

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 17-cv-02296

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL S. MOSES, and
MOSES INVESTMENT COMPANY, LLC,

Defendants.

COMPLAINT

The United States Securities and Exchange Commission (“the Commission”) alleges as follows:

SUMMARY

1. This case involves false and misleading statements made by Moses Investment Company, LLC (“MIC”) and its sole member and manager, Michael S. Moses, to induce investors and prospective investors to invest in a private fund that MIC and Moses managed and controlled, WAKE Fund I, LP (“WAKE Fund”).

2. From November 2013 through April 2014, Moses and MIC used material misrepresentations and omissions to raise approximately \$974,741 from investors.

3. Moses and MIC misrepresented 1) Moses’ past experience as a trader or portfolio manager with large private fund advisers, 2) the past investment performance obtained through Moses’ investment strategy, 3) the safety of investments in WAKE Fund, and 4) Moses’ personal investment in WAKE Fund.

4. For example, Moses and MIC claimed that Moses was a “Portfolio Manager” in 2007 for a \$750 million global macro fund, highlighted Moses’ twenty-four percent trading return achieved during the financial crisis in 2008, and repeatedly represented that the strategy Moses would employ in WAKE Fund was safe and involved limited downside risk.

5. In reality, Moses had very limited private fund portfolio management experience (which did not include serving as a portfolio manager for a \$750 million global macro fund), misrepresented his investment returns (the claimed return in excess of twenty-four percent was generated almost exclusively by a co-manager using a completely different strategy than what Moses employed), and used a strategy with significant downside risk, as evidenced by WAKE Fund’s precipitous decline.

6. By May 2015, Moses and MIC’s trading and failure to implement stated risk controls resulted in the near-total loss of the money invested in WAKE Fund.

7. By virtue of the conduct alleged herein, the Defendants, directly or indirectly, engaged in acts, practices, and courses of business that violated Section 17(a)(2) of Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)(2)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. 240.10b-5(b)], and Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-6] and Rule 206(4)-8(a)(1) thereunder [17 C.F.R. 275.206(4)-8].

8. Unless Defendants are permanently restrained and enjoined, they are likely to again engage in acts, practices, and courses of business similar to those set forth in this Complaint and otherwise violate Section 17(a)(2) of Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(1) thereunder.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22 of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77v], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)].

10. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the acts, practices, transactions, and courses of business alleged in this Complaint.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), Section 22 of the Securities Act [15 U.S.C. § 77v], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

12. Defendant Moses resides in this District. Defendant MIC is a Colorado limited liability company located in this District. Certain of the acts, practices, transactions, and courses of business constituting violations alleged in this Complaint occurred in this District.

DEFENDANTS

13. Michael S. Moses, age 51, is a resident of Centennial, Colorado. Moses is and always has been the sole owner and member of MIC, which acted as the investment adviser and general partner to WAKE Fund, a private fund. Through MIC, Moses controlled all investment decisions made for WAKE Fund. Moses was registered as an investment adviser representative with the state of Colorado from July 2013 through May 2017.

14. Moses Investment Company, LLC is a Colorado limited liability company, based in Greenwood Village, Colorado. Moses formed MIC in January 2013, and it acted as the investment

adviser and general partner to WAKE Fund. MIC was registered as an investment adviser with the state of Colorado from July 2013 through May 2017.

FACTS

Background

15. WAKE Fund was a Colorado limited partnership, based in Greenwood Village, Colorado. WAKE Fund was a private pooled investment fund.

16. Moses formed MIC and WAKE Fund in January 2013.

17. MIC served as the investment adviser and general partner to WAKE Fund, MIC's sole advisory client.

18. Moses, as the founder, manager, and sole member of MIC, exercised exclusive control over MIC and the investment decisions of WAKE Fund.

19. Moses and MIC began soliciting investments in WAKE Fund in November 2013. Ultimately, seven individuals invested a total of approximately \$974,741 in WAKE Fund between January and April 2014.

20. Prior to November 2013, Moses created a presentation outlining the investment in WAKE Fund ("WAKE Fund Investor Presentation").

21. To solicit investments in WAKE Fund, Moses and MIC provided a copy of the WAKE Fund Investor Presentation to multiple investors and prospective investors either before or at the time investors invested in WAKE Fund.

22. Moses and MIC provided the WAKE Fund Investor Presentation to investors through email.

23. Moses and MIC highlighted certain information in the WAKE Fund Investor Presentation and also made additional oral representations to certain investors.

24. Moses and MIC traded WAKE Fund assets from February 2014 through May 2015. By May 2015, the WAKE Fund had lost all but \$8,868 of investors' funds.

Material Misstatements and Omissions

25. Moses and MIC made numerous false and misleading representations to investors and prospective investors while soliciting investments in WAKE Fund.

Moses and MIC Misrepresented Moses' Work Experience

26. Moses and MIC emphasized Moses' claimed extensive past money management experience to investors both orally and in writing, in the WAKE Fund Investor Presentation and through emails, when soliciting their investments. In doing so, Moses and MIC made numerous false and misleading statements about Moses' work experience.

27. In the WAKE Fund Investor Presentation, Moses and MIC claimed that "Moses is a seasoned investment professional with over 20 years of alternative investment experience" and that "[o]ver the last 15 years, he has successfully managed money as Portfolio Manager for hedge funds" In a "Personal Note" in the WAKE Fund Investor Presentation, Moses also claimed that "[a]fter working with institutional investors for 22 years, I am now opening up my money management services to accredited individuals for a limited time only." Moses and MIC also included a chart depicting Moses' "Applicable Experience" in the WAKE Fund Investor Presentation.

28. Moses emphasized his claimed work experience orally and through emails to investors when soliciting their investments.

29. Moses and MIC made false and misleading representations about Moses' work experience.

30. Moses' and MIC's statement that "[o]ver the last 15 years, [Moses] has successfully managed money as Portfolio Manager for hedge funds ..." and Moses' statement that "[a]fter working with institutional investors for 22 years ..." were misleading because Moses and MIC failed to disclose that Moses' work from 1997 through 2006 as a "Portfolio Manager" for a "Hedge Fund" was, in fact, Moses solely trading for his own account.

31. In addition, the "Applicable Experience" chart in the WAKE Fund Investor Presentation falsely claims that Moses was a "Portfolio Manager" of a "\$750 M Global Macro Fund" at a large, Atlanta-based private fund adviser in 2007.

32. In fact, Moses worked for the Atlanta-based adviser only as a contractor and only for six months. Moses was never a "Portfolio Manager" at the adviser, nor did he ever manage a \$750 million fund. Instead, the Atlanta-based adviser briefly tested Moses' strategies in certain foreign markets, before terminating its contract with Moses because the strategies did not work.

33. The "Applicable Experience" chart is also misleading in stating that Moses was an "Alternatives Investment Consultant" for a "\$1 Billion" fund of hedge funds for a Denver-based investment adviser in 2009.

34. In fact, Moses' role at the Denver-based investment adviser did not involve consulting on investments, but instead was limited to administrative assistance and marketing.

35. The "Applicable Experience" chart also misleadingly states that Moses was the principal of a hedge fund at a Chicago-based investment adviser in 2011.

36. In fact, Moses' work for the Chicago-based investment adviser consisted solely of marketing someone else's investment strategy.

37. The "Applicable Experience" chart is also misleading because Moses and MIC failed to include Moses' most recent employment, which was serving as a financial advisor for a

large broker-dealer from March 2012 until December 2012. After receiving a written warning, Moses was terminated from the broker-dealer for “fail[ing] to meet performance standards.”

38. Because the representations in the WAKE Fund Investor Presentation and the “Applicable Experience” chart gave the impression that Moses was an experienced and accomplished investment adviser, the misstatements in and omissions from that presentation were material to investors.

39. Moses and MIC knew or should have known Moses’ accurate work history.

Moses and MIC Misrepresented Moses’ Trading Performance History

40. In the WAKE Fund Investor Presentation, Moses and MIC represented to investors that they should “invest with WAKE Fund” because of a “[d]emonstrable long-term record of achieving investment goals.” In addition, Moses and MIC included a chart depicting “Michael Moses’ Real Time Trading Performance History” in the WAKE Fund Investor Presentation.

41. Moses and MIC emphasized Moses’ historic trading performance to investors when soliciting their investments.

42. Moses and MIC made false and misleading statements with respect to Moses’ trading performance history.

43. In the “Trading Performance History” chart in the WAKE Fund Investor Presentation, Moses and MIC misrepresented Moses trading performance for the years 1997 through 2006.

44. The “Trading Performance History” chart indicates that the trading performance for 1997 through 2006 were returns Moses obtained while managing “a private hedge fund account, owned and operated by Michael S. Moses.”

