

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ELIZABETH FLENNER, Individually and On Behalf of All Others Similarly Situated,)	
)	CIVIL ACTION NO.
Plaintiff,)	
)	
vs.)	CLASS ACTION COMPLAINT
)	
AMERICAN EXPRESS COMPANY, AMERICAN EXPRESS FINANCIAL CORPORATION, and AMERICAN EXPRESS FINANCIAL ADVISORS, INC.,)	<u>JURY TRIAL DEMANDED</u>
)	
Defendants.)	
)	

Plaintiff, Elizabeth Flenner (“Plaintiff”), individually and on behalf of all other persons similarly situated, by her undersigned attorneys, for her complaint against defendants, alleges the following based upon personal knowledge as to herself and her own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through her attorneys, which included, among other things, a review of the defendants’ public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding American Express Company (“AEC”), American Express Financial Corporation (“AEFC”), and American Express Financial Advisors, Inc. (“AEFA”). Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal class action on behalf of a class consisting of all persons other than defendants who were AEFA clients between March 10, 1999 and February 9, 2004 (the “Class Period”), inclusive, and who purchased AEC Funds and/or Preferred Funds (which are 11 outside mutual fund families that include, but are not limited to, AIM Mutual Funds, Putnam Mutual Funds, Strong Mutual Funds, and Van Kampen Mutual Funds) during that period. Plaintiff seeks to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”), the Investment Company Act of 1940 (the “Investment Company Act”), the Investment Advisors Act of 1940 (the “Investment Advisers Act”), and common law.

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. § 78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. 240.10b-5]; Sections 206 and 215 of the Investment Advisers Act [15 U.S.C. §§80b-6 and 80b-15], and common law.

3. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Exchange Act of 1934 (15 U.S.C. § 78aa); Section 214 of the Investment Advisers Act, 15 U.S.C. §80b-14; and 28 U.S.C. § 1391(b).

4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this Judicial District. Additionally, the Company maintains a principal executive office in this Judicial District.

5. In connection with the conduct, acts, and other wrongs alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff Elizabeth Flenner bought shares of AXP New Dimensions Fund during the Class Period and has suffered damages as a result of the wrongful acts of defendants as alleged herein.

7. Defendant AEC is incorporated in Delaware and its principal executive offices are located at World Financial Center, 200 Vesey Street, New York, New York. AEC is in the business of providing travel-related services, financial advisory services and international banking services worldwide. Financial advisory services and products include financial planning and advice, investment advisory services and various products, including insurance and annuities, investment certificates and mutual funds.

8. AEFC is incorporated in Delaware and its principal executive offices are located at 50606 AXP Financial Center, Minneapolis, Minnesota. AEFC, a wholly-owned subsidiary of AEC, is registered as an investment adviser under the Investment Advisers Act of 1940 and, at all relevant times, provided research, analysis and investment management services for the AEC Funds in exchange for a fee that was calculated as a percentage of assets under management. The AEC Funds consist of 64 mutual funds, marketed under the proprietary American Express trademark that American Express categorizes as follows: Growth Funds, Blend Funds, Value Funds, Global/International Funds, Income/Tax Exempt Funds, Sector Funds, and Index Funds.

9. AEFA is incorporated in Delaware and its principal executive offices also are located at 50606 AXP Financial Center, Minneapolis, Minnesota. AEFA, a wholly-owned subsidiary of AEFC and an indirect wholly-owned subsidiary of AEC, is a registered brokerdealer and a registered investment advisor.

CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b) (3) on behalf of a Class, consisting of all persons or entities who were clients of AEFA and purchased or otherwise acquired shares or like interests in any of the American Express Funds, and/or 11 outside fund families between March 10, 1999, and February 9, 2004, inclusive, and who were damaged thereby.

11. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class.

12. Plaintiff's claims are typical of the claims of the members of the Class, because Plaintiffs and all of the Class members sustained damages arising out of defendants' wrongful conduct complained of herein.

13. Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel who are experienced and competent in class actions and securities litigation.

14. A Class Action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Class may be relatively small, the expense and

burden of individual litigation make it impossible for the members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

15. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by defendants' acts as alleged herein;
- (b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts;
- (c) Whether defendants breached their common law fiduciary duties; and
- (d) to what extent the members of the Class have sustained damages and the proper measure of damages.

SUBSTANTIVE ALLEGATIONS

Defendants Profited From The Misplaced Trust Of Their Clients

16. AEC, through its AEFA business unit, makes available a variety of financial products and services to help individuals, businesses and institutions establish and achieve their financial goals. This business unit principally includes AEFC as well as its subsidiaries and affiliates

17. According to AEC's annual report for year-ended December 31, 2002, AEFA, a registered broker dealer and investment advisor, maintained a nationwide field sales force of over

11,600 financial advisors, which provided products and services to more than two million clients throughout the U.S.

18. In its annual report for year-ended December 31, 2002, AEC stated that the core of AEFA's business is financial planning and advice. AEFA's financial advisors work with retail clients to develop strong relationships and long-term financial strategies. To fulfill the needs of its retail clients, AEFA also develops and offers a broad array of financial products and services, including annuities; a variety of insurance products, including life insurance, disability income insurance and property and casualty insurance; a variety of investment products, including investment certificates and mutual funds; investment services, including wrap programs; a variety of tax-qualified products, including individual retirement accounts, employer-sponsored retirement plans and Section 529 college savings plans; personal trust services; and retail securities brokerage, including online direct brokerage services.

19. According to AEC's regulatory filings, approximately 24 percent of AEFA's 11,600 financial advisors are American Express employees; about 64 percent are American Express-branded franchisees; and about 12 percent are affiliates with Securities America, Inc., which is an "unbranded" broker-dealer.

20. Moreover, AEC's regulatory filings stated that AEFC's fees are calculated as a percentage of funds under management. Therefore, such fees tended to increase as the number of AEC investors grew and the size of their holdings increased.

21. Although AEFA carries a lower profile than the firm's credit-card business, it accounted for roughly 24% of American Express' \$26 billion in revenue and 22% of its net income

last year. Fees from financial plans and other advice services accounted for just \$121 million of the unit's \$6.2 billion in revenue last year, according AEC's regulatory filings.

22. Consequently, AEFA's fiduciary relationships with its clients were extremely important to defendants because such relationships enabled defendants to influence their clients' investment decisions and, specifically, direct them purchase AEC Funds and Preferred Funds. Since the management fees paid to AEFC were calculated as a percentage of total assets under management, defendants, acting in concert, had a strong financial incentive to tailor their advice to ensure that a critical component of any clients' long-term financial plan was an investment in AEC Funds, and the greater the investment, the better. Additionally, defendants received "revenue sharing" payments from funds in eleven "preferred" fund families (the "Preferred Funds") calculated on the basis of the number of AEFA referrals to such funds, and therefore had a strong incentive to push those funds as well, unbeknownst to its clients.

23. As a result of this fraudulent scheme, AEFA's primary duty of loyalty was not to its clients and achievement of the clients' financial goals. Rather, defendants viewed AEFA clients primarily as a vehicle for generating investment management fees and "revenue sharing" payments so that AEC could achieve its own financial goals and increase the profitability of the ultimate corporate parent.

**Defendants Concealment Their Scheme
And Marketing of AEFA Advisors As Unbiased Financial Advisor**

24. Disclosure of the true motivations of AEFA advisors would greatly reduce their influence over AEFA clients, and damage AEFA advisors as a fee-generating machine.

Consequently, AEFA's ulterior motives were not disclosed in any of the defendants' public filings or promotional material.

25. In all promotional material, AEFA stressed that it purportedly offered "objective advice" about investment decisions that it claimed are inextricably linked to the most intimate aspects of investors' lives. In this regard, promotional materials and the AEFA and AEC website stated: "Our advisors combine customized planning, sound advice, and the right products to help you meet your unique goals."

26. Additionally, prospective AEFA clients were invited to "[g]et more information related to your specific needs," and offered links for the following: Retirement Planning, Having a Baby, College Planning, Job Change, Inheritance, Divorce, Savings Goals, and Other.

27. An example of some of the claims that defendants made can be found in its webpage for Planning for College:

Planning for College

American Express Financial Advisors has been offering advice to college-bound economies semester after semester. By looking at your broader economic picture, we can show you how to achieve your education plans even as you save for other financial goals. To learn more, request our FREE College Planning Guide, and review some important financial tips for college-bound economies: . . .

28. Another example of some of the claims that defendants made can be found in its webpage for Savings Goal:

Savings Goal

Good things - like a second home or a comfortable retirement - come to those who plan. At American Express Financial Advisors, we

believe even better things can come to those who plan their economy. By looking at your broader economic picture, we can help you achieve all of your financial goals. To learn more, request our FREE Financial Planning Guide, and review these important financial tips[.]

29. The defendants made similar claims of offering unbiased advice for other life events including: Having a Baby, College Planning, Job Change, Inheritance, and Divorce.

