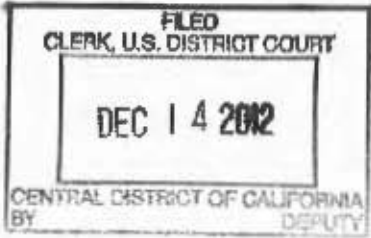


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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13
14 SECURITIES AND EXCHANGE
COMMISSION,
15 Plaintiff,
16 vs.
17 ALETHEIA RESEARCH AND
18 MANAGEMENT, INC., and PETER J.
EICHLER, JR.,
19 Defendants.

Case No. **CY12-10692** JFW (PZx)
COMPLAINT

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges the
2 following against Defendants Aletheia Research and Management, Inc.
3 (“Aletheia”) and Peter J. Eichler, Jr. (“Eichler”):

4 SUMMARY

5 1. This case is about a “cherry-picking” scheme by an investment
6 adviser and the adviser’s CEO. The investment adviser, Defendant Aletheia,
7 which recently filed for bankruptcy, provided investment advisory services through
8 several investment strategy products. Separate and apart from those strategy
9 products, Defendant Eichler, the chairman and CEO of Aletheia, traded options for
10 a number of Aletheia-managed accounts. It is this option trading that is at the heart
11 of the Defendants’ cherry-picking scheme.

12 2. Like many investment advisers, the Defendants generally did not
13 allocate a specific option trade to any one account until after the trade was
14 executed. Allocations of options trades were made hours and sometimes days after
15 execution. This delay gave the Defendants the opportunity to “cherry-pick” – that
16 is, allocate the winning trades to some accounts, and allocate the losing trades to
17 other accounts. And that is exactly what the Defendants did. They allocated the
18 winning trades to certain favored accounts, including accounts personally held by
19 Eichler as well as other select employees and clients, and allocated the losing
20 trades to two disfavored hedge funds.

21 3. By engaging in this cherry-picking scheme, the Defendants violated
22 the fiduciary duties they owe to the disfavored hedge funds and the Aletheia
23 advisory clients invested in those funds, and the Defendants further violated the
24 antifraud provisions of the federal securities laws. In addition, Aletheia failed to
25 implement policies, procedures, or a code of ethics that reasonably could have
26 prevented the scheme. Over the course of approximately 27 months from mid-
27 August 2009 through November 2011, the Defendants’ cherry-picking scheme
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1 allowed the favored accounts to obtain approximately \$4.14 million in profit
2 (including roughly \$2 million in profit to Eichler's personal accounts), while the
3 two disfavored hedge funds sustained trading losses of approximately \$4.4 million.

4 4. In addition to engaging in this cherry-picking scheme, Aletheia
5 breached its fiduciary duties and violated the federal securities laws in a second
6 way. Federal securities laws require an investment adviser to fully and promptly
7 disclose any financial condition that is reasonably likely to impair the investment
8 adviser's ability to meet contractual commitments to its advisory clients. No later
9 than July 2012, Aletheia was in a precarious financial condition. According to
10 Eichler himself, long-running lawsuits had "decimated" Aletheia's business. The
11 state of California had filed a \$2,053,470 tax lien against Aletheia for unpaid taxes
12 and penalties. And on October 1, 2012, California suspended Aletheia's corporate
13 status for failing to pay this enormous tax bill. Once suspended, Aletheia could not
14 legally exercise any of its corporate powers, rights and privileges in the state of
15 California. In breach of its fiduciary duties and federal law, however, Aletheia did
16 not disclose its precarious financial condition to its clients until November 9, 2012,
17 on the very eve of its bankruptcy filing.

18 5. By engaging in this conduct, the Defendants violated the antifraud
19 provisions of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange
20 Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5(a) &
21 (c), and the antifraud provisions of Sections 206(1), 206(2) and 206(4) of the
22 Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1), (2) and
23 (4), and Rule 206(4)-8(a) thereunder, 17 C.F.R. § 275.206(4)-8(a); and Aletheia
24 violated the reporting provisions of Sections 204 and 207 of the Advisers Act, 15
25 U.S.C. §§ 80b-4 and 80b-7, and Rule 204-1(a)(2) thereunder, 17 C.F.R. § 275.204-
26 1(a)(2), the compliance procedures and practices provision of Section 206(4) of the
27 Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-7(a) thereunder, 17 C.F.R. §
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1 275.206(4)-7, and the ethics code requirement of Section 204A of the Advisers
2 Act, 15 U.S.C. § 80b-4A, and Rule 204A-1(a) thereunder, 17 C.F.R. § 204A-1(a).
3 The Commission seeks a permanent injunction prohibiting future violations,
4 disgorgement of ill-gotten gains together with prejudgment interest thereon, and
5 the imposition of civil penalties.

6 **JURISDICTION AND VENUE**

7 6. This Court has jurisdiction over this action pursuant to Sections 21(d),
8 21(e), and 27(a) of the Exchange Act, 15 U.S.C. §§ 78u(d)(1), 78u(d)(3), 78u(e) &
9 78aa(a), and Sections 209(d), 209(e), and 214(a) of the Advisers Act, 15 U.S.C. §§
10 80b-9(d), 80b-9(e) & 80b-14(a).

11 7. Venue is proper in this judicial district under Section 27(a) of the
12 Exchange Act, 15 U.S.C. § 78aa(a), and Section 214(a) of the Advisers Act, 15
13 U.S.C. § 80b-14(a), because Eichler resides in and transacts business in this
14 district, Aletheia transacts business in this district, and certain of the transactions,
15 practices, and courses of business constituting violations of the federal securities
16 laws occurred within this district.

17 8. Defendants have, directly or indirectly, made use of the means or
18 instrumentalities of interstate commerce, or of the mails, in connection with the
19 transactions, acts, practices and courses of business alleged herein.

20 **DEFENDANTS**

21 9. Aletheia was organized as a California corporation in 1997, and its
22 principal place of business is in Santa Monica, California. Since 1998, Aletheia
23 has been registered with the Commission as an investment adviser under Section
24 203 of the Advisers Act, 15 U.S.C. § 80b-3. Aletheia's corporate status was
25 suspended by the State of California on October 1, 2012 for non-payment of taxes.
26 On November 11, 2012, Aletheia filed for Chapter 11 bankruptcy in the U.S.
27 Bankruptcy Court for the Central District of California.

1 (the "relevant period"), Eichler used Aletheia's discretionary authority over these
2 accounts and funds to engage in option trading on their behalf.

3 15. Specifically, Aletheia managed what were called "custom accounts"
4 for certain Aletheia clients who were not entirely invested in Aletheia's strategy
5 investment products. During the relevant period, these clients held 24 Aletheia
6 custom accounts which also traded in options (the "Favored Custom Accounts").