45. In fact, however, Moses was not operating a hedge fund; rather, Moses' trading consisted exclusively of him trading his own money in his personal trading account.

46. Moses and MIC knew that from 1997 through 2006, Moses' trading consisted solely of him trading his own money in his personal account.

47. Moses and MIC also misrepresented Moses' trading performance for 2007 in the "Trading Performance History."

48. While the "Trading Performance History" chart falsely states that in 2007 Moses was a "Portfolio Manager for [a] \$750MM Global Macro Investment Company," it also omits to state that Moses' trading strategies during that time were unsuccessful, and that Moses' consultant position, and his strategies, were terminated for that reason after six months.

49. Moses and MIC knew that Moses' trading strategy for the Atlanta-based investment adviser was unsuccessful in 2007.

50. Moses and MIC also misrepresented Moses' trading performance for 2008 in the WAKE Fund Investor Presentation and the "Trading Performance History" chart.

51. The WAKE Fund Investor Presentation states that "[o]ur investment processes were profitable in 2008." In addition, the "Trading Performance History" chart shows a 24.53 percent return for 2008.

52. In fact, the claimed 24.53 percent return was not from Moses' investment processes, but rather was almost entirely the result of the trading of Moses' co-portfolio manager, whose trading generated approximately 24 percent of the 24.53 percent return.

53. Moses and MIC knew or should have known that the represented trading profits for 2008 were almost entirely the result of the trading of Moses' co-portfolio manager.

54. Because the WAKE Fund Investor Presentation and the “Trading Performance History” chart claimed that Moses had a successful trading performance history as an investment adviser, even during the financial crisis, the misrepresentations in and omissions from the WAKE Fund Investor Presentation were material to investors.

Moses and MIC Misrepresented the Risk of Investing in WAKE

55. Moses and MIC touted the safety of investments in WAKE Fund repeatedly, both orally and in writing.

56. While soliciting investments, Moses told investors that there was “no downside risk” to investing in WAKE Fund and that his past trading success was due to the risk protections he employed. He also told investors that their investment was protected because any losing investment would be automatically sold or stopped.

57. Moses’ oral representations were reinforced through representations in the WAKE Fund Investor Presentation about the lack of risk in investing in WAKE Fund.

58. Moses and MIC made the following representations in the WAKE Fund Investor Presentation:

- “WAKE Fund I LP seeks to build and protect wealth for its Limited Partners in all market conditions ... and through its rigorous risk management” as the “Investment Objective.”
- “We are even more vigilant with respect to being wrong - we get out by setting stop limits on all positions.”
- “We will not get every trade right. In order to consistently build wealth, we are vigilant and disciplined when we are wrong.”
- “Limiting drawdowns is a central tenet of our risk management.”

- “The overriding risk guidance for the Fund is to limit loss by exiting trades that do not work Risk rules reflect these overriding factors.”
- “Positional and portfolio level price volatility is monitored constantly throughout the global trading day Markets are inherently risky and the Fund’s broad investment universe requires real time price based risk discipline.”
- “Partnership culture of building and protecting wealth-rigorous risk management rules embedded in methodologies” as an answer to “Why Invest with Wake Fund I LP.”

59. In addition, in the WAKE Fund Investor Presentation, Moses and MIC identified specific risk management rules:

- “Portfolio level drawdown daily and monthly limitations.”
- “Portfolio level monthly drawdown position not to exceed 12 percent.”
- “[S]ell discipline incorporates discretion on watch list positions until hard stop exits occur.”
- “Any position in excess of 1% loss is placed on watch list, or trimmed or exited.”
- “Positions have a 5% hard intraday stop.”
- “Losses not to exceed 5% per theme, monthly drawdown limited.”
- “Profit and Loss measured continuously.”

60. Despite these oral and written assertions about the safety of and limited risk associated with investment in WAKE Fund, Moses’ and MIC’s strategy involved substantial risk, including investments in options, futures, and short positions, and WAKE Fund did not possess any meaningful system to apply any of the specific “risk management rules” represented.

61. WAKE Fund investors suffered a fifty-six percent loss in November 2014, a thirty-three percent loss in February 2015, and a forty-three percent loss in April 2015.

62. As the sole manager of MIC, Moses knew that WAKE Fund investments involved substantial risk, and that MIC had no mechanism to evaluate position exposure in real time, or any automatic mechanism to sell losing positions.

