

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

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**U.S. DISTRICT COURT  
DISTRICT OF R.I.**

Case No.

**CA 09**  
JURY TRIAL DEMANDED

**100**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LOCKE CAPITAL MANAGEMENT, INC. and  
LEILA C. JENKINS,

Defendants.

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission (“the Commission”) alleges the following against defendants Locke Capital Management, Inc. (“Locke”) and Leila C. Jenkins (“Jenkins”):

**PRELIMINARY STATEMENT**

1. This enforcement action concerns a registered investment adviser (Locke), with offices in New York and in Newport, Rhode Island, and its President, Chief Executive Officer, and sole owner (Jenkins). From at least 2003 until early 2009, Locke and Jenkins lied repeatedly in filings with the Commission, marketing materials, and communications with clients and prospective clients in order to mislead investors into placing their assets in Locke’s care. First, Locke and Jenkins invented several large advisory client accounts, supposedly based in Switzerland, in order to inflate Locke’s reported assets under management. Since late 2006, Locke and Jenkins have told clients, potential clients, and the Commission that Locke has more

than \$1 billion in assets under management (and sometimes as much as \$1.6 billion), whereas the assets of Locke's real clients comprised only a small fraction of that figure (less than \$165 million). Second, Locke and Jenkins fabricated investment performance returns, including returns for several years when Locke had no real clients and was not managing any real assets. Third, Locke and Jenkins made false statements about other aspects of Locke's business. Lastly, to perpetuate the scheme and conceal her deceptions, Jenkins lied repeatedly during a routine examination and subsequent enforcement investigation by the Commission.

2. Through the activities alleged in this Complaint, Locke and Jenkins engaged in: (i) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); (ii) fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; (iii) fraudulent or deceptive conduct with respect to investment advisory clients, in violation of Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"); and (iv) the making of untrue statements of material fact in reports filed with the Commission, in violation of Section 207 of the Advisers Act. In addition, Locke engaged in: (i) fraudulent or deceptive advertising for investment advisory services, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder; and (ii) violations of numerous reporting, record-keeping and other provisions of Sections 204 and 204A of the Advisers Act and Rules 204-2(a) and 204A-1 thereunder, and Jenkins aided and abetted Locke's violations of those provisions.

3. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting Locke and Jenkins from further violations of the relevant provisions of the federal

securities laws; (ii) disgorgement of Locke and Jenkins' ill-gotten gains, plus pre-judgment

interest; and (iii) the imposition of a civil monetary penalty due to the egregious nature of Locke and Jenkins' violations.

### JURISDICTION

4. The Commission seeks a permanent injunction and disgorgement pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)], and Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)]. The Commission seeks the imposition of a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)].

5. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d), 77v(a)], Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), 78aa], and Sections 209(3) and 214 of the Advisers Act [15 U.S.C. §§80b-9(d), 80b-14]. Venue is proper in this District because, at all relevant times, Locke maintained an office here and Jenkins maintained a residence here.

6. In connection with the conduct described in this Complaint, Locke and Jenkins directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

7. The conduct of Locke and Jenkins involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

**DEFENDANTS**

8. Locke Capital Management, Inc. (“Locke”) is a Rhode Island corporation with an office in Newport, Rhode Island. At all relevant times, Locke also maintained an office in New York, New York. Locke has been registered with the Commission as an investment adviser since March 1997. Locke markets itself as a global equity management boutique, and its clients have included institutions, high net worth individuals, two separately managed accounts for wrap fee clients, and a hedge fund with approximately \$10 million in assets.

9. Leila C. Jenkins, age 54, maintains residences in Newport, Rhode Island, and in Palm Beach, Florida. She is the founder and sole owner of Locke, and currently serves as its President, Chief Executive Officer, and Chief Investment Officer. On February 3, 2009, Jenkins submitted a sworn declaration to the Commission in which she invoked her Fifth Amendment right against self-incrimination in connection with the investigation that preceded the filing of this action.