30. At the bottom of the page of the website, in smaller letters, there is the following statement with respect to the free financial consultation.

A Personal Economic Forecast is any written financial analysis provided with an American Express Financial Advisory Service. The nature and cost of the service varies and will be determined by an American Express financial advisor in consultation with the client, based on individual needs and objectives. There is no fee for an initial complimentary consultation. All Personal Economic Forecast illustrations are hypothetical and not a forecast or guarantee of specific investment results. American Express Financial Advisors, Inc., Member NASD. Copyright American Express Financial Corporation.

31. Nowhere do defendants state that their recommendations are based not on their understanding of their client's financial personal needs and stage in life, but rather, solely or primarily on their incentives to increase assets under AEFC's management.

32. Moreover, AEC's undisclosed revenue sharing arrangements with its 11 preferred funds clearly presented conflicts of interest, pitting the financial interest of the AEFA advisors against that of its clients.

33. Rather than disclose these conflicts, defendants sought to conceal the truth in order to generate greater fees for themselves.

The Truth Begins to Emerge

34. On February 9, 2004, The Wall Street Journal published an article about AEC

under the headline, "Financial Plans: Selling for In-House Gains," which laid out the undisclosed plan and scheme set forth herein. The article stated:

Investors who sign up for financial plans believe they are getting independent advice tailored to their own needs. But in one of several "open secrets" that have been hazards for investors in this era, these plans often are little more than sales tools that stand a better chance of making money for advisers and their firm than their clients.

Critics say advisers rarely disclose that they get big bucks for directing investors to insurance products and mutual funds that provide the highest payouts, rather than offering investments that may pay the adviser less but are better-suited to the client's needs. Any information about potential conflicts is often vague at best and tucked into documents provided to investors when they are already well into the planning process.

A good financial plan can be useful to chart an investor's future, of course. But "for a number of advisers it is a marketing hook," says Matthew McGinness, an associate director with Cerulli Associates, a market-research firm. Many financial firms that provide such plans also offer proprietary, or in-house, financial products. The potential for conflicts at American Express is intense because of its large stable of in-house mutual funds and insurance products. Proprietary products account for roughly 65% of adviser sales at AmEx, a regulatory filing says.

Many AmEx funds have been poor performers. Over the past three and five years, AmEx funds have, on average, ranked in the bottom third of all fund families, according to fund-tracker Morningstar, Inc. And AmEx receives special revenue-sharing payments from 11 outside fund families -- including AIM, Putnam, Strong and Van Kampen.

An American Express spokesman says the company has been overhauling its fund operation in the past two years in an effort to boost returns. "We are absolutely committed to improving our performance," he says. Though fund performance has improved, AmEx funds still ranked in the bottom half of all fund families in the past 12 months, according to Morningstar. American Express Financial Advisors carries a lower profile than the firm's credit-card business, yet it accounted for roughly 24% of American Express's

\$26 billion in revenue and 22% of its net income last year. Fees from financial plans and other advice services accounted for just \$121 million of the unit's \$6.2 billion in revenue last year, according to regulatory filings. But the importance of planning to AmEx and the firm's more than 12,000 advisers is far greater: Three-quarters of total sales were generated by financial plans and advice services.

Financial advisers use the planning process to draw clients in, but they depend on product sales for their livelihood, current and former advisers say. "The financial plan is their big claim to fame. But if that's all you did, you'd starve to death," says Judy Reed, an adviser who left American Express in early 2002 after more than a decade with the company. Other former AmEx advisers say that when they presented a financial plan, they dubbed it "The Close," because of its usefulness in selling high-fee products, including proprietary funds and insurance that paid more to the salesmen -- and to the firm.

An AmEx spokesman says "financial planning is at the core of what we do" and is "the best way to serve the needs of our clients," adding that the firm's approach to financial planning is "comprehensive." While many clients buy financial plans from AmEx and then use the firm to follow its recommendations, others pay for plans and implement the suggestions elsewhere or simply buy products from the firm, the spokesman says. "It's not one size fits all."

In some cases, the pressure to sell in-house products is overt. Peggy Bigelow, a financial adviser who left American Express in 2001 after a year with the firm, says she was repeatedly criticized for recommending that her clients invest in outside mutual funds. Other former advisers say the training they received focused largely on sales techniques and the company's proprietary insurance products.

