOB inspection.

48. The Auditing Firm also lacked independence as defined by Regulation S-X. The Custody Rule requires that Regulation S-X independence standards be met for the audit to satisfy the audit exception under the Custody Rule. *See* 17 C.F.R. §§ 275.206(4)-2(b)(4)(ii), 275.206(4)-2(d)(3) (independent public accountant must meet standards of Regulation S-X). As part of the Auditing Firm's engagement by Total Wealth, the Auditing Firm prepared the Altus Capital Opportunity Fund's 2010 financial statements. Then, Total Wealth instructed the Auditing Firm to audit those very financial statements, which it did. Under Regulation S-X, an accountant is not independent if he provides certain bookkeeping and other services related to the accounting records or financial statements unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements. *See* Rule 2-01(c)(4)(i) of Regulation S-X, 17 C.F.R. § 210.2-01(c)(4)(i); *Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence*, 68 Fed. Reg. 6006, 6011 (Feb. 5, 2003) (to be codified at 17 C.F.R. pts. 210, 240, 249 and 274) (it is a basic principle that an auditor cannot audit his own work and remain independent).

49. Cooper served as one of the principal contacts for the Auditing Firm and helped the Auditing Firm obtain information that it then used to prepare the financial statements. Cooper reviewed those financial statements and signed the management representation letter.

50. McNamee also served as one of the Auditing Firm's principal contacts during the audit and preparation of financial statements. McNamee helped the Auditing Firm obtain the information that it used to prepare the financial statements, and McNamee reviewed those financial statements.

51. In short, throughout this time period, Total Wealth and Cooper placed investors in the Altus Capital Opportunity Fund, allowing Cooper, McNamee and Shoemaker to obtain revenue sharing fees. Because Total Wealth, and not the Altus Capital Opportunity Fund, collected the revenue sharing fees, those fees did not appear directly on the fund's 2010 audited financial statements prepared and audited by the Auditing Firm. Total Wealth funneled the revenue sharing fees through the Side Entities, companies that apparently were created just for that purpose. Invoices were created to give the appearance that the fees were just payments for consulting work, even though virtually no consulting work was ever done. The professionals who inquired about the revenue sharing agreements or asked for information about them either were not hired or were fired. This entire course of conduct by Total Wealth and Cooper was inherently deceptive, and had the principal purpose and effect of facilitating a scheme to conceal the revenue sharing fees while inducing investors to place their money in the Altus Capital Opportunity Fund.

52. McNamee and Shoemaker aided and abetted Total Wealth and Cooper's fraudulent scheme. McNamee and Shoemaker created and submitted the false invoices to collect the revenue sharing fees, which gave the false appearance that the fees were for consulting when, in fact, they were for revenue sharing arrangements that had not been disclosed. Moreover, these fees were paid to entities that McNamee and Shoemaker apparently created solely for the purpose of receiving fees. Also, McNamee and Shoemaker substantially assisted in the scheme because each knew about the revenue sharing agreements and reviewed the materials provided to Total Wealth clients, but failed to make sure that these arrangements were sufficiently disclosed.

3. Total Wealth's Due Diligence Efforts

53. Total Wealth and Cooper also misled Altus investors about the due diligence they conducted on the holdings in the Altus Funds. Cooper was responsible for selecting the investments recommended by Total Wealth and held by the Altus Funds, and he identified those investments mainly through word of mouth.

54. In face-to-face meetings and emails with potential investors, Cooper represented that he conducted "rigorous due diligence" to choose investments. The offering memoranda and the promotional materials for the Altus Capital Opportunity Fund represented that the "leadership team . . . conduct[ed] regular reviews of all Fund investments including on-site manager visits and in-depth qualitative and quantitative due diligence." This representation appeared in the executive summary provided to prospective investors and on the glossy folder that contained the prospective investor packet.

55. Such "in-depth qualitative and quantitative due diligence" was important to investors because Total Wealth and its investment adviser representatives were the clients' only potential source of any information about the holdings in the Altus Funds. Moreover, as both the offering memoranda and the subscription agreement acknowledged, the profitability of the fund depended upon the abilities of Altus Management and Total Wealth to assess the future course of price movement of securities and to choose private investment funds.

56. Total Wealth's and Cooper's representations about due diligence are false. They did not conduct the due diligence they represented to investors. For many, if not all, of the investments held by the Altus Funds, Total Wealth did not perform any quantitative analysis of the investments. Total Wealth received promotional materials, subscription agreements, and the self-reported and unverified performance history of the underlying funds. But Total Wealth failed to review or analyze such documents or obtain any third-party due diligence of the underlying funds.

57. Moreover, Total Wealth did not have audited financial statements for many of the private funds held by the Altus Capital Opportunity Fund. Even when Total Wealth did obtain audited financials, it either did not review them or did not obtain them for all the relevant periods before it invested client funds. Cooper relied on the underlying funds for almost all of his information about the funds.

58. Indeed, as early as 2010, Total Wealth knew at least two of the funds held in the Altus Capital Opportunity Fund had financial issues. But this did not dissuade Total Wealth from continuing to place clients in the Altus Capital Opportunity Fund or to hold the troubled funds in the Altus Capital Opportunity Fund. The audited financial statements for one of these funds revealed that it had expenses (consisting almost exclusively of management fees, commissions, and incentive fees) of over \$700,000, but income of only \$5,000 – and that the only assets of this fund were cash and T-bills. In another fund, Cooper knew, prior to investing, that the fund generated investor returns by "borrowing the carry," *i.e.*, paying interest to investors from the capital it raised from other investors. Nonetheless, the Altus Capital Opportunity Fund invested with this fund. The company's 2010 audited financial statements,

prepared in 2012, showed that it was insolvent. The Altus Capital Opportunity Fund is still invested with both of the funds described here.