**FACTS COMMON TO ALL COUNTS****The Importance of Assets Under Management and Investment Returns in the Selection of an Investment Adviser**

10. Two factors that investors often consider when choosing an investment adviser are the adviser’s assets under management and the investment returns that the adviser has achieved from its various investment strategies. Several commercial services compile data about investment advisers, including assets under management and investment returns, to assist investors in evaluating investment advisers. Many of Locke’s clients reviewed information about

assets under management and investment returns in connection with their choice of an investment adviser.

### **Misrepresentations about Locke's Assets Under Management**

#### **Locke's Reported Assets Under Management**

11. As an investment adviser registered with the Commission, Locke is required by Section 203 of the Advisers Act to execute and keep current an application for investment adviser registration on Form ADV. [See 17 C.F.R. §279.1] Part I of a Form ADV, which is filed with the Commission and made available to the public, requires the disclosure of certain material information about the adviser, including the amount of assets under its management.

12. Between February 2003 and September 2008, Locke filed Forms ADV containing the following representations about its assets under management:

<b>Date of Form ADV</b>	<b>Assets under Management</b>
February 1, 2003	\$82,000,000
January 16, 2004	\$88,000,000
February 16, 2005	\$62,118,262
September 8, 2005	\$74,838,002
January 20, 2006	\$89,317,924
April 2, 2007	\$1,232,689,661
April 2, 2008	\$1,306,692,872
September 26, 2008	\$1,327,635,399

Jenkins, as Locke's President, signed each Form ADV under the pains and penalties of perjury.

13. Locke and Jenkins maintained and periodically updated a “due diligence questionnaire” that was distributed to clients and prospective clients. Two versions of the questionnaire contained the following representations about Locke’s assets under management:

<b>Date of Questionnaire</b>	<b>Assets under Management</b>
December 1, 2006	\$1,200,000,000
November 30, 2008	\$1,200,000,000

14. Locke and Jenkins maintained and periodically updated a firm brochure that was distributed to clients and prospective clients. Various versions of the firm brochure contained the following representations about Locke’s assets under management:

<b>Year</b>	<b>Assets under Management</b>
2003	\$400,000,000
2004	\$649,000,000
2005	\$893,000,000
2006	\$1,231,000,000
2007	\$1,312,000,000
2008 (as of March 31)	\$1,377,000,000
2008 (as of June 30)	\$1,386,000,000
2008 (as of Sept. 30)	\$1,241,000,000
2008 (as of Nov. 30)	\$1,217,000,000

15. Locke and Jenkins supplied data to several commercial services which, as set forth above, compile information for clients and consultants to review when evaluating

investment advisers. Many of Locke's clients and potential clients reviewed this information

when deciding whether to select or retain Locke as an advisor.

a. In late 2006, Locke and Jenkins told one service that Locke had more than \$1.1 billion in assets under management as of September 30, 2006.

b. In 2008, Locke and Jenkins provided another service with the following information about Locke's assets under management:

<b>Year</b>	<b>Assets under Management</b>
2003	\$400,500,000
2004	\$602,100,000
2005	\$893,000,000
2006	\$1,231,000,000
2007	\$1,312,000,000
2008	\$1,377,000,000

16. Jenkins sent emails to clients and prospective clients containing information about Locke. Several of the emails contained the following representations about Locke's assets under management:

<b>Date of Email</b>	<b>Assets under Management</b>
November 27, 2007	\$1,230,671,049
January 13, 2008	\$1,312,000,000
January 28, 2008	\$1,500,000,000
March 27, 2008	\$1,361,000,000
May 23, 2008	\$1,306,692,872

17. Jenkins made representations about Locke's assets under management during meetings with prospective clients. Examples include:
- a. On or about December 13, 2004, Jenkins told a prospective client that Locke had \$581 million in assets under management for three clients, including a Swiss bank.
  - b. On or about July 31, 2006, Jenkins told a prospective client that Locke had more than \$1 billion in assets under management as of June 30, 2006.
  - c. On or about November 16, 2007, Jenkins told a prospective client that Locke had \$1.4 billion or \$1.6 billion in assets under management. (Jenkins used both figures during the meeting.)
  - d. On or about January 28, 2008, Jenkins told a prospective client that Locke had more than \$1.5 billion in assets under management as of September 30, 2007.
  - e. On or about August 19, 2008, Jenkins told a prospective client that Locke had \$1.4 billion in assets under management.
  - f. As recently as January 29, 2009, Jenkins told a client that Locke had \$1.2 billion in assets under management.