63. Moses' and MIC's representations about the lack of risk in investing in WAKE Fund were material to investors.

Moses and MIC Misrepresented That Moses Personally Invested

64. Moses and MIC also represented in the WAKE Fund Investor Presentation that Moses was personally invested in the WAKE Fund.

65. Moses never invested any money in the WAKE Fund.

66. Moses and MIC knew that Moses never invested in the WAKE Fund.

67. Because Moses' personal investment demonstrated a personal stake in the WAKE Fund, Moses' and MIC's representation that Moses was personally invested in the WAKE Fund was material to investors.

Limited Partnership Interests in WAKE Fund were Securities

68. Investors in WAKE Fund invested in a common enterprise. Their money was pooled together in WAKE Fund for Moses and MIC to use to make investments.

69. Any profits derived by WAKE Fund investors were to come solely from the efforts of Moses and MIC. The WAKE Fund limited partnership agreement vested management of the fund exclusively with MIC and Moses and denied limited partners any right to control the fund.

WAKE Fund was a Pooled Investment Vehicle

70. WAKE Fund was a hedge fund and/or a private equity fund.

71. WAKE Fund was engaged primarily in the business of investing, reinvesting, or trading in securities.

72. WAKE Fund had fewer than one hundred beneficial owners.

73. WAKE Fund was not publicly offered.

Moses and MIC were Investment Advisers

74. MIC was registered as an investment adviser with the state of Colorado during the relevant period.

75. Moses was registered as an investment adviser representative with the state of Colorado during the relevant period.

76. MIC and Moses earned and received management fees as compensation for furnishing investment advice regarding securities to WAKE Fund. As the sole owner and member of MIC, Moses was solely responsible for overseeing and directing all WAKE Fund investments.

FIRST CLAIM FOR RELIEF
Violations of Securities Act Section 17(a)(2)
[15 U.S.C. § 77q(a)(2)]

77. The Commission realleges and incorporates by reference paragraphs 1 through 76, as though fully set forth herein.

78. By engaging in the conduct described in paragraphs 15 through 69 above, Moses and MIC have, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of an untrue statement of material fact or omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

79. By reason of the foregoing, Moses and MIC directly or indirectly violated and, unless restrained and enjoined, will continue to violate Section 17(a)(2) of the Securities Act.

SECOND CLAIM FOR RELIEF
Violations of Exchange Act Section 10(b) and Rule 10b-5(b) Thereunder
[15 U.S.C. § 78j(b) and 17 C.F.R. 240.10b-5(b)]

80. The Commission realleges and incorporates by reference paragraphs 1 through 76, as though fully set forth herein.

81. As detailed in paragraphs 15 through 69 above, Moses and MIC, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of a security, made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

82. By virtue of the foregoing, Moses and MIC directly or indirectly violated and, unless restrained and enjoined, will again violate Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

THIRD CLAIM FOR RELIEF
Violations of Advisers Act Section 206(4) and Rule 206(4)-8 Thereunder
[15 U.S.C. § 80b-6 and 17 C.F.R. 275.206(4)-8]

83. The Commission realleges and incorporates by reference paragraphs 1 through 76, as though fully set forth herein.

84. As detailed in paragraphs 15 through 76 above, Moses and MIC, while investment advisers to a pooled investment vehicle, directly or indirectly, made untrue statements of material facts and omitted to state material facts necessary to make statements made not misleading to investors in the pooled investment vehicle.

85. By virtue of the foregoing, Moses and MIC directly or indirectly violated and, unless restrained and enjoined, will again violate Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court:

I.

Find that each of the Defendants committed the violations alleged in this Complaint;

II.

Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining each of the Defendants from violating, directly or indirectly, the laws and rules alleged in this Complaint;

III.

Order that each of the Defendants disgorge any and all ill-gotten gains, together with pre- and post-judgment interest, derived from the improper conduct set forth in this Complaint;

IV.

Order that each Defendant pay civil monetary penalties pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3)(A) of the Exchange Act [15 U.S.C. § 78u(d)(3)(A)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)];

V.

Grant such other and further relief as the Court may deem just and proper.

JURY DEMAND

The Commission demands a trial by jury on all claims so triable.

Respectfully submitted.

s/ Polly A. Atkinson
Polly A. Atkinson
U.S. Securities and Exchange Commission
Byron G. Rogers Federal Building
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
Phone: (303) 844-1000
Email: atkinsonp@sec.gov

*Attorney for Plaintiff United States
Securities and Exchange Commission*