7 16. Aletheia also managed accounts that were held by Aletheia, its
8 corporate officers (including Eichler), its employees, or family members of
9 Aletheia's employees. During the relevant period, 24 of these Aletheia-related
10 accounts traded in options (the "Favored Aletheia-Related Accounts"). The
11 Favored Aletheia-Related Accounts included Eichler's personal accounts (the
12 "Eichler Accounts") and an account in which Aletheia made proprietary trades on
13 its own behalf (the "Aletheia Proprietary Account").

14 17. In addition, Aletheia managed two privately-offered funds, Aletheia
15 Insider Index, L.P. (the "Insider I Fund") and Aletheia Insider Index II, L.P. (the
16 "Insider II Fund") (collectively, the "Disfavored Hedge Funds"). Aletheia only
17 offered the Insider I Fund and the Insider II Fund to Aletheia advisory clients.
18 Investors in the Disfavored Hedge Funds were primarily high net worth
19 individuals. Like the Favored Custom Accounts and the Favored Aletheia-Related
20 Accounts, the Disfavored Hedge Funds held an account which traded in options
21 during the relevant period (the "Disfavored Hedge Funds Account").¹

22 18. As their general partner, Aletheia had the sole right to conduct the
23 operations of the Disfavored Hedge Funds. During the relevant period, Aletheia
24 was the investment manager for the Disfavored Hedge Funds.

25
26 ¹ Appendix A, attached hereto and incorporated herein, is a chart listing the last
27 four digits of the account numbers for the Favored Custom Accounts, Favored
28 Aletheia-Related Accounts, and Disfavored Hedge Funds Account.

1 19. At the end of 2008, shortly before the start of the fraudulent options
2 trading alleged herein, the Insider I Fund had net assets of \$35.9 million and the
3 Insider II Fund had net assets of \$75.6 million. By July 1, 2012, due to subsequent
4 investor redemptions and trading losses -- including those sustained as a result of
5 the cherry-picking scheme alleged herein -- the Insider Fund I had only \$1.3
6 million in net assets and the Insider II Fund had only \$1.4 million in assets.

7 20. During the relevant period, the Favored Custom Accounts, Favored
8 Aletheia-Related Accounts and the Disfavored Hedge Funds Account (collectively,
9 the "Option Trading Accounts") were all managed by Aletheia. Eichler, as
10 Aletheia's CEO and CIO, had full discretionary authority over all Aletheia client
11 accounts -- including the Option Trading Accounts. He was also solely responsible
12 for all of the investment decisions made for these accounts throughout the relevant
13 period.

14 **B. The Defendants' Cherry-Picking Scheme**

15 21. From at least mid-August 2009 through November 2011, Eichler used
16 Aletheia's discretionary authority over the Option Trading Accounts to place
17 approximately 4,791 options trades for an aggregate investment of \$238.9 million
18 on behalf of these accounts.

19 22. Eichler made all decisions regarding the option trading in the Option
20 Trading Accounts and all decisions concerning which accounts these option trades
21 would be allocated to. The trades were not allocated to any account until after
22 each trade was executed. Because the majority of those trades were allocated more
23 than one hour after trade execution, or allocated after the options position had
24 closed (when profit or loss on the trade was certain), Eichler was routinely able to
25 cherry-pick winners and losers for the benefit of the Favored Aletheia-Related
26 Accounts and the Favored Custom Accounts, and at the expense of the Disfavored
27 Hedge Funds Account.

1 I. Aletheia's Trading Procedures

2 23. An options trade is more susceptible to cherry-picking the later it is
3 allocated because over time, post-execution movements in price will enable an
4 adviser to steer profitable trades to favored accounts, and less profitable or
5 unprofitable trades to disfavored accounts. This opportunity is most prevalent
6 when the trades are allocated after the options position is closed, when the profit or
7 loss on the trade is known with certainty. By cherry-picking on the basis of this
8 information, Eichler could reduce or entirely eliminate investment risk for favored
9 accounts, including his own.

10 24. The Defendants engaged in their cherry-picking scheme by allocating
11 options trades during the relevant period in the following manner. First, Eichler
12 orally communicated an instruction to buy or sell an option to a trading assistant.
13 The trading assistant then filled out a hand-written order ticket as instructed by
14 Eichler. On the order ticket, the trading assistant entered information for the
15 security being traded, the quantity purchased, and in some cases, a price limit.
16 Eichler did not provide allocation information at the time he instructed the trading
17 assistant to place an order. Consequently, the trading assistant left blank the
18 portion of the order ticket corresponding to the name and/or account number of the
19 client engaging in the ordered trade.

20 25. Next, the trading assistant placed the order with Aletheia's clearing
21 broker, NFS, through its trading system. Information on the security being traded,
22 the quantity purchased, and if applicable, the requested price limit, was sufficient
23 to execute an options order with NFS.

24 26. Therefore, by the time the trade was placed and executed, it had not
25 been allocated to any specific Option Trading Account. Instead, from mid-August
26 2009 to August 15, 2010, Aletheia placed option trades either through an allocation
27 account held by the Disfavored Hedge Funds, or through a general allocation
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1 account held by ASI. In the event that Eichler wanted to move an option trade to
2 the Disfavored Hedge Funds Account, Aletheia would cancel the initial trade from
3 the general ASI allocation account and re-place the trade through the Disfavored
4 Hedge Funds' allocation account. In the event that Eichler wanted to move an
5 option trade away from the Disfavored Hedge Funds Account, Aletheia would
6 cancel the initial trade from the Disfavored Hedge Funds' allocation account and
7 re-place the trade through the general ASI allocation account. From August 16,
8 2010 through November 2011, however, Eichler had greater flexibility to allocate
9 option trades because all option trades executed during that time period were
10 placed only through the ASI allocation account. From there, Eichler could directly
11 allocate an option trade to whichever Option Trading Account he wanted.

12 27. After the trade was executed, Eichler spoke to the trading assistant
13 and told her at that time which account(s) to allocate a given options trade to. Only
14 then did the trading assistant add allocation information to the order ticket, and
15 allocate the options trade per Eichler's instruction in NFS's trading system. Prior
16 to this point, for the vast majority of the option trades in question, the trading
17 assistant had no knowledge of which Aletheia clients were trading in the options
18 order she had earlier executed through NFS.

19 28. In perpetrating his cherry-picking scheme, the Defendants late-
20 allocated the majority of the approximately 4,791 options trades he placed from
21 mid-August 2009 through November 2011. Only an approximate 38% of those
22 options orders were allocated to Option Trading Accounts within an hour of trade
23 execution. The remaining 62% were either allocated more than an hour after
24 execution, or allocated after the options position was completely closed and actual
25 profit or loss on the trade was certain.

1 2. The Impact of the Cherry-Picking Scheme

2 29. Through the course of thousands of options trades from mid-August
3 2009 through November 2011, the overall impact of the Defendants' cherry-
4 picking scheme was that the Favored Aletheia-Related Accounts and Favored
5 Custom Accounts received a disproportionate share of the late-allocated profitable
6 trades, and the Disfavored Hedge Funds Account received a disproportionate share
7 of the unprofitable late-allocated trades.