#### **Locke's Fictitious Swiss Client**

18. Since at least 2000, Jenkins has told some of Locke's employees, clients, and prospective clients that Locke's clients include an entity in Switzerland which she sometimes described as a Swiss money manager and sometimes as a Swiss private bank. Jenkins often referred to the purported Swiss client's accounts as "SPB accounts," which she told at least one Locke employee meant "Swiss Private Bank."



19. From approximately mid-2003 until late 2006, Locke had no clients except for the purported Swiss client, but beginning in late 2006, Locke started to attract new clients, including two foreign banks who in 2007 invested in a hedge fund formed by Locke. The period when Locke began attracting new clients coincided with the ten-fold increase in Locke's assets under management as reported in its Form ADV -- from less than \$100 million (Form ADV dated January 20, 2006) to more than \$1.2 billion (Form ADV dated April 2, 2007).

20. The Commission began a routine examination of Locke in late May 2008. During that examination, which lasted for several months, Locke provided information indicating that approximately \$1.2 billion of its more than \$1.3 billion in reported assets under management was comprised of money in certain accounts controlled by a Swiss client. Jenkins explained that the Swiss client had retained Locke to provide investment advice, that she regularly telephoned the client with lists of recommended transactions, that the client told her by phone the prices and quantities at which her recommendations had been executed, and that the client later sent her information reflecting the execution of the completed transactions.

21. In connection with the 2008 examination, Jenkins stated that an email account at Hotmail had recently been set up so that she could send the Swiss client her trade recommendations and the client could send her data on trade execution. However, records obtained during the course of the investigation indicate that when Jenkins received a list of proposed trades for a particular day from Locke's head trader, she frequently did not forward the list to the Hotmail account for as long as three or four weeks after the putative trade date, and she did not forward the proposed trades for certain days at all. Also, Jenkins received trade execution data from the Hotmail account on only a few occasions, and on at least one of them,

the log-in to the account took place from New York, where Locke maintained an office, and not from Switzerland, where the client was supposedly located. (None of the log-ins for which information is available took place from Switzerland.) Further, Jenkins sometimes provided Locke's employees with purported trade execution data for the Swiss client for dates when she received no emails from the Hotmail account.

22. In connection with the 2008 examination, Jenkins produced documents which she represented were copies of custodial statements for the Swiss client's accounts at JP Morgan Chase ("Chase"). Jenkins claimed that she had obtained the statements from the Swiss client by mail. However, the custodial statements are not genuine, and Chase has no record of any accounts for the Swiss client, for Locke itself, or for any Locke-related entity other than some of Locke's genuine clients. In addition, laptop computers used by Jenkins contain files which were used to create the purported custodial statements, including images of Chase's logo and drafts of the custodial statements with names like "chase in word," "chase paper" and "try."

23. During the course of the Commission's investigation, Jenkins admitted that she never visited the Swiss client, never met anyone from the client, and kept no phone records reflecting any calls with the client (supposedly because she used prepaid phone cards). In addition, nine former employees of Locke, including the former head trader, stated that they never communicated with any representatives of the Swiss client and never saw any trade tickets, confirmations, or brokerage account statements reflecting any trading for the client. (No employee reported having had any communications with, or having seen any documents reflecting the existence of, the Swiss client.) Also, records available to Swiss authorities contain no trace of the Swiss client (which Jenkins identified as "AM AG") or the persons named by

Jenkins as her contacts at the Swiss client, no entity named "AM AG" can be found at the

address provided by Jenkins, and repeated calls to the phone number provided by Jenkins have gone unanswered.

