

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

**SECURITIES ACT OF 1933**  
**Release No. 10625 / April 1, 2019**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 85477 / April 1, 2019**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5217 / April 1, 2019**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 33435 / April 1, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19128**

**In the Matter of**

**OMAR ZAKI,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Omar Zaki (“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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative And Cease-And-Desist Proceedings, Pursuant to Section 8A Of The Securities Act of 1933, Section 21(C) Of The Securities Exchange Act Of 1934, Sections 203(f) And 203(k) Of The Investment Advisers Act Of 1940, And Section 9(b) Of The Investment Company 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

While operating an unregistered investment adviser ("Investment Adviser"), and a hedge fund (the "Fund"), Zaki repeatedly misled investors in the Fund about assets under management, fund performance, and fund management. He also concealed from one investor the true performance of his investment in the Fund, while trying to convince him to finance his next venture, an off-shore hedge fund.

#### **Respondent**

1. **Omar Zaki**, age 21, is a resident of New York, New York. Zaki is currently unemployed.

#### **Other Relevant Entities**

2. **The Fund** is a hedge fund that was formed in Delaware in November 2016 and maintains its principal place of business in New Haven, Connecticut. The Fund is a pooled investment vehicle within the meaning of Advisers Act Rule 206(4)-8(b). The Fund is inactive and no longer holds any assets. It is not registered with the Commission or any state securities regulator.

3. **Investment Adviser** was formed in Connecticut in November 2016. It is the general partner of and investment adviser to the Fund. When Investment Adviser was formed, Zaki and Individual A were its managing members. Zaki is currently the sole owner of Investment Adviser. Investment Adviser is not registered with the Commission or any state securities regulator.

#### Background

4. In the fall of 2016, Respondent, who was a college student, and Individual A, who was a law student, formed Investment Adviser and the Fund to employ a biotechnology trading strategy developed by Zaki and an algorithm-based trading strategy developed by a friend of Zaki's.

5. Zaki managed and controlled the Fund and Investment Adviser. He determined the trading strategies deployed by Investment Adviser. He also controlled or directed all trading in accounts advised by Investment Adviser, either by placing trades himself or by instructing

portfolio managers he hired to place trades at his direction. Zaki unilaterally determined who the Fund would hire. Zaki also determined who could access Investment Adviser's advisory clients' accounts. At all relevant times, he had sole access to Investment Adviser's bank account, through which he conducted the Fund's transactions.

6. Although Individual A helped draft the Fund's prospectus and operating agreement, Zaki determined the final content of these documents.

7. From January 2017 to February 2018, Zaki and Individual A raised approximately \$1.7 million from 11 investors.

8. Approximately \$1 million of investors' funds were held in separately managed brokerage accounts. These investors agreed to pay fees to Investment Adviser, which was the investment adviser for these accounts. The majority of these funds were in accounts owned by Individual A and his family.

9. The remaining \$700,000 of investors' funds were invested by the Fund's limited partners and Zaki. The two primary investors in the Fund, Investors A and B, invested in late August 2017 and late October 2017, respectively. Limited partners in the Fund agreed to pay fees as a percentage of their assets under management and profits. Investment Adviser was the investment adviser for the Fund.

10. The Fund's operating agreement required that the Fund hold all of its property in the name of the Fund and not in the name of any partner. Although Zaki opened a brokerage account in the name of the Fund, he invested all of the Fund's assets in a brokerage account in the name of Investment Adviser. Zaki began trading the Fund's securities in the Investment Adviser's brokerage account in June 2017.

### **Misrepresentations to Investors**

11. Zaki prepared multiple versions of the Fund's prospectus dated May 16, 2017, which contained some or all of the following false information: (i) the Fund had trading history dating from December 2016 to April 2017, even though it did not start trading until June 2017; (ii) the Fund had returns in its biotech portfolio in excess of 80% from December 2016 through early March 2017, even though it did not maintain a separate biotech portfolio or conduct any trading at all until June 2017; (iii) the Fund had returns from its SPY algorithm trading ranging from 18% to 114% over a 10 year period, even though the algorithm was not available to the Fund prior to 2017 and was never deployed; (iv) the Fund deployed a foreign exchange trading strategy on April 1, 2017, that had positive returns, even though it did not engage a foreign exchange trader until April 29, 2017, and the trader was never able to deploy his strategy; and (v) Individual A and others were among the Fund's management, even though Zaki was solely responsible for its management and operations. Zaki also claimed that a portfolio manager joined the Fund in December 2016, even though the individual was not affiliated with the Fund until May 2017.

12. In May 2017, Zaki directed a Fund portfolio manager to provide a prospectus that contained each of the misrepresentations referred to in Paragraph 11 to Investors A and B. In

addition, in July 2017, Zaki sent a revised prospectus to Investor A that reiterated each of these misrepresentations.

13. In October 2017, Zaki sent Investor B another revised prospectus that included the misrepresentations about the Fund's leadership, but no longer contained the misrepresentations referred to in Paragraph 11(i)-(iv) above.

14. Zaki also prepared written presentations about the Fund which contained some or all of the following false information: (i) the Fund's portfolio had assets totaling between \$2 million to \$5 million, even though the Fund's investors never invested more than \$700,000 and Investment Adviser's assets under management never exceeded \$1.3 million; (ii) that Individual A and others were among the Fund's leadership, as opposed to just Zaki; (iii) that the Fund had multiple funds, including a separate fund for trading biotechnology securities, even though it did not; and (iv) that the Fund had double-digit returns prior to June 2017, even though it did not begin trading until June 2017.

15. In June 2017, Zaki directed a Fund portfolio manager to send a copy of the presentation to Investor A. In October 2017, Zaki provided revised copies of the presentation to Investor A.

16. Zaki made several additional misrepresentations to Investor A. On October 21, 2017, Zaki sent messages to Investor A, falsely claiming the value of Investor A's Fund investment had grown 30% in two months. To support his statement, Respondent provided a screenshot showing what he purported to be Investor A's account value. At the time that he sent the message, Zaki knew that the screenshot included other investors' funds.

17. The next trading day, the account value dropped significantly. Zaki took repeated steps to conceal investment losses from Investor A. For example, on October 25, 2017, Respondent provided Investor A with a trading log that contained false information about the Fund's trading history, including listing securities that the Fund did not trade and false purchase and sale prices to inflate the Fund's returns.

18. On October 26, 2017, Respondent sent Investor A a chart that purported to disclose the names of the Fund's investors, the date and amount of their initial investment, and their year-to-date account growth. In the chart Respondent repeated his false claims about Investor A's account value and investment returns. He also provided false information about other Fund investors and their investment returns, fabricating one investor completely and inflating the amount invested and the investment returns for the other Fund limited partner included on the chart. Respondent also misrepresented several Investment Adviser clients as Fund investors and overstated the assets under management and account performance for each of these Investment Adviser clients.

19. On November 20, 2017, Respondent sent Investor A screenshots reflecting the value of two brokerage accounts. Respondent represented that the screenshots depicted the total value of Investor A's limited partnership interest, when he knew that the first screenshot reflected

the value of the Fund, which held several investors' assets, and that the second screenshot reflected a brokerage account that did not contain any of Investor A's funds and was not a Fund account.

### **Funds Returned to Investors**

20. Shortly after making their investments, Investors A and B began exploring opening an offshore fund with Zaki, which Investors A and B intended to offer to their friends and family members. The plans to open this fund ended in November 2017, when Zaki refused to allow Investors A and B to verify the Fund's bank account and brokerage account balances directly with the custodians.

21. On November 25, 2017, Investors A and B demanded the return of their investments in the Fund. In early December, the Fund returned Investor A's funds. The amount that the Fund returned to Investor A was less than the amount reflected in the screenshots Zaki had provided to Investor A on November 20, 2017, and less than the amount that he invested in the Fund. This is when Investor A first learned that he had incurred trading losses. Investor B received his principal investment and modest trading gains. Neither Investor A or B were charged any fees.

### **Additional Misrepresentations to Investors**

22. Zaki continued to provide false information to investors after November 2017.

23. For example, in late 2017, Zaki prepared multiple versions of the Fund prospectus dated December 31, 2017, that included some or all of the following false information: (i) that the Fund had trading history dating from December 1, 2016, to May 31, 2017; (ii) that the Fund achieved returns of 40% from December 1, 2016, through June 1, 2017; and (iii) that Individual A and others were among the Fund's leadership, as opposed to just Zaki.

24. Zaki provided a version of the revised prospectus to Individual A that included all of these misrepresentations, which Individual A provided to two potential investors. One of these individuals became an investor in the Fund and the other individual became a client of Investment Adviser. Zaki also provided a version of the prospectus to one potential investor that contained the misrepresentation about the Fund's leadership. The investor became a client of Investment Adviser.

25. Zaki also prepared a written presentation about the Fund which falsely stated that the Fund portfolio was \$3 million; the Fund was comprised of separately managed accounts as opposed to being a pooled investment vehicle; the Fund achieved returns of 40% from December 1, 2016, through June 1, 2017; and that Individual A and others were among the Fund's leadership, as opposed to just Zaki.

26. Individual A provided this presentation to a potential investor who made an investment in the Fund.

## Violations

27. As a result of the conduct described above, Zaki willfully violated Sections 17(a)(1) and (3) of the Securities Act, which prohibit fraudulent conduct in the offer or sale of securities.

28. As a result of the conduct described above, Zaki willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a), (b), and (c) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

29. As a result of the conduct described above, Zaki willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

30. As a result of the conduct described above, Zaki willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit fraudulent conduct by an investment adviser to an investor or prospective investor in a pooled investment vehicle.

## IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter

with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any

disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay civil penalties of \$25,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: \$2,083.33 within 30 days of the date of this Order; \$2,083.33 within 120 days of the date of this Order; \$2,083.33 within 210 days of the date of this Order; \$2,083.33 within 300 days of the date of this Order; \$2,083.33 within 390 days of the date of this Order; \$2,083.33 within 480 days of the date of this Order; \$2,083.33 within 570 days of the date of this Order; \$2,083.33 within 660 days of the date of this Order; \$2,083.33 within 750 days of the date of this Order; \$2,083.33 within 840 days of the date of this Order; \$2,083.33 within 930 days of the date of this Order; and \$2,083.37 plus post-order interest within 1020 days of the date of this Order. Prior to making the final payment set forth herein, Respondent shall contact the Staff of the Commission for the amount due. Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. 3717. 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 Omar Zaki as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Paul A. Montoya, Division of

Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Ste. 1450, Chicago, Illinois 60604.

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, he shall not argue that he is entitled to, nor shall he 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 he 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.

#### V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman  
Acting Secretary