8 30. For the options trades allocated within an hour of execution (when the
9 ability to cherry-pick is lower), the Favored Aletheia-Related Accounts, Favored
10 Custom Accounts and Disfavored Hedge Funds Account earned similar investment
11 results: in their aggregate, each of the three groups of Option Trading Accounts
12 sustained trading losses.

13 31. In contrast, the investment returns on options trades that were
14 allocated more than an hour after execution – when the opportunity to cherry-pick
15 was greater – reveal a stark difference in performance at the time of allocation
16 between the Favored Aletheia-Related Accounts and Favored Custom Accounts,
17 on the one hand, and the Disfavored Hedge Funds Account, on the other. In the
18 relevant period, about 2,493 of the 4,791 option trades were allocated more than
19 one hour after execution. As the chart below shows, because of the cherry-picking
20 scheme, the Favored Aletheia-Related Accounts and Favored Custom Accounts
21 earned positive returns on these late-allocated trades, while the Disfavored Hedge
22 Funds Account earned negative returns:

TRADES ALLOCATED MORE THAN AN HOUR AFTER EXECUTION	
Account Type	Return ²
Favored Custom Accounts	2.7%
Favored Aletheia-Related Accounts	5.2%
Aletheia Proprietary Account	3.4%
Eichler Accounts	5.6%
Disfavored Hedge Funds Account	-6.5%

32. Similarly, because of the cherry-picking scheme, the Defendants allocated more of the profitable late-allocated trades to the Favored Aletheia-Related Accounts and Favored Custom Accounts, and fewer of these profitable trades to the Disfavored Hedge Funds Account:

TRADES ALLOCATED MORE THAN AN HOUR AFTER EXECUTION	
Account Type	% of Allocations That Were Profitable
Favored Custom Accounts	55.0%
Favored Aletheia-Related Accounts	53.7%
Aletheia Proprietary Account	54.3%
Eichler Accounts	51.3%
Disfavored Hedge Funds Account	30.8%

² Options trades during the relevant period were allocated by the Defendants either while the position remained open or after the position had been closed. For open trades, the described investment returns are calculated using the mid-point between the closing best bid and best ask prices on the day of allocation. For closed trades, actual trade prices were used.

1 33. The difference in returns and percentage of profitable allocations is
2 even more pronounced for the trades allocated only after the options position was
3 closed out, which enabled Eichler to know with certainty at the time of allocation
4 whether the trade was profitable and to what degree. In the relevant period, about
5 463 of the 4,791 option trades were allocated after the options position was closed.
6 The cherry-picking scheme caused the Favored Aletheia-Related Accounts and
7 Favored Custom Accounts to earn positive returns on these "perfect information"
8 trades, while the Disfavored Hedge Funds Account earned negative returns:

9

"PERFECT INFORMATION" TRADES	
<u>Account Type</u>	<u>Return</u>
Favored Custom Accounts	11.0%
Favored Aletheia-Related Accounts	17.2%
Aletheia Proprietary Account	12.9%
Eichler Accounts	19.1%
Disfavored Hedge Funds Account	-1.7%

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18 34. Likewise, because of the cherry-picking scheme, more of the
19 profitable, "perfect information" trades were allocated to the Favored Aletheia-
20 Related Accounts and Favored Custom Accounts, while a lesser amount of these
21 profitable, "perfect information" trades were allocated to the Disfavored Hedge
22 Funds Account:

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"PERFECT INFORMATION" TRADES	
Account Type	% of Allocations That Were Profitable
Favored Custom Accounts	98.0%
Favored Aletheia-Related Accounts	99.0%
Aletheia Proprietary Account	100%
Eichler Accounts	98.3%
Disfavored Hedge Funds Account	31.7%

35. Under the cherry-picking scheme, the Defendants personally profited from these disproportionate allocations.

36. For example, with respect to "perfect information" trades allocated only after the options position was closed, Eichler's accounts (which fell within the Favored Aletheia-Related Accounts) enjoyed extraordinary trading success. During the relevant period, the Defendants allocated 120 of these trades to Eichler, and 118 (or 98%) were profitable. Eichler profited from virtually all of his "perfect information" trades, and was only able to do so through the cherry-picking scheme. On these trades, Eichler realized approximate trading profits of \$945,000 and a 19.1% return.

37. With respect to "perfect information" trades allocated only after the options position was closed, the Aletheia Proprietary Account also enjoyed extraordinary trading success. From mid-August 2009 to the end of November 2011, the Defendants allocated 41 of these trades to the Aletheia Proprietary Account, and all 41 of them (100%) were profitable. On these "perfect information" trades, Aletheia realized approximate trading profits of \$243,000 and

1 an approximate 13.04% return.

2 38. By contrast, of the 60 “perfect information” trades allocated to the
3 Disfavored Hedge Funds Account during the relevant period, only 19 (or 31.67%)
4 were profitable. On a net basis, the Disfavored Hedge Funds Account did not even
5 profit on these trades, and instead *lost* approximately \$69,000 for a negative 1.73%
6 return.

7 39. Between mid-August 2009 and the end of November 2011, the
8 Favored Aletheia-Related Accounts and Favored Custom Accounts obtained about
9 \$4.14 million in profit on option trades allocated more than one hour after
10 execution, or allocated after the position was closed out (including roughly \$2
11 million in trading profits to Eichler himself), while the Disfavored Hedge Funds
12 *lost* \$4.4 million on late-allocated or “perfect information” trades.

13 3. Examples of the Cherry-Picking Scheme

14 40. From at least mid-August 2009 through November 2011, the
15 Defendants disproportionately allocated profitable trades to the Favored Aletheia-
16 Related Accounts and Favored Custom Accounts, and less profitable trades to the
17 Disfavored Hedge Funds Account. Through the late allocation procedures
18 described above, the Defendants accomplished this disproportionate allocation in
19 various ways.

20 41. Pursuant to the cherry-picking scheme, Eichler regularly allocated
21 trades for which he had perfect information – *i.e.*, only after the options position
22 was completely closed and profit was fully known – to the Eichler Accounts. For
23 these trades, he did not allocate what he knew to be a profitable trade fairly and
24 equitably among the investment accounts under his management. For example:

- 25 A. On February 1, 2010, from 10:20 a.m. to 10:21 a.m., Eichler bought
26 150 Amazon options through the ASI allocation account, at a price of
27 \$11.45 per share (each option represents the right to buy or sell 100
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1 shares). By 11:47 a.m., the option price had risen to \$15.20 per share.
2 At that time, the ASI allocation account sold 150 Amazon options at
3 \$15.20 per share. Then, at 11:49 – only after the Amazon position
4 was profitably closed out and with this perfect information in hand –
5 Eichler allocated every one of the Amazon options trades to his
6 personal trading account. Because of this late allocation, Eichler
7 personally profited approximately \$56,212.43.