24. In short, the Swiss client is pure fiction invented by Jenkins. As a result, the representations set forth above about Locke's assets under management were materially false and misleading. The figures for 2004 and 2005 were completely false, because Locke had no real clients in those years. The figures for 2006, 2007 and 2008 were materially overstated, because the assets of Locke's real clients never exceeded \$165 million in those years, whereas Locke and Jenkins consistently reported figures in excess of \$1 billion and, on some occasions, as high as \$1.6 billion.

25. In mid-January 2009, after the Commission had commenced the investigation that preceded the filing of this action, Jenkins produced a document purporting to be a copy of a letter dated January 6, 2009 from the Swiss client terminating the advisory agreement with Locke as of January 1, 2009. Nevertheless, Locke and Jenkins have continued to claim that Locke has more than \$1 billion in assets under management.

a. On or about January 29, 2009, Jenkins told a client that Locke had \$1.2 billion in assets under management.

b. On or about February 11, 2009, Locke filed a Form ADV stating that Locke has more than \$1.3 billion in assets under management.

## **Misrepresentations about Locke's Investment Returns**

26. From 2005 until at least 2008, Locke and Jenkins made misrepresentations to clients and potential clients about the investment returns on Locke's various investment strategies. Examples include:

a. Throughout this period, Locke and Jenkins prepared and distributed to clients and prospective clients certain marketing brochures that presented Locke's purported investment returns dating back to 1990. In reality, Locke did not even exist in 1990.

b. Locke's due diligence questionnaire dated December 1, 2006 included figures purporting to show that the firm had an 11-year track record (from 1995 through 2006) for investment performance. In reality, Locke had no clients in 2004 and 2005, and thus Locke could not have had any investment performance in those years.

c. On or about November 9, 2005 and January 24, 2006, Locke and Jenkins caused a brochure to be sent to prospective investors in Locke's hedge fund that listed the hedge fund's investment performance results dating back to January 2004. Similarly, on September 29, 2008, Jenkins told a prospective client that the hedge fund had been in operation since early 2004. In reality, the hedge fund only came into existence in January 2006, and it was not funded by any investors until 2007.

27. From 2005 until at least 2008, Locke and Jenkins told clients and potential clients that Locke's investment performance figures complied with Global Investment Performance Standards ("GIPS"), a set of standardized principles that provide investment firms with guidance on how to calculate and report their investment returns in a manner that enables the investing

public to compare such results. In reality, Locke's investment performance figures were not

GIPS-compliant.

### **Other Misrepresentations about Locke's Business**

28. Locke and Jenkins frequently misrepresented the number, identity, role, and employment status of its employees, including without limitation, in its Form ADV, in its marketing materials, and at meetings with clients and prospective clients. Examples include:

a. On or about July 29, 2007, Jenkins told a prospective client that a certain individual was one of Locke's current clients and could provide a reference for Locke. On or about August 22, 2007, Jenkins made a similar representation to another prospective client. In reality, the person named was Locke's Chief Operating Officer.

b. On or about November 27, 2007, Jenkins sent a brochure to a prospective client stating that Locke had employed a certain portfolio manager since 1999. In reality, the individual did not work for Locke in 2003 and 2004, and the individual's employment with Locke had been terminated by October 31, 2007.

c. Even though the portfolio manager's employment had been terminated by October 31, 2007, Jenkins told at least one prospective client in January 2008 that no key personnel had left Locke. She also told another prospective client in February 2008 that the portfolio manager was on a medical leave of absence. In reality, the portfolio manager had no medical condition and was not on a leave of absence.

d. On or about January 29, 2009, Jenkins told a client that Locke had eight employees. Similarly, the Form ADV which Locke filed on February 11, 2009 stated that Locke

had between six and ten employees. In reality, Locke employed only Jenkins and one other individual when the statements were made.

e. On or about January 15, 2009, Locke and Jenkins provided a firm brochure to a consultant and a prospective client which stated that Locke employed a certain individual as an analyst and another individual as a trader. In reality, the trader had stopped working for Locke in December 2008, and the analyst had only volunteered at Locke between January and April 2008.