59. Total Wealth and Cooper breached their fiduciary duties by failing to conduct the due diligence they claimed they were doing and making misrepresentations about the due diligence they performed.

4. Total Wealth's Custody Rule Violation

60. As the managing member of Altus Management, which is the general partner of the Altus Funds, Total Wealth had custody of the funds and securities of its clients, the Altus funds, as well the funds and securities of the investors in those funds who are Total Wealth clients. As such, Total Wealth was required to comply directly with all the requirements of the Custody Rule, 17 C.F.R. §275.206(4)-2, unless it satisfied the requirements of the audit exception, in which case it does not have to comply with Rule 206(4)-(2)(a)(2) (notice to clients) or (a)(3) (account statements to clients) and “will be deemed to have complied” with (a)(4) (independent verification by annual examination). Total Wealth neither complied with the provisions of Rule 206(4)-(2)(a)(4), nor did it satisfy this provision by taking the audit approach provided in 206(4)-2(b)(4), that is by having the Altus Funds audited annually by an independent public accountant who is registered with, and subject to regular inspection by, the PCAOB and by distributing audited financial statements prepared in accordance with GAAP to the Altus investors within 120 days of the end of its fiscal year. 17 C.F.R. §275. 206(4)-2(b)(4)(ii) (audit must be conducted “by an independent public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules”) (emphasis added).

61. In its ADV filings since March 2011, Total Wealth has claimed that it has complied with the Custody Rule by having the Altus Funds audited annually by the Auditing Firm. Total Wealth also identifies the Auditing Firm as the auditor of the Altus Portfolio Series Funds in the offering memoranda for the funds in this series.

62. These representations are not true. The only audit that the Auditing Firm performed was of the 2010 financial statements of the Altus Capital Opportunity Fund. But the Auditing Firm was not independent of the Altus Capital Opportunity Fund as required by Regulation S-X because the Auditing Firm had prepared the 2010 financial statements for the Altus Capital Opportunity Fund prior to conducting his audit. The Auditing Firm also was not subject to regular inspection by the PCAOB. Thus, Total Wealth could not use that audit to avail itself of the audit exception to the Custody Rule.

63. Cooper and McNamee aided and abetted Total Wealth's Custody Rule violation. Both were the Auditing Firm's principal contacts at Total Wealth during the Auditing Firm's preparation of the 2010 financial statements and the Auditing Firm's audit of those statements. Each knew or was reckless in not knowing that the Auditing Firm was required to be subject to regular inspection by the PCAOB if the Auditing Firm's audits were to be used to satisfy the audit exception to the Custody Rule. As a result, both Cooper and McNamee knew, or were reckless in not knowing, that the Auditing Firm was not conducting annual audits as required by

the rule, did not possess the requisite independence, and was not subject to regular PCAOB inspection as required by the Custody Rule. They also provided the Auditing Firm with information that the Auditing Firm used to prepare the Altus Fund financial statements, and reviewed those financial statements. Cooper also signed the management representation letter. Thus, Cooper and McNamee provided substantial assistance to Total Wealth's Custody Rule violations.

E. VIOLATIONS

64. As a result of the conduct described above, Total Wealth willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities by:

a. engaging in a scheme to defraud investors by directing client money to funds that paid revenue-sharing fees and by collecting, and concealing the receipt of, revenue-sharing fees in violation of Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c); and

b. making, and obtaining money or property by means of, material misrepresentations and omissions regarding the receipt of revenue-sharing fees and the amount of due diligence performed regarding the investments held by the Altus Funds in violation of Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b).

65. As a result of the conduct described above, Total Wealth willfully violated Sections 206(1), 206(2), 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-8, promulgated thereunder, by directing client money to funds that paid revenue sharing fees, without adequate disclosure, by engaging in a scheme to collect and conceal their receipt of the revenue sharing fees, and by otherwise misleading clients regarding these fees and its due diligence efforts, in breach of its fiduciary duties in violation of 206(1), 206(2), 206(4) of the Advisers Act and Rule 206(4)-8.

66. As a result of the conduct described above, by failing to obtain independent verification of client funds and securities as set forth in Rule 206(4)-(2)(a), Total Wealth willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2, promulgated thereunder, which makes it a fraudulent, deceptive or manipulative act under Section 206(4) for any registered investment adviser to have custody of clients' funds or securities in a pooled investment vehicle unless that investment adviser complies with Rule 206(4)-2(a) or with the exceptions set forth in Rule 206(4)-2(b).

67. As a result of the conduct described above, by making misleading and false statements regarding the revenue sharing fees, Total Wealth's custody of client funds, the independence of the Altus Funds' auditor, and the annual audits of the Altus Funds, Total Wealth willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent Total Wealth's Offer.

Accordingly, pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, it is hereby ORDERED that:

A. Respondent Total Wealth shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-2 and 206(4)-8 promulgated thereunder.

B. Respondent Total Wealth's registration as an investment adviser be, and it is hereby is, revoked.

C. The SEC will forego seeking from Total Wealth any disgorgement or civil penalty in this proceeding.

By the Commission.

Brent J. Fields
Secretary