8 B. On February 23, 2011, at 12:20 p.m., Eichler bought 125 Fluor
9 options through the ASI allocation account, at prices of \$5.00 per
10 share (16 options) and \$4.95 per share (109 options). By 2:11 p.m.,
11 the option price had risen to \$7.70 per share. At 2:11 p.m., the ASI
12 allocation account sold the 125 Fluor options at prices of \$7.70 per
13 share (99 options) and \$7.96 per share (26 options). Then, at 4:10
14 p.m. – only after the Fluor position was profitably closed out and with
15 this perfect information in hand – Eichler allocated every one of the
16 Fluor options trades to his personal trading account. Because of this
17 late allocation, Eichler personally profited approximately \$34,931.16.

18 42. Pursuant to the cherry-picking scheme, Eichler also allocated
19 profitable “perfect information” trades to his own account and an account held by
20 an Aletheia trading assistant. For these trades, he did not allocate what he knew to
21 be a profitable trade fairly and equitably among the investment accounts under his
22 management. For example:

23 A. On December 9, 2010, from 1:44 p.m. to 1:52 p.m., Eichler bought
24 500 AIG options through the ASI allocation account, at prices ranging
25 between \$0.86 and \$1.02 per share. From 2:28 p.m. to 3:15, Eichler
26 closed out the position, selling the 500 AIG options at prices ranging
27 between \$1.41 and \$2.00 per share. Then, at 3:57 p.m. – only after
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1 the AIG position was profitably closed out and with this perfect
2 information in hand – Eichler allocated 425 of the AIG options trades
3 to his personal trading account and the remaining 75 AIG options
4 trades to the trading account of an Aletheia trading assistant. Because
5 of this late allocation, Eichler personally profited approximately
6 \$25,879.06 and the Aletheia trading assistant profited approximately
7 \$4,361.93.

8 B. On December 10, 2010, at 12:11 p.m., Eichler bought 225 Barrick
9 Gold options through the ASI allocation account, at a price of \$3.10
10 per share. From 3:57 p.m. to 3:58 p.m., Eichler closed out the
11 position, selling the 225 Barrick Gold options at \$3.30 per share.
12 Then, at 4:01 p.m. – only after the Barrick Gold position was
13 profitably closed out and with this perfect information in hand –
14 Eichler allocated 150 of the Barrick Gold options trades to his
15 personal trading account and the remaining 75 Barrick Gold options
16 trades to the trading account of an Aletheia trading assistant. Because
17 of this late allocation, Eichler personally profited approximately
18 \$2,960.50 and the Aletheia trading assistant profited approximately
19 \$1,462.96.

20 43. Pursuant to the cherry-picking scheme, Eichler regularly allocated
21 unprofitable perfect information trades – *i.e.*, only after the options position was
22 completely closed at a realized loss – to the Disfavored Hedge Funds Account. For
23 these trades, he did not allocate what he knew to be an unprofitable trade fairly and
24 equitably among the investment accounts under his management. For example:

25 A. On December 31, 2010, at 11:55 a.m., Eichler bought 175 Newport
26 Mining options through the ASI allocation account, at a price of \$6.85
27 per share. These options dropped in price over the next several hours
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1 and at 3:53 p.m., Eichler sold them at a loss for a price of \$6.40 per
2 share. Then, at 3:54 p.m. – after the Newport Mining position was
3 closed out for a recognized day trading loss of \$7,875 – Eichler
4 allocated every one of these losing trades to the Disfavored Hedge
5 Funds Account.

6 B. On January 3, 2011, at 12:11 p.m. through 12:13 p.m., Eichler bought
7 250 Barrick Gold options at a price of \$3.20 to \$3.21 per share. These
8 options dropped in price over the next several hours and at 3:56 p.m.,
9 Eichler sold them at a loss for a price of \$2.98 per share. Then, at
10 4:02 p.m. – after the Barrick Gold position was closed out for a
11 recognized day trading loss of \$5,645 – Eichler allocated every one of
12 these losing trades to the Disfavored Hedge Funds Account.

13 44. Pursuant to the cherry-picking scheme, Eichler regularly allocated
14 open trades that had, since execution, become unprofitable to the Disfavored
15 Hedge Funds Account. He did not allocate what he knew to be an already
16 unprofitable open trade fairly and equitably among the investment accounts under
17 his management. For example:

18 A. On September 16, 2009, from 9:37 a.m. to 2:19 p.m., Eichler bought
19 550 Amazon short-term options, set to expire in 3 days, through the
20 ASI allocation account. Eichler's first trade at 9:37 a.m. was at \$3.55
21 per share, and as he continued to buy options from then until 2:19
22 p.m., he executed trades at \$2.07 per share, \$2.06 per share, \$1.33 per
23 share, \$1.32 per share, and \$1.30 per share. The midpoint between
24 the best bid and best ask at the end of the trading day on September
25 16, 2009 was \$1.025 per share. At 5:25 p.m., after market close,
26 however, Eichler allocated 100 of these option trades to the
27 Disfavored Hedge Funds' allocation account at the highest executed
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1 price of \$3.55 per share, and another 150 of these option trades to the
2 Disfavored Hedge Funds' allocation account at a price of \$2.07 per
3 share. At 6:37 p.m., the remaining 300 Amazon options were all
4 allocated to favored custom accounts and Aletheia-Related accounts at
5 the lower price of \$1.33 per share. Because more unprofitable,
6 higher-priced option trades were allocated to the Disfavored Hedge
7 Funds Account, the Disfavored Hedge Funds sustained a substantially
8 larger unrealized loss at the end of the allocation day of \$40,968.50,
9 or negative 61.52%.

10 B. On May 19, 2011, at 9:30 a.m., Eichler bought 200 Deere & Co.
11 short-term options, set to expire in 2 days, through the ASI allocation
12 account. These trades were executed at prices ranging from \$2.61 per
13 share to \$2.33 per share. The midpoint between the best bid and best
14 ask at the end of the trading day on May 19, 2011 was \$1.215 per
15 share. At 3:56 p.m., Eichler allocated all 200 Deere & Co. options to
16 the Disfavored Hedge Account, for an unrealized loss at the end of the
17 allocation day of \$24,388.00, or -50.09%.

18 4. Defendants' Breach of Fiduciary Duty and Fraudulent Scheme

19 45. The Defendants owed a fiduciary duty to Aletheia's advisory clients.
20 As the investment adviser and its CEO, Aletheia and Eichler, respectively, owed
21 all of the advisory clients invested in each of the Option Trading Accounts a
22 fiduciary duty to exercise the utmost good faith, to disclose all material facts, and
23 to employ reasonable care to avoid misleading them.

24 46. The Defendants each breached their respective duty through the
25 cherry-picking scheme they conducted during the relevant period. The
26 Defendants' practice of disproportionately allocating options trades to favored
27 accounts rather than the Disfavored Hedge Funds Account, based on their ability to
28

1 obtain short-term profits through the mechanism of late allocation, constituted a
2 breach of their fiduciary duty to the Disfavored Hedge Funds and the Aletheia
3 advisory clients invested in those funds. The Defendants could have fairly and
4 equitably allocated profitable trades among Aletheia's advisory clients, but instead
5 chose to divert those profits to favored accounts, including Eichler's personal
6 trading accounts and Aletheia's proprietary trading account.

7 47. Similarly, the Defendants' practice of disproportionately allocating
8 other options trades to the Disfavored Hedge Funds only after determining that the
9 trades had lost money, or had diminished in value at the time of late allocation,
10 likewise constituted a breach of fiduciary duty to the Disfavored Hedge Funds and
11 the Aletheia advisory clients invested in those funds. The Defendants could have
12 fairly and equitably allocated unprofitable trades among Aletheia's advisory
13 clients, but instead chose to steer losses away from favored accounts, including
14 Eichler's personal trading accounts and Aletheia's proprietary trading account.

15 48. In addition, the Defendants, acting as investment advisers and in
16 connection with the purchase or sale of a security, committed a series of
17 manipulative or deceptive acts in furtherance of a scheme or artifice to defraud or a
18 course of business that operated as a fraud. From at least mid-August 2009
19 through November 2011, the Defendants disproportionately allocated a greater
20 share of profitable trades to the Favored Aletheia-Related Accounts (including
21 those held by Eichler himself) and Favored Custom Accounts, and a
22 disproportionately smaller share of those trades to the Disfavored Hedge Funds
23 Account, without any justification consistent with the Defendants' fiduciary duty
24 to the Disfavored Hedge Funds and the Aletheia advisory clients invested in those
25 funds. This conduct had a deceptive purpose and effect because the cherry-picking
26 scheme directed by the Defendants defrauded the Disfavored Hedge Funds and
27 Aletheia clients invested in the Disfavored Hedge Funds. The Defendants did not
28

1 disclose the cherry-picking scheme to the Disfavored Hedge Funds or their
2 investors, nor did the Defendants disclose the conflicts of interest that resulted
3 from their cherry-picking of trades for the Eichler Accounts and the Aletheia
4 Proprietary Account.

5 49. The Defendants acted with scienter in perpetrating the cherry-picking
6 scheme. Eichler personally made each and every allocation determination for the
7 options trades alleged herein. Over a 27-month period, Eichler knowingly,
8 recklessly or, in the alternative, negligently allocated thousands of options trades
9 more than one hour after trade execution, or after the options position had closed,
10 in a way that disproportionately benefited the favored accounts and that
11 disproportionately disadvantaged the Disfavored Hedge Funds Account, without
12 any justification consistent with the Defendants' fiduciary duty to the Disfavored
13 Hedge Funds and the Aletheia advisory clients invested in those funds. Indeed,
14 Eichler himself wrongly profited from these late allocations. Because virtually all
15 of the "perfect information" trades that Eichler allocated to his personal account
16 realized a profit, there is no doubt that the Defendants: knowingly or recklessly
17 intended to deceive, manipulate or defraud advisory clients of Aletheia through a
18 device, scheme, or artifice to defraud; or alternatively, negligently engaged in
19 transactions, practices, or courses of business that operated as a fraud or deceit
20 upon the Disfavored Hedge Funds and the Aletheia advisory clients invested in
21 those funds, or transactions, practices, or courses of business that were fraudulent,
22 deceptive, or manipulative with respect to the Disfavored Hedge Funds' investors.

23 **C. No Procedures Designed To Prevent the Cherry-Picking**

24 50. During the relevant period, Aletheia issued a June 2009 Code of
25 Conduct and Regulatory Compliance Manual and later, a March 2011 Code of
26 Conduct and Regulatory Compliance Manual (the "Aletheia Manuals"). An
27 overview section in the Aletheia Manuals stated that Aletheia expected that its
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1 employees “act with honesty, integrity” and “in an ethical manner” when dealing
2 with advisory clients and prospective advisory clients. The section also stated that
3 Aletheia employees were expected to “adhere to the highest standards with respect
4 to any potential conflicts of interest with client accounts” and that employees
5 should never “enjoy an actual or apparent benefit over the account of any client.”
6 The Aletheia Manuals purportedly governed personal securities transactions and
7 trade allocations by Aletheia employees. Despite this, Aletheia failed to establish
8 effective policies and/or procedures to reasonably prevent and/or detect Eichler’s
9 cherry-picking scheme during the relevant period.

10 51. Aletheia had no policies or procedures to ensure that Eichler allocated
11 options trades at or near the time of trade execution, or that Eichler was not
12 disproportionately allocating profitable options trades to favored accounts of
13 clients or himself, while at the same time disproportionately allocating less
14 profitable or unprofitable options trades to disfavored client accounts.

15 52. Instead, the Aletheia Manuals’ specific policies and procedures for
16 trade allocation only related to: (1) allocation of investment opportunities among
17 client accounts with similar investment objectives for which Aletheia routinely
18 trades the same security at or about the same time; and (2) allocation of aggregated
19 orders among similar client accounts. Thus, the rules governing trade allocation at
20 Aletheia only applied to trades for the various Aletheia investment strategies and
21 not to the options trading that Eichler used to perpetrate the cherry-picking scheme.
22 With respect to the options trading alleged herein – frequent buying and selling of
23 various options with trades being generally allocated to only one of the favored or
24 disfavored accounts – Aletheia’s policies and procedures for trade allocation had
25 no application.

26 53. As to personal securities transactions by Aletheia’s officers and
27 employees, the Aletheia Manuals exempted, from its limitations on personal
28

1 securities transactions, trades conducted in fully discretionary investment accounts
2 managed by Aletheia. The Defendants had full discretionary authority over all of
3 the Favored Aletheia-Related Accounts that benefitted from the cherry-picking
4 scheme, and these accounts were therefore not subject to the Aletheia Manuals'
5 policies and procedures on personal securities transactions.

6 54. Aletheia failed to adopt or implement policies and procedures
7 reasonably designed to prevent the Defendants' cherry-picking scheme and failed
8 to establish, maintain and enforce a written code of ethics that reflected Aletheia's
9 fiduciary obligations.

10 **D. Aletheia's Failure To Disclose Its Precarious Financial Condition**

11 55. An investment adviser's precarious financial condition is information
12 that is important to its clients and prospective clients. In the event of the adviser's
13 insolvency or inability to continue its business, the adviser will not be able to
14 provide an adequate level of service to clients, and there is a substantial risk that
15 the advisers' clients will lose prepaid fees or be forced to incur substantial costs in
16 selecting another adviser. Consequently, the disclosure that clients and prospective
17 clients receive in the event of an adviser's precarious financial condition is critical
18 to their ability to make an informed decision about whether to continue their
19 relationship with the adviser, or whether to engage the adviser at all.