### **Jenkins' Misrepresentations to Commission Employees**

29. During the 2008 examination and the subsequent investigation, Jenkins made numerous misrepresentations to Commission employees in order to perpetuate the scheme described above and prevent its discovery. Examples include:

a. On several occasions (including but not limited to June 15, July 1, September 26, November 25, and December 30, 2008), Jenkins stated that the Swiss client and its accounts actually existed. As set forth above, the Swiss client does not actually exist.

b. During the examination, Jenkins produced documents that she represented were custodial statements for the Swiss client's accounts at Chase. In reality, as set forth above, the statements are not genuine, and Jenkins prepared them on a laptop computer.

c. During the examination, Jenkins produced a document purporting to be an investment advisory agreement with AM AG dated January 2, 1997. In reality, AM AG does not exist, and Locke had no advisory clients in January 1997.

d. On September 26, 2008, Jenkins stated by email that an audit of Locke's performance figures was nearly completed. In a letter dated November 25, 2008, Jenkins stated that the audit was still ongoing. In reality, the audit had not even begun when Jenkins made those statements.

d. In her letter dated November 25, 2008, Jenkins also stated that Locke had never claimed that its performance figures were GIPS compliant in any advertising, marketing, or sales materials distributed to any client, consultant, or prospective client. In reality, as set forth above, Locke routinely claimed -- in advertising, marketing, and sales materials distributed to both consultants and prospective clients -- that its performance figures were GIPS-compliant.

**FIRST CLAIM FOR RELIEF**  
**(Violation of Section 17(a) of the Securities Act)**

30. The Commission repeats and incorporates by reference the allegations in paragraphs 1-29 above.

31. Locke and Jenkins, directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.



32. As a result, Locke and Jenkins have violated and, unless enjoined, will continue to

violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

**SECOND CLAIM FOR RELIEF**  
**(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)**

33. The Commission repeats and incorporates by reference the allegations in paragraphs 1-32 above.

34. Locke and Jenkins, directly or indirectly, acting intentionally, knowingly or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged or are engaging in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

35. As a result, Locke and Jenkins have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

**THIRD CLAIM FOR RELIEF**  
**(Violation of Sections 206(1) and (2) of the Advisers Act)**

36. The Commission repeats and incorporates by reference the allegations in paragraphs 1-35 above.



37. Locke was an “investment adviser” within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)]. Likewise, Jenkins was an “investment adviser” due to her ownership and control of Locke.

38. Locke and Jenkins, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly or recklessly: (a) have employed or are employing devices, schemes, or artifices to defraud; or (b) have engaged or are engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client.

39. As a result, Locke and Jenkins have violated and, unless enjoined, will continue to violate Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§80b-6(1), (2)].

**FOURTH CLAIM FOR RELIEF**  
**(Violation of Section 207 of the Advisers Act)**

40. The Commission repeats and incorporates by reference the allegations in paragraphs 1-39 above.

41. Section 207 of the Advisers Act provides that it is unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203, or to omit to state in any such application or report any material fact which is required to be stated therein.

42. As set forth above, Locke filed Forms ADV with the Commission (signed by Jenkins as its President) which made untrue statements of material fact, or willfully omitted to state a material fact which was required to be stated.

43. As a result, Locke and Jenkins have violated and, unless enjoined, will continue to violate Section 207 of the Advisers Act [15 U.S.C. §80b-7].

#### **FIFTH CLAIM FOR RELIEF**

##### **(Violation of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5))**

44. The Commission repeats and incorporates by reference the allegations in paragraphs 1-43 above.

45. Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) promulgated thereunder provide that it shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business for any registered investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading.

46. As set forth above, Locke published, circulated, or distributed advertisements -- including without limitation numerous versions of its “due diligence questionnaire” and firm brochure -- that contained untrue statements of material fact or were otherwise false or misleading.