Mr. Haritos, a medical-equipment salesman in Mesa, Ariz., says he learned this lesson the hard way. When he discovered in 2001 that the investments recommended by his adviser were faring poorly, he closed the brokerage account, at a loss of roughly \$14,000, or about 35% of his total investment, and moved his IRA to Charles Schwab Corp. He's still holding [his American Express] annuity, however, because he doesn't want to pay a costly surrender charge. His suit, filed in October seeking class-action status, requests the refund of all financial-planning fees plus interest, according to Jon E. Drucker, Mr. Haritos's lawyer. Mr. Haritos says his AmEx adviser, Michael Vukonich, never told him he had financial incentives for

recommending AmEx proprietary products, rather than outside investments offered by other companies. Mr. Vukonich declined to comment.

Other investors say they were directed to the firm's in-house mutual funds and other proprietary investments. Pierre Gangloff, a software engineer in Boston, says he was looking for tax and investment advice when he paid \$600 for a financial consultation in 2002. Mr. Gangloff says his adviser persuaded him to invest a total of more than \$17,000 in a dozen different AmEx mutual funds. Mr. Gangloff also invested \$500 a month in an IDS variable universal life policy and moved \$8,000 from a money-market account to a less-liquid AmEx Market Strategy Certificate -- a certificate of deposit tied to the Standard & Poor's 500. "I had the impression I would be . . . hiring some professional . . . who would work for me to figure out the best alternatives," he says. "But they were really pushing the American Express brand."

Some AmEx customers say they didn't learn about the potential conflicts until they were well into the planning process. Douglas Parker, a computer programmer in Baltimore, paid AmEx \$450 for a financial plan in 2001. Mr. Parker says his AmEx adviser then sold him disability insurance, term insurance and two variable universal life-insurance policies run by IDS. Mr. Parker also rolled over \$34,000 from three retirement accounts at Charles Schwab, T. Rowe Price Group Inc. and TIAA-CREF into AmEx annuities and an AmEx brokerage account that included investments in proprietary mutual funds. Mr. Parker says he didn't receive any papers indicating that the adviser might have a conflict until after he had signed the planning agreement and rollover papers.

Says Mr. Parker: "They manage to get control of your funds before you know it."

ADDITIONAL SCIENTER ALLEGATIONS

35. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in

the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding AEC, their control over, and/or receipt and/or modification of AEC's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning AEC Funds or Preferred Funds, participated in the fraudulent scheme alleged herein.

36. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including AEC and AEFC.

**Applicability Of Presumption Of Reliance:
Fraud-On-The-Market Doctrine**

37. At all relevant times, the market for AEC Funds and the Preferred Funds was efficient for the following reasons, among others: (a) The AEC Funds and Preferred Funds met the requirements for listing, and were listed and actively bought and sold through a highly efficient and automated market; (b) As regulated entities, periodic public reports concerning the AEC Funds and Preferred Funds were regularly filed with the SEC; (c) Persons associated with the AEC Funds and Preferred Funds regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and (d) The AEC

Funds and Preferred Funds were followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

38. As a result of the foregoing, the market for the AEC Funds and the Preferred Funds promptly digested current information regarding the AEC Funds and the Preferred Funds from all publicly available sources and reflected such information in the respective AEC Funds and Preferred Funds' share prices. Investors who purchased or otherwise acquired shares or interests in the AEC Funds Preferred Funds relied on the integrity of the market for such securities as well as the integrity and honesty of AEC. Under these circumstances, all purchasers of the AEC Funds and the Preferred Funds during the Class Period suffered similar injury through their purchase or acquisition of AEC Funds and Preferred Funds.

NO SAFE HARBOR

39. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was

false, and/or the forward-looking statement was authorized and/or approved by an executive officer of AEC who knew that those statements were false when made.

FIRST CLAIM
Violation Of Section 10(b) Of
The Exchange Act And Rule 10b-5
Promulgated Thereunder Against All Defendants

40. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein. This claim is asserted against all defendants.

41. During the Class Period, each of the defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did deceive the investing public, including plaintiff and other Class members, as alleged herein and cause plaintiff and other members of the Class to pay advisory fees, to purchase shares or interests in the AEC Funds and Preferred Funds and to otherwise suffer damages. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

42. These defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to generate greater fees in violation of Section 10(b) of the Exchange Act and Rule 10b-5. These defendants are sued either as primary participants in the wrongful and illegal conduct charged herein.

43. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful

information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and performance so that investment decisions would be based on truthful, complete and accurate information.

44. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about defendants' revenue-sharing arrangements and other incentives to peddle the AEC Funds and Preferred Funds.

45. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to not reveal its revenue-sharing agreements and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the Plaintiff and the Class during the Class Period.

46. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above the sales process was manipulated. In ignorance of the facts that the advice they were receiving was tainted by undisclosed conflicts of interest, and relying directly or indirectly on the false and misleading statements made by defendants and the purported honesty of AEC's business practices, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the

Class Period, Plaintiff and the other members of the Class paid advisory fees and acquired the shares or interests in the Preferred Funds during the Class Period and were damaged thereby.

47. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and other members of the Class and the marketplace known of the truth concerning the revenue-sharing arrangements, which were not disclosed by defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their shares or, if they had acquired such shares or other interests during the Class Period.

48. By virtue of the foregoing, defendants have each violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

49. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

SECOND CLAIM
Violation Of Section 20(a) Of The Exchange Act Against
AEC and AEFC

50. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein. This claim is asserted against AEC and AEFC.

51. AEC and AEFC each acted as a controlling person of AEFA within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, AEC and AEFC each had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including

the content and dissemination of the various statements which Plaintiff contends are false and misleading. Each of AEC and AEFC was provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

52. In addition, each of AEC and AEFC had direct involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

53. As set forth above, AEC and AEFC each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, AEC and AEFC are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

THIRD CLAIM
Against AEFA Under Section 215 Of The
Investment Advisers Act For Violations Of Section 206 Of
The Investment Advisers Act

54. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

55. This Count is based upon Section 215 of the Investment Advisers Act, 15 U.S.C. §80b-15.

56. AEFA served as an “investment adviser” to Plaintiff and the other members of the Class pursuant to the Investment Advisers Act.

57. As fiduciaries pursuant to the Investment Advisers Act, AEFA was required to serve Plaintiff and the other members of the Class in a manner in accordance with the federal fiduciary standards set forth in Section 206 of the Investment Advisers Act, 15 U.S.C. §80b-6, governing the conduct of investment advisers.

58. During the Class Period, AEFA, through its agents, breached its fiduciary duties to Plaintiff and other members of the Class by engaging in a deceptive contrivance, scheme, practice and course of conduct pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud upon Plaintiff and other members of the Class. As detailed above, AEFA advisors failed to disclose that they were motivated to steer clients to AEC proprietary products and that, therefore, their advise was not unbiased and objective as claimed. The purpose and effect of said scheme, practice and course of conduct was to enrich defendants at the expense of Plaintiff and other members of the Class. AEFA, through its agents, breached its fiduciary duties owed to Plaintiff and the other members of the Class by engaging in the aforesaid transactions, practices and courses of business knowingly or recklessly so as to constitute a deceit and fraud upon Plaintiff and other members of the Class.

59. AEFA is liable as a direct participant in the wrongs complained of herein. AEFA, because of its position of authority and control over AEFA advisors, was able to and did control the conduct of AEFA advisors.

60. AEFA had a duty to (1) disseminate accurate and truthful information with respect to the services provided by the AEFA advisors; and (2) truthfully and uniformly act in accordance

with their stated policies and fiduciary responsibilities to Plaintiff and the other members of the Class. AEFA participated in the wrongdoing complained of herein in order to prevent Plaintiff and other members of the Class from knowing of AEFA's breaches of fiduciary duties including the charging of fees for supposedly unbiased financial advice that was not in fact unbiased but rather, designed to steer clients to AEC proprietary products.

61. As a result of AEFA's multiple breaches of their fiduciary duties owed to Plaintiff and other members of the Class, Plaintiff and other members of the Class were damaged.

62. Plaintiff and other members of the Class are entitled to rescind their investment advisory contracts with the Investment Adviser Defendants and recover all fees paid in connection with such contracts.

FOURTH CLAIM
Breach Of Fiduciary Duty Against AEFA

63. Plaintiff repeats and realleges each of the preceding allegations as though fully set forth herein.

64. As advisers to Plaintiff and the other members of the Class, AEFA was a fiduciary to the Plaintiff and other members of the Class and was required to act with the highest obligations of good faith, loyalty, fair dealing, due care and candor.

65. As set forth above, AEFA, through its agents, breached its fiduciary duties to Plaintiff and the Class.

66. Plaintiff and the Class have been specially injured as a direct, proximate and foreseeable result of such breach on the part of the Investment Adviser Defendants and have suffered substantial damages.

67. Because AEFA acted with reckless and willful disregard for the rights of Plaintiff and other members of the class, AEFA is liable for punitive damages in an amount to be determined by the jury.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: March 9, 2004

Respectfully submitted,

**CAULEY GELLER BOWMAN &
RUDMAN, LLP**

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