20 1. **Long-Running Lawsuits "Decimated" Aletheia**

21 56. In February 2010, Aletheia sued a minority shareholder, Proctor
22 Investment Managers, LLC ("Proctor"), in state court, alleging *inter alia* breach of
23 contract (the "*Proctor* lawsuit"). Proctor subsequently cross-claimed. The matter
24 is currently set for trial on May 6, 2013. According to Eichler, the demands of
25 discovery and the litigation process in the *Proctor* lawsuit caused Aletheia "to
26 expend countless hours toiling" and "to suffer great losses, including the loss of
27 key employees as well as clients and investors." On November 2010, another
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1 Aletheia minority shareholder, Roger Peikin, brought suit against Aletheia for
2 wrongful termination, breach of contract, and other quasi-contractual and tort
3 causes of action (the "*Peikin* lawsuit"). The *Peikin* lawsuit remains pending.
4 According to Eichler, the burdens of discovery and litigation in the *Peikin* lawsuit
5 similarly caused Aletheia "to suffer great losses, including the loss of key
6 employees as well as clients and investors." According to Eichler, the *Proctor*
7 lawsuit and the *Peikin* lawsuit "severely inhibited" Aletheia's "ability to continue
8 to operate its business profitably" and had "decimated" the firm by summer 2012.

9 57. In 2011, as the lawsuits continued to proceed in state court, Aletheia's
10 assets under management dropped from approximately \$7.24 billion to \$4.23
11 billion. As of the end of September 2012, Aletheia's assets under management had
12 further declined to approximately \$1.62 billion. On November 20, 2012,
13 Aletheia's assets under management had fallen even further to approximately
14 \$1.44 billion.

15 2. Aletheia's Failure to Pay Its California Taxes

16 58. By September 30, 2011 Aletheia's liabilities exceeded its assets,
17 resulting in negative shareholder equity of approximately \$1.96 million. In Q3
18 2011, Aletheia operated at a net loss of approximately \$7.7 million.

19 59. In 2011, Eichler learned that Aletheia owed the California State
20 Franchise Tax Board a substantial amount of unpaid state income taxes and
21 penalties. Although Eichler was alerted to Aletheia's state tax liabilities and
22 deficiencies no later than 2011, Aletheia had not resolved that debt as of July 2012.

23 60. On July 2, 2012, the state of California accordingly filed a
24 \$2,053,470.13 tax lien against Aletheia for income taxes owed from tax year 2008,
25 and penalties for late-filed returns in tax years 2010, 2011 and 2012.

26 61. Over the next several months, Aletheia was unable to resolve the
27 outstanding lien, and on October 1, 2012, California suspended Aletheia's
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1 corporate status for non-payment of taxes pursuant to section 23301 of the
2 California Revenue and Tax Code. The purpose of section 23301 is to prohibit a
3 delinquent corporation from enjoying the ordinary privileges of a going concern.

4 62. Under California law, as a suspended corporation, Aletheia could not,
5 and cannot legally exercise any of its corporate powers, rights and privileges. It
6 also could not, and cannot prosecute or defend a lawsuit. In addition, Aletheia
7 could not and cannot appeal from an adverse judgment, seek a writ of mandate, or
8 renew a judgment that it obtained before its suspension. Any contract entered into
9 by Aletheia during its suspension is voidable at the option of the suspended
10 company's counter-party.

11 63. Once suspended, Aletheia could not lawfully engage in the securities
12 (or any other) business.

13 3. Aletheia's Bankruptcy

14 64. By the end of September 2012, Aletheia's balance sheet reported
15 negative shareholder equity of approximately \$4.3 million. In Q3 2012, Aletheia
16 operated at a net loss of approximately \$2.7 million.

17 65. On November 11, 2012, Aletheia filed for Chapter 11 bankruptcy
18 protection in the United States Bankruptcy Court for the Central District of
19 California. At that time, Aletheia listed those creditors holding the 20 largest
20 unsecured claims against Aletheia. In addition to the unpaid taxes and penalties it
21 owed the California Franchise Tax Board, Aletheia owed approximately \$647,000
22 to various business creditors. Aletheia also owed about \$6 million to other third-
23 parties. Finally, Aletheia owed approximately \$2.9 million to various law and
24 financial consulting firms, \$2 million of which was disputed.

25 66. As of November 17, 2012, the total funds in Aletheia's bank accounts
26 had dwindled to \$311,340.09.

1 4. Aletheia's False Form ADV

2 67. As a registered investment adviser, Aletheia was required to file a
3 Form ADV with the Commission. The Form ADV contains certain required
4 disclosures concerning the investment adviser and is available for review by the
5 general public.

6 68. Specifically, Form ADV, Part 1, Item 3.A. required Aletheia to
7 describe its form of organization and Form ADV, Part 1, Item 11.D.(5) required
8 Aletheia to state whether any state regulatory agency has ever denied, suspended,
9 or revoked its registration or license, or otherwise restricted its activities.

10 69. Beginning in 2011, Part 2 of Form ADV further required investment
11 advisers to prepare narrative brochures in plain English. The brochure is the
12 primary disclosure document that investment advisers must provide to their clients.
13 Form ADV, Part 2A, Item 18.B. required Aletheia to disclose in its brochure any
14 financial condition that is reasonably likely to impair Aletheia's ability to meet
15 contractual commitments to its clients.

16 70. Aletheia filed a Form ADV with the Commission on September 14,
17 2012. In Aletheia's September 14, 2012 Form ADV Part 2A brochure, Aletheia
18 stated, "Not Applicable," in response to Item 18, which required Aletheia to
19 disclose any financial condition that is reasonably likely to impair Aletheia's
20 ability to meet contractual commitments to its clients.

21 71. In its September 14, 2012 Form ADV Part 2A brochure:

22 A. Aletheia did not state that the *Proctor* litigation and the *Peikin*
23 litigation had "severely inhibited" Aletheia's "ability to continue to
24 operate its business profitably" and had "decimated" the firm;

25 B. Aletheia did not state that on July 2, 2012, California had filed a
26 \$2,053,470.13 lien against Aletheia for non-payment of 2008 taxes
27 and for penalties arising from the 2010, 2011, and 2012 tax years; and
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1 C. Aletheia did not state that if left unpaid, the tax lien would result in
2 the suspension of Aletheia's corporate status, thereby cutting off
3 Aletheia's ability to lawfully operate as a going corporate concern.

4 72. Aletheia's September 14, 2012 Form ADV failed to disclose multiple
5 financial conditions that were reasonably likely to impair Aletheia's ability to meet
6 its contractual commitments to its advisory clients. Accordingly, Aletheia
7 willfully omitted to state in its September 14, 2012 Form ADV material facts that
8 were required to be stated therein.

9 73. Aletheia filed another Form ADV with the Commission on September
10 24, 2012. In Part 1, Item 3.A. of its September 24, 2012 Form ADV, Aletheia
11 stated that it was a corporation. In Part 1, Item 11.D.(5) of its September 24, 2012
12 Form ADV, Aletheia stated that no state regulatory agency had ever suspended or
13 revoked its registration or license, and that no state regulatory agency had ever
14 restricted its activities.

15 74. One week later, on October 1, 2012, the state of California suspended
16 Aletheia's corporate status. Once suspended, Aletheia was legally powerless to
17 conduct its investment advisory business (or any other business).

