

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 64442 / May 9, 2011**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3197 / May 9, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14374**

**In the Matter of**

**ALETHEIA RESEARCH AND  
MANAGEMENT, INC.,  
PETER J. EICHLER, JR. and  
ROGER B. PEIKIN**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTIONS 203(e), 203(f) AND 203(k) OF  
THE INVESTMENT ADVISERS ACT OF  
1940, MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER AS TO ALETHEIA  
RESEARCH AND MANAGEMENT, INC.,  
PETER J. EICHLER, JR. AND ROGER B.  
PEIKIN**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Aletheia Research and Management, Inc. (“Aletheia”) and Sections 203(f) and 203(k) of the Advisers Act against Peter J. Eichler, Jr. (“Eichler”) and Roger B. Peikin (“Peikin”) (Aletheia, Peikin and Eichler referred to as collectively as “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and A Cease-and-Desist Order ("Order"), as set forth below.

### **III.**

On the basis of this Order and Respondents' Offers, the Commission finds that:

#### **SUMMARY**

These proceedings concern violations of the Investment Advisers Act by a registered investment adviser, Aletheia, and its two principals, Eichler and Peikin:

- From 2006 to 2008, Aletheia disseminated proposals to client and potential clients that failed to disclose requested information regarding prior Commission examinations, which Peikin reviewed.
- Aletheia and Peikin failed to implement written procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder regarding responding to requests for proposals from prospective clients.
- For fiscal years 2003 through 2008, Aletheia, Eichler, and Peikin failed to have an annual surprise examination of Aletheia's hedge funds and to provide the hedge fund investors with quarterly account statements, or provide the hedge fund investors with timely annual audit reports.
- From 2005 through 2009, Aletheia, Eichler, and Peikin failed to make and/or keep copies of the employees' acknowledgments indicating the receipt of Aletheia's code of ethics even after receiving 2005 and 2008 deficiency letters notifying Aletheia of that requirement.

#### **RESPONDENTS**

1. Aletheia Research and Management, Inc. ("Aletheia") is a California corporation with its principal place of business in Santa Monica, California. Aletheia (File No. 801-55761) is registered with the Commission as an investment adviser and its wholly-owned subsidiary Aletheia Securities, Inc. ("ASI") is a registered broker-dealer. As of December 31, 2009, it had over \$7.1 billion in assets under management.

2. Peter J. Eichler, Jr. ("Eichler") resides in Pacific Palisades, California. Eichler is Aletheia's co-founder, chairman, CEO, president, Chief Investment Officer ("CIO"), director, and largest shareholder. Eichler is also an officer, director and control person of ASI. He received a B.S. degree from Santa Clara University. Before forming Aletheia, he worked at a number of large brokerage firms. Eichler holds series 7, 24, 63 and 65 securities licenses.

3. Roger B. Peikin (“Peikin”) resides in Santa Monica, California. Peikin is Aletheia’s co-founder, director, and second largest shareholder. Until February 2010, he was also Aletheia’s CCO, and until July 2010, he was its CFO, executive vice president and general counsel. Until July 2010, Peikin was also an officer and control person of ASI. He received his JD from Southwestern University School of Law in 1991 and has been admitted to practice law in California since 1991. Peikin holds a series 27 securities licenses.

## **FACTS**

### **Background**

4. As of December 31, 2009, Aletheia managed over \$7.1 billion in assets for more than 5,400 clients consisting of retail accounts, institutional clients, and two private hedge funds. During the relevant period, Eichler was the CEO and CIO of Aletheia and managed all aspects of Aletheia and was solely responsible for all investment decisions. Peikin was an executive vice president, general counsel, CCO and CFO of Aletheia and was primarily responsible for directing Aletheia’s backroom operations. Peikin reported to Eichler.