47. As a result, Locke violated and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-1(a)(5) thereunder [17 C.F.R. §275.206(4)-1(a)(5)]. In addition, Jenkins aided and abetted Locke’s violation of those provisions.

**SIXTH CLAIM FOR RELIEF**  
**(Violation of Sections 204 and 204A of the Advisers Act**  
**and Rules 204-2 and 204A-1)**

48. The Commission repeats and incorporates by reference the allegations in paragraphs 1-47 above.

49. Section 204 of the Advisers Act and certain rules promulgated thereunder require a registered investment adviser to make and keep true, accurate and current books and records.

50. Rule 204-2(a)(6) promulgated under the Advisers Act requires an investment adviser to make and keep accurate trial balances and financial statements. Locke's trial balances for 2007 and 2008 (produced in the course of the 2008 examination) reflect unequal credits and debits. In addition, Locke's cash flow statements for 2007 and 2008 (also produced in the course of the 2008 examination) do not accurately account for all the fees which Locke received from clients.

51. Rule 204-2(a)(8) promulgated under the Advisers Act requires an investment adviser to keep a list or other record of all accounts for which the investment adviser has discretionary authority with respect to any funds or transactions. The client list which Locke provided to the Commission failed to include eight of Locke's current clients and included eight other clients whose agreements with Locke had been terminated.

52. Rule 204-2(a)(10) promulgated under the Advisers Act requires an investment adviser to maintain originals or copies of all written agreements between the adviser and any client. Despite repeated requests, Locke was unable to provide the Commission with copies of such written agreements for several clients.

53. Rule 206(4)-3 promulgated under the Advisers Act requires an investment adviser that pays a cash fee for solicitation activities to receive from its solicited clients an acknowledgment that the client has received the adviser's written disclosure statement on Form ADV as well as the solicitor's written disclosure statement. Rule 204-2(a)(15) requires an investment adviser to maintain copies of the client acknowledgments and solicitor disclosure documents. Locke has entered into a written solicitation agreement but, during the 2008 examination, Locke was unable to produce copies of the client acknowledgments or any other evidence that the clients had been provided with the solicitor's written disclosure statement.

54. Rule 204-2(a)(16) promulgated under the Advisers Act requires an investment adviser to keep all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than persons connected with such investment adviser); provided, however, that with respect to the performance of managed accounts, the retention of all account statements, if they reflect debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy this requirement. During the 2008 examination, Locke was unable to provide support for the reported performance of all its client accounts.

55. Section 204A of the Advisers Act and Rule 204A-1 thereunder require an <http://www.jdsupra.com/post/documentViewer.aspx?fid=5ceb6ce2-9fd5-42a3-a128-3ce0a790ae3d>

investment adviser to adopt a Code of Ethics with certain minimum standards. During the 2008 examination, Locke was unable to produce a copy of its Code of Ethics.

56. As a result, Locke violated and, unless enjoined, will continue to violate Sections 204 and 204A of the Advisers Act [15 U.S.C. §§80b-4, 80b-4A] and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16), and 204A-1 thereunder [17 C.F.R. §§275.204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16), 204A-1]. In addition, Jenkins aided and abetted Locke's violation of those provisions.

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Locke, Jenkins and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)];
2. Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5];
3. Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§80b-6(1), 80b-6(2), 80b-6(4)] and Rule 206(4)-1(a)(5) thereunder [17 C.F.R. §275.206(4)-1(a)(5)];
4. Section 207 of the Advisers Act [15 U.S.C. §80b-7];
5. Section 204 of the Advisers Act [15 U.S.C. §80b-4] and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), and 204-2(a)(16)

thereunder [17 C.F.R. §§275.204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16)]; and

6. Section 204A of the Advisers Act [15 U.S.C. §80b-4A] and Rule 204A-1 thereunder [17 C.F.R. §275.204A-1].
  - B. Require Locke and Jenkins to disgorge their ill-gotten gains, plus pre-judgment interest;
  - C. Order Locke and Jenkins to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)];
  - D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and
  - E. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Dated: March 9, 2009