UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6763 / November 1, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22283

In the Matter of **WAHED INVEST, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Wahed Invest, LLC ("Wahed" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) 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 Respondent's Offer, the Commission finds that:

Summary

1. This matter involves failures by Wahed, a registered investment adviser, to comply with Advisers Act Rule 206(4)-1 (the "Marketing Rule"). After the Marketing Rule's compliance deadline of November 4, 2022 through May 2024 (the "Relevant Period"), Wahed disseminated advertisements on its public website and via social media and email containing endorsements from several professional athletes that failed to provide the disclosures required under the Marketing Rule. During the same period, Wahed disseminated advertisements on its public website that presented hypothetical, backtested performance without adopting and implementing required policies and procedures designed to ensure the hypothetical performance was relevant to the likely financial situation and investment objectives of the intended audience. As a result, Wahed violated Section 206(4) of the Advisers Act and Rules 206(4)-1(b) and 206(4)-1(d) thereunder.

Respondent

2. Respondent Wahed is a Delaware limited liability company with its principal place of business in New York, New York. Wahed has been registered with the Commission as an investment adviser since October 8, 2015. According to its March 22, 2024 Form ADV, Wahed reported that it had more than 19,000 retail and high net worth clients and approximately $523.5 million in regulatory assets under management.

Facts

3. On December 22, 2020, the Commission adopted significant amendments to the Marketing Rule, which governs marketing by Commission-registered investment advisers. *See Investment Adviser Marketing*, Release No. IA-5653 (Dec. 22, 2020) (effective May 4, 2021) ("Adopting Release"). The Commission set a deadline of November 4, 2022, eighteen months after the amendments' effective date of May 4, 2021, for registered investment advisers to come into compliance with the Marketing Rule. *See id.* at 252.

4. The Marketing Rule defines an "advertisement," in pertinent part, to include "[a]ny direct or indirect communication an investment adviser makes… to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser or offers new investment advisory services with regard to securities to current clients or investors in a private fund advised by the investment adviser." Advisers Act Rule 206(4)-1(e)(1). The definition of advertisement also includes "[a]ny endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly…" *Id.*

5. During the Relevant Period, Wahed disseminated communications on its public website that constituted advertisements because they offered Wahed's investment advisory services with regard to securities to prospective clients and offered new investment advisory

services with regard to securities to current clients. As the communications were published on Wahed's public website, they were made to more than one person. Wahed also disseminated communications on its website and via social media and email depicting non-client professional athletes that constituted advertisements because they included paid endorsements from those athletes.

Endorsements

6. Under the Marketing Rule, registered investment advisers are prohibited from including any endorsement in an advertisement unless, among other things, the investment adviser clearly and prominently discloses, as applicable:

- that the endorsement was given by a person other than a current client or investor in a private fund advised by the investment adviser ("private fund investor");[1]
- that cash or non-cash compensation was provided for the endorsement;
- and a brief statement of any material conflicts of interest on the part of the person giving the endorsement resulting from the investment adviser's relationship with such person.

See Advisers Act Rule 206(4)-1(b)(1)(i). The adviser must also disclose "[t]he material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement." Advisers Act Rule 206(4)-1(b)(1)(ii). In addition, the adviser must provide "[a] description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement." Advisers Act Rule 206(4)-1(b)(1)(iii).

7. In adopting the requirement that an advertisement that includes an endorsement clearly and prominently disclose that the endorsement was given by a current client or private fund investor, the Commission observed:

> We believe that this disclosure will provide investors with important context for weighing the relevance of the testimonial or endorsement. For example, an investor might reasonably give more weight to a statement made about an adviser by a current investor rather than someone who was never an investor. Additionally, without clearly attributing an endorsement to someone other than an investor, the advertisement could mislead investors who may assume the endorsement reflects the endorser's experience as an investor.

Adopting Release at 92-93. The Commission provided a similar reason for requiring clear and prominent disclosure that cash or non-cash compensation was provided. *See id.* at 94 ("Similar to the disclosure of a promoter's status as a current investor or person other than a current investor,

[1] During the Relevant Period, Wahed reported on Form ADV that it is not an adviser to any private fund.

we continue to believe that this disclosure [of compensation] will provide investors with important context for weighing the relevance of the testimonial or endorsement"). "In order to be clear and prominent, the disclosures must be at least as prominent as the testimonial or endorsement." *Id.* at 90.

8. The Marketing Rule defines "endorsement" to mean "any statement by a person other than a current client or investor in a private fund advised by the investment adviser that: (i) Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons; (ii) Directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or (iii) Refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser." Advisers Act Rule 206(4)-1(e)(5).

9. During the Relevant Period, Wahed disseminated multiple advertisements on its public website and via its social media accounts and email that contained endorsements that did not disclose that the endorsements were given by persons other than a current client, that compensation was provided for the endorsements, and any material conflicts of interest resulting from an endorser's relationship with Wahed.