### **Aletheia’s Response To Requests For Proposals**

5. As part of their due diligence process for selecting or retaining investment advisers, clients and prospective clients sent Aletheia questionnaires called Request for Proposals (“RFPs”) that requested certain information about Aletheia, including information about its background and investment performance. In 10 RFPs between 2005 and 2008, clients and prospective clients asked whether Aletheia had had any “findings,” “deficiencies,” or “corrective actions required” in connection with the SEC’s prior examination. Some of the RFPs also requested a copy of the SEC’s deficiency letter and Aletheia’s reply. In response, Aletheia either: (1) stated that “there were no significant findings” in its most recent SEC examination; (2) did not answer the question; (3) referred to its broker-dealer (ASI) when answering the question in the negative and/or (4) provided a copy of the deficiency letter and reply for ASI (rather than for Aletheia).

6. Aletheia’s responses were incorrect. In fact, as part of the 2005 examination, the staff sent Aletheia a seven page letter dated May 13, 2005, reporting six deficiencies found during the exam.

7. Peikin knew or should have known of the 2005 Aletheia exam and deficiencies. He received the deficiency letter and signed Aletheia’s reply letter. Peikin participated in the RFP process by reviewing Aletheia’s responses to the RFPs. Peikin should have, at a minimum, verified the SEC’s deficiency letter in response to the RFPs.

8. As a result of the conduct described above, Aletheia willfully committed violations<sup>1</sup> of, and Peikin willfully aided and abetted and caused violations of, Section 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any client.

#### **Failure to Implement Existing Procedures in Aletheia's Compliance Manual Relating to Responses to the RFPs**

9. Between 2005 and 2008, Aletheia made a concerted effort to attract institutional clients in order to increase the assets that it managed by soliciting prospective clients through its responses to the RFPs. As a direct result, Aletheia's assets under management (and associated management fees) increased from \$225 million in 2005 to over \$9 billion in 2008. Aletheia had a compliance manual that required Peikin, its CCO, to review the response to the RFPs for any misleading statement. However, Peikin failed to adequately review the RFP responses by correcting the misleading statements about the prior SEC examination.

10. As a result of the conduct described above, Aletheia willfully committed violations of, and Peikin willfully aided and abetted and caused violations of, Section 206(4) of the Advisers Act, and Rule 206(4)-7 promulgated thereunder, which requires that an investment adviser registered with the Commission to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and rules adopted under the Adviser Act.

#### **Late Hedge Fund Examinations**

11. Aletheia is the general partner and adviser for two private hedge funds, the Aletheia Insider Index, LP ("Index I") and the Aletheia Insider Index II, LP ("Index II"), which had total assets of \$75 million as of December 31, 2009. As a registered investment adviser, Aletheia was required by the Advisers Act and rules thereunder to send quarterly account statements to the limited partners and to ensure that its independent accountant conducted an unannounced (i.e., surprise) annual examination to verify the partnerships' funds and securities. Under an exception and in lieu of these requirements, Aletheia was permitted to complete and distribute to each limited partner an annual audited financial statement within 120 days of the end of the fund's fiscal year, which was December 31.

12. In response to these Advisers Act requirements, Aletheia opted to distribute annual audits to the funds' investors. However, from 2003 through 2008, Aletheia failed to comply with

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<sup>1</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

the Advisers Act provisions because it distributed the funds' audited financial statements to the investors from 1½ to 14 months after they were due.<sup>2</sup>

13. Aletheia's late distribution of the funds' audited financial statements resulted from many factors, including Aletheia's failure to timely pay the auditors, not having the funds' books and records properly organized for its auditors, problems with its portfolio management software, and Eichler's and Peikin's desire to complete other Aletheia audits or reviews first.

14. Eichler and Peikin were aware of the delays related to each audit. In fact, in some instances they directly caused the delays. For example, Eichler and Peikin jointly were responsible for signing the checks to pay the audit bills that were past due. However, in at least one instance, Eichler and Peikin simply did not jointly sign the check to pay the auditor.

15. As a result of the conduct described above, Aletheia willfully committed violations of, and Eichler and Peikin willfully aided and abetted and caused violations of, Section 206(4) of the Advisers Act, and Rule 206(4)-2(a) promulgated thereunder, which requires that an investment adviser registered with the Commission maintain each client's funds in bank accounts containing only those client funds, notify its clients about the place and manner in which their funds are maintained, reasonable believe that each client has received at least a quarterly account statement and have client funds and securities verified by an independent public accountant at least once a year without prior notice to the investment adviser.

#### **Books and Records – Failure to Make and Keep Acknowledgments**

16. As required by the Advisers Act rules, Aletheia had a code of ethics, which was included in its compliance manual, which required Aletheia to provide the code to all employees and to have each employee sign an acknowledgment that he or she had received the code. The Advisers Act rules also required Aletheia to maintain the signed acknowledgment pages for five years. However, from 2005 through 2007, Aletheia did not make and/or maintain any of the required acknowledgment pages and, for 2008 and 2009, Aletheia only made and/or maintained the required acknowledgment pages for just two employees. Between 2005 and 2009, Aletheia had between 14 and 28 employees.

17. As Aletheia's CCO, Peikin was responsible for receiving and maintaining the acknowledgment pages. Moreover, Aletheia, Peikin and Eichler were advised in the 2005 deficiency letter that not a single Aletheia employee had completed an acknowledgment of receipt. Yet, even though there was sufficient time in 2005 to have the acknowledgment pages signed and retained, they did not. In 2008, Aletheia was once again made aware of the need to make and maintain copies of the acknowledgment pages by the 2008 deficiency letter. Yet, even after receiving a second deficiency letter in four years, Aletheia, Eichler and Peikin failed to make and/or maintain all of the acknowledgment pages for 2008 and 2009.

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<sup>2</sup> Index I's first audit was for 2003; Index II first audit was for 2006.

18. As a result of the conduct described above, Aletheia willfully committed violations of, and Eichler and Peikin willfully aided and abetted and caused violations of, Section 204(a) of the Advisers Act, and Rule 204-2(a)(12) promulgated thereunder, which require that investment advisers registered with the Commission maintain a record of all written acknowledgments as required by Rule 204A-1(a)(5) for each person who is currently, or within the past five years was, a supervised person of the investment adviser.

### **REMEDIAL EFFORTS**

19. In determining to accept the Offers, the Commission considered remedial acts undertaken by Respondents and cooperation afforded the Commission staff. Specifically, during the Commission's staff investigation, Aletheia hired an independent consultant (the "Independent Consultant") to evaluate its compliance practices and procedures, and Aletheia is implementing its recommendations.

### **UNDERTAKINGS**

20. Within thirty (30) days of the issuance of this Order, Respondent Aletheia undertakes to mail a copy of the Form ADV which incorporates the paragraphs contained in Section III of this Order to each of Aletheia's existing clients, and specify that the entire Order will be posted on the homepage of Aletheia's website. Within thirty (30) days of the issuance of this Order, Respondent Aletheia also undertakes to post a copy of this Order on the homepage of Aletheia's website and maintain this copy of the Order on Aletheia's website for a period of six (6) months. Respondent Aletheia shall also provide a copy of the Form ADV to any new client that engages Aletheia or Eichler within one (1) year of the date of this Order.

21. Respondent Aletheia shall comply with the following undertakings:

- a. To continue to retain the Independent Consultant, at its expense. Aletheia shall require the Independent Consultant to conduct any additional review of Aletheia's compliance policies and procedures that the Independent Consultant deems appropriate with respect to Sections 204(a), 206(2) and 206(4) of the Advisers Act and Rules 204-2(a)(12), 206(4)-2(a) and 206(4)-(7) thereunder including:
  - (1) complying with the record retention requirements relating to written acknowledgements;
  - (2) ensuring that the responses to the RFPs do not contain any material misrepresentations or omissions;
  - (3) providing quarterly account statements to the limited partners; and hire an independent public accountant to conduct a surprise

examination of the adviser's records annually to verify all the clients' funds and securities, or in lieu of these requirements, complying with any statutory exceptions;

- (4) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, including implementing procedures related to the responses to RFPs; and
  - (5) complying with such other policies or procedures as are reasonably expected to prevent and detect the types of violations of the federal securities laws involving Aletheia's actions described in Section III;
- b. At the end of that review, which in no event shall be more than three (3) months after the date of the issuance of this Order, Aletheia shall require the Independent Consultant to submit to Aletheia and to the Commission's Los Angeles Regional Office an Initial Report. The Initial Report shall describe the review performed, the conclusions reached and shall include any recommendations deemed necessary to make the policies and procedures adequate. Aletheia may suggest an alternative procedure designed to achieve the same objective or purpose as that of the recommendation of the Independent Consultant. The Independent Consultant shall evaluate Aletheia's proposed alternative procedure. Aletheia, however, shall abide by the Independent Consultant's final recommendation;
  - c. Within six (6) months of the date of this Order, Aletheia shall, in writing, advise the Independent Consultant and the Commission's Los Angeles Regional Office of the recommendations it is adopting;
  - d. Within nine (9) months of the date of this Order, Aletheia shall require the Independent Consultant to complete its review and submit a written final report to Aletheia and the Commission's Los Angeles Regional Office. The Final Report shall describe the review made of Aletheia's compliance policies and procedures relating to Sections 204(a), 206(2) and 206(4) of the Advisers Act and Rules 204-2(a)(12), 206(4)-2(a) and 206(4)-(7) thereunder; set forth conclusions and recommendations and any proposals by Aletheia; and describe how Aletheia is implementing those recommendations and proposals;
  - e. Aletheia shall take all necessary and appropriate steps to adopt and implement all recommendations contained in the Independent Consultant's Final Report;
  - f. No later than three (3) months after the date of the Independent Consultant's final report, Aletheia shall submit to the Commission's Los

Angeles Regional Office an affidavit setting forth the details of its efforts to implement the Independent Consultant's recommendations as set forth in the Final Report and its compliance with them;

- g. For good cause shown and upon timely application by the Independent Consultant or Aletheia, the Commission's staff may extend any of the deadlines set forth in these undertakings; and
- h. Aletheia shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Aletheia, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Los Angeles Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Aletheia, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

22. Aletheia shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission's staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to John McCoy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Ste. 1100, Los Angeles, CA 90036, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents Offers.

Accordingly, pursuant to Sections 15(b) of the Exchange Act and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Aletheia cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), and 206(4) of the Advisers Act and Rules 204-2(a)(12), 206(4)-2(a), and 206(4)-7 promulgated thereunder;



B. Respondent Eichler cease and desist from committing or causing any violations and any future violations of Sections 204(a) and 206(4) of the Advisers Act and Rules 204-2(a)(12) and 206(4)-2(a) promulgated thereunder;

C. Respondent Peikin cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), and 206(4) of the Advisers Act and Rules 204-2(a)(12), 206(4)-2(a), and 206(4)-7 promulgated thereunder;

D. Respondents Aletheia, Eichler and Peikin are censured.

E. Respondent Aletheia shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$200,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Aletheia as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John McCoy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Ste. 1100, Los Angeles, CA 90036.

F. Respondent Eichler shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Eichler as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John McCoy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Ste. 1100, Los Angeles, CA 90036.

G. Respondent Peikin shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Peikin as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John

McCoy, Associate Director, Division of Enforcement, Securities and Exchange Commission,  
5670 Wilshire Blvd., Ste. 1100, Los Angeles, CA 90036.

By the Commission.

Elizabeth M. Murphy  
Secretary

## Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), on the Respondents and their legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

David M. Rosen, Esq.  
Los Angeles Regional Office  
Securities and Exchange Commission  
5670 Wilshire Blvd., Ste. 1100  
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Aletheia Research and Management, Inc.  
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Mr. Peter J. Eichler, Jr.  
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Mr. Roger B. Peikin  
c/o Robert Friese, Esq.  
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