18 75. Although it lost its right to lawfully engage in its investment advisory
19 business on October 1, 2012, Aletheia did not amend its false September 24, 2012
20 Form ADV until November 9, 2012. At that time, several weeks after its corporate
21 suspension, Aletheia finally filed an amended Form ADV disclosing the California
22 tax lien and the revocation of its corporate status.

23 76. Aletheia's November 9, 2012 Form ADV, Part 2A brochure further
24 stated that Aletheia intended to file for bankruptcy to protect itself from costly
25 litigation, to raise additional capital, and to assist in the resolution of Aletheia's tax
26 and corporate status issues. But Aletheia's November 9, 2012 Form ADV did not,
27 however, provide a complete account of Aletheia's precarious financial condition.

1 For example, the November 9, 2012 Form ADV failed to disclose that Aletheia
2 was behind in its payments to its business creditors.

3 77. Having not disclosed its corporate suspension until several weeks
4 after the fact, Aletheia failed to promptly amend its Form ADV to update material
5 information concerning its corporate status and financial condition.

6 **FIRST CLAIM FOR RELIEF**

7 **Anti-Fraud Provisions of the Exchange Act**

8 **Violations of Section 10(b) of the Exchange Act**
9 **and Rule 10b-5(a) & (c) Thereunder By All Defendants**

10 78. The Commission realleges and incorporates by reference paragraphs 1
11 through 49 above as if set forth fully herein.

12 79. The Defendants, by engaging in the conduct described above, directly
13 or indirectly, singularly or in concert, in connection with the purchase or sale of
14 securities, by the use of the means or instrumentalities of interstate commerce or of
15 the mails, knowingly or recklessly: employed devices, schemes, or artifices to
16 defraud; or engaged in acts, practices, or courses of business which operated or
17 would operate as a fraud or deceit upon certain other persons, including advisory
18 clients of Aletheia.

19 80. By engaging in the conduct described above, the Defendants violated,
20 and unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15
21 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5(a) & (c).

22 **SECOND CLAIM FOR RELIEF**

23 **Anti-Fraud Provisions of the Advisers Act**

24 **Violations of Sections 206(1) and 206(2) of the Advisers Act By All Defendants**

25 81. The Commission realleges and incorporates by reference paragraphs 1
26 through 49 above as if set forth fully herein.

27 82. Aletheia at all relevant times was an investment adviser as defined by
28

1 Section 202(a)(11) of the Adviser's Act, 15 U.S.C. § 80b-2(a)(11).

2 83. Eichler at all relevant times was an investment adviser as defined by
3 Section 202(a)(11) of the Advisers Act, 15 U.S.C. §80b-2(a)(11), because as
4 founder, majority owner, chairman, CEO, and CIO of Aletheia, Eichler controlled
5 Aletheia and provided investment advice to its advisory clients.

6 84. The Defendants, directly or indirectly, singularly or in concert, by the
7 use of the means or instrumentalities of interstate commerce or of the mails, while
8 acting as investment advisers, knowingly or recklessly employed devices, schemes
9 or artifices to defraud; or knowingly, recklessly or negligently engaged in acts,
10 transactions, practices and courses of business which operated or would operate as
11 a fraud or deceit upon certain other persons, including advisory clients of Aletheia.

12 85. By engaging in the conduct described above, the Defendants violated,
13 and unless enjoined, will continue to violate Sections 206(1) and 206(2) of the
14 Advisers Act, 15 U.S.C. § 80b-6(1) and (2).

15 **THIRD CLAIM FOR RELIEF**

16 **Anti-Fraud Provision of the Advisers Act**

17 **Violation of Section 206(4) of the Advisers Act**

18 **and Rule 206(4)-8(a) Thereunder By All Defendants**

19 86. The Commission realleges and incorporates by reference paragraphs 1
20 through 49 above as if set forth fully herein.

21 87. The Defendants directly or indirectly, singularly or in concert, by the
22 use of the means or instrumentalities of interstate commerce or of the mails, while
23 acting as investment advisers, knowingly, reckless or negligently: engaged in acts,
24 practices and courses of business that are fraudulent, deceptive, or manipulative
25 with respect to any investor in the Disfavored Hedge Funds.

26 88. By engaging in the conduct described above, the Defendants violated,
27 and unless enjoined, will continue to violate Section 206(4) of the Advisers Act, 15
28

1 U.S.C. § 80b-6(4), and Rule 206(4)-8(a) thereunder, 17 C.F.R. § 275.206(4)-8(a).

2 **FOURTH CLAIM FOR RELIEF**

3 **Compliance Procedures and Practices Provision of the Advisers Act**

4 **Violation of Section 206(4) of the Advisers Act**

5 **and Rule 206(4)-7 Thereunder By Defendant Aletheia**

6 89. The Commission realleges and incorporates by reference paragraphs 1
7 through 54 above as if fully set forth herein.

8 90. Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule
9 206(4)-7(a) promulgated thereunder, 17 C.F.R. § 275.206(4)-7, prohibit registered
10 investment advisers from providing investment advice to clients unless they have
11 adopted and implemented written policies and procedures reasonably designed to
12 prevent violations by the investment advisers and its employees of the Advisers
13 Act and rules thereunder.

14 91. Aletheia, by engaging in the conduct described above, acting as an
15 investment adviser, directly or indirectly, knowingly, recklessly or negligently
16 failed to adopt or implement policies and procedures reasonably designed to
17 prevent Eichler's cherry-picking scheme.

18 92. By engaging in the conduct described above, Aletheia has violated,
19 and unless enjoined, will continue to violate the provisions of Section 206(4) of the
20 Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-7(a) promulgated thereunder,
21 17 C.F.R. § 275.206(4)-7.

22 **FIFTH CLAIM FOR RELIEF**

23 **Failure To Establish, Maintain, and Enforce a Written Code of Ethics**

24 **Reflecting Aletheia's Fiduciary Obligations**

25 **Violation of Section 204A of the Advisers Act**

26 **and Rule 204A-1(a) Thereunder By Defendant Aletheia**

27 93. The Commission realleges and incorporates by reference paragraphs 1
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1 through 54 above as if set forth fully herein.

2 94. Rule 204A-1(a), promulgated under Section 204A of the Advisers
3 Act, requires an investment adviser to establish, maintain, and enforce a written
4 code of ethics that reflects Aletheia's fiduciary obligations to its advisory clients
5 and that requires Eichler, among others, to comply with all applicable federal
6 securities laws and rules promulgated thereunder.

7 95. Aletheia, by engaging in the conduct described above, acting as an
8 investment adviser, failed to establish, maintain, and enforce a written code of
9 ethics that would have prevented Eichler's cherry-picking scheme by requiring him
10 to comply with all applicable federal securities laws and rules promulgated
11 thereunder.

12 96. By engaging in the conduct described above, Aletheia has violated,
13 and unless enjoined, will continue to violate Section 204A of the Advisers Act, 15
14 U.S.C. § 80b-4A, and Rule 204A-1(a) thereunder, 17 C.F.R. § 204A-1(a).

15 **SIXTH CLAIM FOR RELIEF**

16 **Untrue Statements or Omissions of Material Fact in Form ADV**

17 **Violation of Sections 204 and 207 of the Advisers Act** 18 **and Rule 204-1(a)(2) Thereunder By Defendant Aletheia**

19 97. The Commission realleges and incorporates by reference paragraphs 1
20 through 20, paragraph 45, and paragraphs 55 through 77 above as if fully set forth
21 herein.

22 98. Section 207 of the Advisers Act, 15 U.S.C. § 80b-7, makes it unlawful
23 for any person to make any untrue statement of material fact in any report filed
24 with the Commission under Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, or
25 to willfully omit to state in such reports material facts which are required to be
26 stated therein.

27 99. Aletheia, by engaging in the conduct described above, directly or
28

1 indirectly, willfully made untrue statements of material fact in reports filed with
2 the Commission under Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, or
3 willfully omitted to state in such reports material facts which are required to be
4 stated therein.

5 100. By engaging in the conduct described above, Aletheia has violated,
6 and unless enjoined, will continue to violate the provisions of Section 207 of the
7 Advisers Act, 15 U.S.C. § 80b-7.

8 **SEVENTH CLAIM FOR RELIEF**

9 **Failure to Promptly Amend Form ADV**

10 **Violation of Section 204 of the Advisers Act**

11 **and Rule 204-1(a)(2) Thereunder By Defendant Aletheia**

12 101. The Commission realleges and incorporates by reference paragraphs 1
13 through 20, paragraph 45, and paragraphs 55 through 77 above as if set forth fully
14 herein.

15 102. Rule 204-1(a)(2), promulgated under Section 204 of the Advisers Act,
16 requires an investment adviser to amend its Form ADV whenever required by the
17 instructions to Form ADV. General Instruction 4 to the Form ADV provides that
18 an investment adviser must amend its Form ADV promptly if information
19 previously provided in a Form ADV concerning the investment adviser's form of
20 organization or financial condition becomes inaccurate in any way.

21 103. Aletheia failed to promptly file an amendment on Form ADV, 17
22 C.F.R. § 279.1, updating information concerning its suspended corporate status and
23 precarious financial condition.

24 104. By engaging in the conduct described above, Aletheia has violated,
25 and unless enjoined, will continue to violate Section 204 of the Advisers Act, 15
26 U.S.C. § 80b-4, and Rule 204-1(a)(2) thereunder, 17 C.F.R. § 275.204-1(a)(2).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Commission respectfully requests that the Court:

3 **I.**

4 Enter a permanent injunction restraining Aletheia and each of its agents,
5 servants, employees and attorneys, and those persons in active concert or
6 participation with any of them, who receive actual notice of the judgment by
7 personal service or otherwise, from directly or indirectly engaging in violations of:

- 8 1. Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
9 thereunder, 17 C.F.R. § 240.10b-5;
- 10 2. Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. 80b-
11 6(1), (2) and (4), and Rules 206(4)-7(a) and 206(4)-8(a) thereunder, 17
12 C.F.R. §§ 275.206(4)-7(a) and 275.206(4)-8(a);
- 13 3. Section 207 of the Advisers Act, 15 U.S.C. 80b-7, and Rule 204-1(a)(2)
14 thereunder, 17 C.F.R. § 275.204-1(a)(2); and
- 15 4. Section 204A of the Advisers Act, 15 U.S.C. § 80b-4A, and Rule 204A-
16 1(a) thereunder, 17 C.F.R. § 275.204A-1(a).

17 **II.**

18 Order Aletheia to disgorge any and all ill-gotten gains obtained, and any and
19 all losses avoided, through Defendants' cherry-picking scheme and other
20 misconduct, together with prejudgment interest thereon;

21 **III.**

22 Order Aletheia to pay appropriate civil monetary penalties under Section
23 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the
24 Advisers Act, 15 U.S.C. § 80b-9(e);

25 **IV.**

26 Enter a permanent injunction restraining Eichler and each of his agents,
27 servants, employees and attorneys, and those persons in active concert or
28

1 participation with any of them, who receive actual notice of the judgment by
2 personal service or otherwise, from directly or indirectly engaging in violations of:

- 3 1. Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
4 thereunder, 17 C.F.R. § 240.10b-5; and
- 5 2. Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. 80b-
6 6(1), (2) and (4), and Rule 206(4)-8(a) thereunder, 17 C.F.R. §
7 275.206(4)-8(a);

8 **V.**

9 Order Eichler to disgorge any and all ill-gotten gains obtained, and any and
10 all losses avoided, through Defendants' cherry-picking scheme and other
11 misconduct, together with prejudgment interest thereon;

12 **VI.**

13 Order Eichler to pay appropriate civil monetary penalties under Section
14 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the
15 Advisers Act, 15 U.S.C. § 80b-9(e);

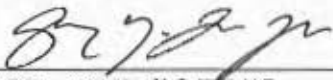
16 **VII.**

17 Retain jurisdiction of this action in accordance with the principles of equity
18 and the Federal Rules of Civil Procedure in order to implement and carry out the
19 terms of all orders and decrees that may be entered, or to entertain any suitable
20 application or motion for additional relief within the jurisdiction of this Court; and

21 **VIII.**

22 Grant such other and further relief as this Court may determine to be just and
23 necessary.

1 DATED: December 14, 2012



2 JOHN B. BULGOZDY
3 GARY Y. LEUNG
4 JANET E. MOSER
5 Attorneys for Plaintiff
6 Securities and Exchange Commission
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APPENDIX A

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Favored Custom Accounts	Favored Aletheia-Related Accounts	Disfavored Hedge Funds Account
XXX-XX0128 XXX-XX 1343 XXX-XX 3425 XXX-XX 1335 XXX-XX 1150 XXX-XX 1279 XXX-XX 0957 XXX-XX 1564 XXX-XX 0663 XXX-XX 0142 XXX-XX 3409 XXX-XX 3182 XXX-XX 2316 XXX-XX 1106 XXX-XX 0975 XXX-XX 2763 XXX-XX 0498 XXX-XX 1297 XXX-XX 0134 XXX-XX 1467 XXX-XX 1246 XXX-XX 0728 XXX-XX 1432 XXX-XX 1386	XXX-XX0001 XXX-XX 0400 XXX-XX 0524 XXX-XX 1007 XXX-XX 0419 XXX-XX 0494 XXX-XX 0577 XXX-XX 0350 XXX-XX 1360 XXX-XX 0206 XXX-XX 0712 XXX-XX 1378 XXX-XX 0435 XXX-XX 0443 XXX-XX 0575 XXX-XX 0214 XXX-XX 0311 XXX-XX 0194 XXX-XX 0036 XXX-XX 0540 XXX-XX 0559 XXX-XX 0399 XXX-XX 0631 XXX-XX 0640	XXX-XX3280