10. First, Wahed included an endorsement from a professional soccer player displaying the individual's image and text that read, "Join the 300,000+ people investing with Wahed. [This professional soccer player] is investing, are you?" However, in reality, the soccer player was not a client and had been compensated for his appearance in the advertisement with stock in Wahed's parent, Wahed Inc., worth approximately $500,000. In addition to providing the professional soccer player with compensation, this award of stock provided the professional soccer player with an ownership interest in Wahed's parent, thereby creating a material conflict of interest on the part of the professional soccer player resulting from his relationship with Wahed. Wahed failed to include any disclosure in the advertisement on its website stating that the athlete was not a current client, that compensation was provided for the endorsement, and that there was a material conflict of interest on the part of the professional soccer player resulting from his ownership stake in Wahed. Wahed also failed to describe the material conflict of interest.

11. Second, in another advertisement on its website, Wahed included images of four professional mixed martial arts ("MMA") athletes, with the name of one of these MMA athletes and text that read, "[j]oin the fight" in stated investment goals. These MMA athletes were not current clients of Wahed and were compensated with $30,000 to $35,000 monthly for their appearance in Wahed's advertisements. Wahed failed to disclose anywhere in the advertisement that the MMA athletes were not current clients and that compensation was provided for the endorsements.

12. Third, Wahed disseminated advertisements that were paid endorsements via social media and email. These advertisements present the same MMA athletes with messages including, among others: "Step into the ring of financial success with Wahed in 2023;" and "Aim higher, start your journey to wealth." Again, none of these advertisements included any

disclosures that the MMA athletes depicted are not current clients and that compensation was provided for the endorsements.

13. Fourth, Wahed's advertisements included these two paid endorsements from third-party endorsers, yet Wahed failed to disclose the material terms of the compensation arrangements between Wahed and the endorsers.

14. Wahed stopped disseminating advertisements containing endorsements in May 2024.

Hypothetical Performance

15. Under the Marketing Rule, registered investment advisers are prohibited from including any hypothetical performance in their advertisements, unless, among other things, the adviser "[a]dopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement." *See* Advisers Act Rule 206(4)-1(d)(6)(i).

16. In adopting this requirement, the Commission observed that:

> We believe that advisers generally would not be able to include hypothetical performance in advertisements directed to a mass audience or intended for general circulation. In that case, because the advertisement would be available to mass audiences, an adviser generally could not form any expectations about their financial situation or investment objectives.

Adopting Release at 220.

17. "Hypothetical performance" is defined as "performance results that were not actually achieved by any portfolio of the investment adviser" and includes, but is not limited to, performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods. *See* Advisers Act Rule 206(4)-1(e)(8)(i)(B).

18. During the Relevant Period, Wahed disseminated an advertisement on its public website containing hypothetical performance. Specifically, Wahed advertised a "Performance Summary" chart showing hypothetical yearly returns for years 1, 3, 5, and 10 for six different strategies, ranging from "[v]ery aggressive" to "[v]ery conservative." The returns presented constituted backtested performance results that were not actually achieved by any portfolio of the investment adviser. Rather, the returns were created using historical data for certain fund indices and funds underlying the six strategies. In addition, when calculating performance prior to 2015, when Wahed first developed these six portfolio strategies, Wahed's calculations incorporated, in certain instances, historical data from comparable funds. Wahed removed the advertisements containing hypothetical performance from its website in April 2024.

19. Although Wahed advertised hypothetical yearly returns during the Relevant Period for six different strategies that covered a range of investor risk tolerances, Wahed failed to adopt

and implement policies and procedures reasonably designed to ensure that the hypothetical performance was relevant to the likely financial situation and investment objectives of the intended audience. As a result, Wahed disseminated hypothetical performance in an advertisement to a mass audience rather than presenting hypothetical performance relevant to the likely financial situation and investment objectives of the intended audience.

Violations

20. As a result of the conduct described above, Respondent willfully[2] violated Section 206(4) of the Advisers Act and Rules 206(4)-1(b) and 206(4)-1(d) thereunder.

Undertakings

21. Respondent has undertaken to:

a. Within 10 days of the entry of this Order revise all advertisements containing endorsements to meet the requirements of Rule 206(4)-1(b)(1) or, in the alternative, permanently stop disseminating all such advertisements.

b. Within 30 days of the entry of this Order, to the extent Respondent plans to disseminate advertisements that contain hypothetical performance, evaluate, update, and review for the effectiveness of their implementation, Respondent's policies and procedures concerning advertisements that include hypothetical performance to ensure that Respondent's policies and procedures are reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement.

c. Within 45 days of the entry of this Order, review all its advertisements and confirm that the advertisements Wahed is presently disseminating comply with the requirements of the Marketing Rule.

d. Within 60 days of the entry of this Order, certify, in writing, compliance with the undertakings ordered pursuant to Section IV.C. below. 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 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 Brianna Ripa, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street, NE, Washington D.C.

[2] "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act "'means no more than 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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. V. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

e. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Wahed's Offer.

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-1 thereunder.

B. Respondent is censured.

C. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 21.a through d above.

D. Respondent shall pay a civil money penalty in the amount of $250,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to the Securities Exchange Act of 1934 Section 21F(g)(3). Payment shall be made in the following installments: $75,000 within 10 days of the entry of this Order, $58,333.33 within 120 days of the entry of this Order, $58,333.33 within 240 days of the entry of this Order, and the remaining amount owed within 365 days of the entry of this Order. Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request.

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Wahed Invest, LLC as a Respondent in these proceedings, and the file number of the proceedings; a copy of the cover letter and check or money order must be sent to Brianna Ripa, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549, or such other address as the Commission staff may provide.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary