

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5959 / February 10, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20750

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 Invest” 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 finds¹ that:

Summary

This matter involves misleading statements and compliance failures by Wahed Invest, a New York-based registered investment adviser, which operates a Shari'ah-compliant robo-adviser business that is marketed to individuals. In July 2019, Wahed Invest also launched a Shari'ah-compliant exchange-traded fund, the Wahed FTSE USA Shariah ETF (Ticker: HLAL) (the "Wahed ETF"). Prior to the launch of the Wahed ETF, however, from September 2018 to July 2019 Wahed Invest disseminated false and misleading marketing materials about its advisory business and failed to rebalance client accounts as promised to its clients and prospective clients. Wahed Invest further breached its fiduciary duty in connection with its July 2019 investment of client assets into the newly launched Wahed ETF when it failed to provide its clients with prior full and fair disclosure of its conflicts of interest relating to the transactions. Finally, Wahed Invest failed to adopt and implement written policies and procedures related to the aforementioned issues and its Shari'ah advisory business, including policies and procedures related to its representation to clients that it would calculate and report purification amounts and its review of Shari'ah-related marketing materials.

Respondent

1. Wahed Invest LLC is an internet-based registered investment adviser incorporated in Delaware, with its principal place of business in New York, New York. Wahed Invest also has an office in Virginia. Wahed Invest has been registered with the Commission since August 7, 2015, initially relying on Rule 203A-2(e) of the Advisers Act, which exempts from the prohibition on SEC registration investment advisers who provide investment advice to all of their clients exclusively through an interactive website and currently as an investment adviser to an investment company registered under the Investment Company Act of 1940 (the "Investment Company Act"). Wahed Invest is also the adviser to the Wahed ETF, a series of the Listed Funds Trust (the "Trust"), which is listed on NASDAQ. According to its Form ADV, as of March 15, 2021, Wahed Invest reported regulatory assets under management ("AUM") of \$147 million for 15,161 clients.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Background

2. During the relevant period, Wahed Invest operated as a “robo-adviser,” an automated digital investment advisory program, and it continues to provide robo-advisory services in addition to other advisory services today. Wahed Invest markets itself as providing advisory services compliant with Islamic, or Shari’ah, law.² Wahed Invest’s platform offers an automated investment service that endeavors to purchase only Shari’ah compliant securities for its clients based on their self-identified risk tolerance. Wahed Invest also utilizes a Shari’ah compliance advisory firm to periodically assess whether the securities selected for its clients are Shari’ah compliant.

3. For these services during the relevant period, Wahed Invest charged an annual fee of 79 basis points (“bps”) for robo-advisory accounts with less than \$100,000 in assets under management and an annual fee of 49 bps for robo-advisory accounts with more than \$100,000 in assets under management.

4. Wahed Invest advertised its businesses on its interactive website (the “Wahed Invest Website”), which included a blog/journal. Wahed Invest also advertised its businesses on its social media pages and in digital ads, and produced or otherwise appeared at numerous seminars, conferences, and webinar presentations available to the general public throughout the United States.

5. Following the identification of certain issues by Commission staff, Wahed Invest relocated its marketing department to the United States for closer oversight by its United States-based CCO, replaced its prior Shari’ah advisory firm, and took certain additional actions to improve its compliance policies and procedures. Throughout the investigation, Wahed Invest voluntarily met with staff on multiple occasions and provided factual summaries of relevant information.

Wahed Invest Misleadingly Claimed to Offer “Funds”

6. From at least September 2018 through July 2019, Wahed Invest invested its robo-advisory clients in individual equity stocks that were included in the S&P 500 Shariah Index and the S&P High Yield Dividend Aristocrats Shariah Index – Wahed Invest had no affiliation or control with respect to these indices. Wahed Invest did not offer any proprietary funds of its own during this period.

7. During this period, however, Wahed Invest misrepresented to current and prospective clients on the Wahed Invest Website and in social media posts the existence of the “Wahed S&P Shariah Fund” and the “Wahed S&P Dividend Growth Fund,” when no such funds existed. For example, in a September 9, 2018, post on the Wahed Invest Website, titled “Wahed launches its S&P 500 Shariah Fund,” Wahed Invest stated: “[W]e are proud to announce the

² According to Wahed Invest’s marketing materials, Shari’ah-compliant investments preclude securities of companies that “generat[e] returns from the selling or producing of alcohol, pork products, weaponry, gambling, adult entertainment, or Riba (interest),” and that do not meet “certain debt ratios,” among other requirements.

launch of our . . . Wahed S&P Shariah Fund and the Wahed S&P Dividend Growth Fund.” Wahed Invest similarly released an informational video titled, “Introducing the Wahed S&P Halal Index Funds.” In its web announcement explaining the video, Wahed Invest stated that “these new funds will replace three of the existing mutual funds in your portfolio.”

8. Wahed Invest’s repeated representations concerning its own proprietary “funds” misled its clients and prospective clients to believe that their assets were or would be invested in shares of one or more registered investment companies operated pursuant to the Investment Company Act and would benefit from the protections of the Investment Company Act, when instead their assets were invested in individual equities.

Wahed Invest’s Failure to Rebalance Client Portfolios

9. From at least September 2018 through July 2019, Wahed Invest represented to current and prospective clients that it periodically rebalanced its robo-advisory client accounts when it did not. For example, in Wahed Invest’s Form ADV Part 2A dated March 20, 2019, Wahed Invest disclosed that its investment methodology included steps taken to “[m]onitor and periodically rebalance your portfolio.” Moreover, Wahed Invest asserted that a portfolio “must be periodically rebalanced” to ensure portfolio optimization, and that Wahed Invest “continuously monitors and periodically rebalances each client’s portfolio.” In various marketing materials distributed during this time period, Wahed Invest claimed that it charged “Zero Rebalancing Fees” and that Wahed Invest “regularly rebalance[s]” a client’s portfolio for no additional fees. The Wahed Invest Website’s “FAQ” page also included information about when rebalancing occurred, and a Wahed Invest social media page announced that Wahed Invest “periodically rebalance[s] [a client’s] portfolio while they can sit back and relax.”

10. During this time period, however, Wahed Invest had no established rebalancing policy in effect, either verbally or in writing. Accordingly, Wahed Invest did not conduct a quarterly, regular, or any other type rebalancing from at least September 2018 to July 2019, when Wahed Invest moved its clients to the Wahed ETF.

Wahed Invest Failed to Disclose Conflicts of Interest Related to the Seeding of the Wahed ETF

11. In July 2019, Wahed Invest launched and began to manage the Wahed ETF, which seeks to replicate the return, less the fees, of the FTSE USA Shariah Index maintained by FTSE Russell. Wahed Invest provides investment advice to the Wahed ETF and manages the day-to-day operations of the Wahed ETF, subject to the general supervision and oversight of the Trust’s board of trustees.

12. During the relevant period, the assets in each Wahed Invest robo-advisory client account were allocated to equities, gold, Sukuk (Islamic bonds), and cash, based on each client’s identified risk tolerance. In connection with the launch of the Wahed ETF, Wahed Invest exercised its discretion to sell its robo-advisory clients out of their individual equity positions in the days before the Wahed ETF launch and used those clients’ advisory assets, amounting to more than \$13 million, as the initial equity capital for the Wahed ETF. Upon the launch of the Wahed ETF and

going forward, Wahed Invest used these and future investments in the Wahed ETF for the portion of each robo-advisory account allocated to equities.

13. Wahed Invest effected the above-referenced transactions without prior disclosure to its clients of its preference for and affiliation with the Wahed ETF or of any potential conflicts of interest related to the Wahed ETF, including: (1) Wahed Invest's financial interest in the Wahed ETF; (2) Wahed Invest would receive additional fees from certain client accounts after the transition to the Wahed ETF; and (3) investing client funds in the Wahed ETF helped seed the ETF, making the Wahed ETF more attractive to other potential investors. As a result, Wahed Invest's clients were not given the opportunity to provide informed consent to or reject these conflicts of interest.

14. Wahed Invest only disclosed conflicts related to the Wahed ETF in Wahed Invest's Form ADV Part 2A dated July 31, 2019, after the initial transfer of client assets into the Wahed ETF had been completed. Wahed Invest subsequently sent an email to its clients in August 2019 notifying them that a revised ADV Part 2A Brochure was available and that Wahed Invest now served as the investment adviser to the Wahed ETF. In a second email sent in August 2019, Wahed Invest informed its clients that the Wahed ETF would be a part of their portfolios going forward. Wahed Invest did not, however, disclose any conflicts of interest in either August 2019 email communication to its clients.

15. As an investment adviser Wahed Invest was required to give its clients sufficient information so that they could understand and provide informed consent to the conflicts of interest arising from Wahed Invest's use of client assets to capitalize the Wahed ETF when it began trading and thereafter. Wahed Invest's failure to disclose all material facts to its advisory clients, including all material conflicts of interest and how those conflicts could affect the advice Wahed Invest provided its clients, was inconsistent with its duty to clients.

Wahed Invest's Compliance Failures Concerning Its Marketing Materials and Conflicts

16. During the relevant period, Wahed Invest failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder, specifically with respect to: (1) marketing materials concerning Wahed Invest's business practices; and (2) Wahed Invest's selection and inclusion of its proprietary ETF in its robo-advisory investment portfolios and the full and fair disclosure of all material conflicts of interest presented by its use of proprietary products in its client accounts.

Wahed Invest's Compliance Failures Concerning Its Shari'ah Advisory Decision-Making Processes and Compliance Reviews and Oversight

17. While Wahed Invest advertised its adherence to Shari'ah compliant investing, Wahed Invest failed to adopt and implement written policies and procedures reasonably designed to address its Shari'ah advisory decision-making processes and compliance reviews and oversight.

18. On the Wahed Invest Website, in its marketing materials, and in interviews, Wahed Invest extensively discussed the importance of its income purification process.³ For example, the Wahed Invest Website stated that Wahed Invest “go[es] the extra mile to ensure your wealth is pure” by creating a “unique annual purification report” for each robo-advisory client, which were provided to clients.

19. Despite these representations to clients and prospective clients, Wahed Invest had no written policies and procedures addressing how it would assure Shari’ah compliance on an ongoing basis or how it would calculate and report the purification of unpure income. Wahed Invest also failed to adopt policies and procedures to ensure Wahed obtained reasonable support for its Shari’ah-related marketing claims.

Violations

20. As a result of the conduct described above, Wahed Invest willfully⁴ violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

21. As a result of the conduct described above, Wahed Invest willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a) thereunder, which prohibit any registered investment adviser from, directly or indirectly, publishing, circulating, or distributing an advertisement which contains any untrue statement of material fact, or which is otherwise false or misleading. A showing of negligence is also sufficient to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

22. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

³ According to Wahed Invest’s marketing materials, “[p]urification is the cleansing process that requires any investment income that might have been generated from unlawful activities according to Islamic principles be given to charity.”

⁴ “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).

Wahed Invest's Remedial Efforts

23. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Wahed Invest and cooperation afforded the Commission staff.

Undertakings

24. Respondent has undertaken to:
- a. Retain, within thirty (30) days of the issuance of this Order, the services of an Independent Compliance Consultant ("Independent Consultant") not unacceptable to the staff of the Commission and provide a copy of this Order to the Independent Consultant. No later than ten (10) days following the date of the Independent Consultant's engagement, Respondent shall provide the Commission staff with a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include the review and report to be made by the Independent Consultant as set forth in this Order. The Independent Consultant's compensation and expenses shall be borne exclusively by Respondent.
 - b. Require the Independent Consultant to conduct one review, not exceeding six (6) months, of Wahed Invest's compliance policies and procedures that the Independent Consultant deems relevant with respect to: (i) marketing materials concerning Wahed Invest's business practices; (ii) the identification and disclosure of, and the adoption and implementation of compliance policies and procedures regarding conflicts of interest; and (iii) Wahed Invest's policies and procedures related to its Shari'ah advisory decision-making processes and compliance reviews and oversight, including the assurance of Shari'ah compliance on an ongoing basis, the calculation and reporting of purification amounts to clients, and review of Shari'ah-related marketing materials.
 - c. Require the Independent Consultant, at the conclusion of the review, to produce a written report, which shall: describe the review; set forth the conclusions reached and the recommendations made by the Independent Consultant, as well as any proposals made by Respondent; and describe how Respondent will implement the Independent Consultant's recommendations.
 - d. Within sixty (60) days of receipt of the Independent Consultant's report, take all necessary and appropriate steps to adopt and implement all recommendations contained in the Independent Consultant's report.
 - e. Within thirty (30) days of the adoption and implementation of all recommendations in the Independent Consultant's report, certify in writing to the Independent Consultant and the Commission staff that Respondent have

adopted and implemented all recommendations in the report. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agree to provide such evidence.

- f. Cooperate fully with the Independent Consultant and provide the Independent Consultant with access to such files, books, records, and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection.
- g. Require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- h. Agree that Respondent shall not be in, and shall not have, an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission staff.

25. The report by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as is otherwise required by law.

26. Within 30 days of the entry of this Order, Respondent shall provide a copy of the Order to each affected investor (*i.e.*, all clients of Wahed Invest during the period September 1, 2018, through July 31, 2019, (hereinafter, "affected investors")) via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

27. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 agree to provide such evidence. The certification and supporting material shall be submitted to: Andrew Dean, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings. For good cause shown, the Commission staff may extend any of the deadlines set forth with respect to these undertakings.

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 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 Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1 and 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Wahed Invest shall pay a civil money penalty of \$300,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (i) within 10 days of the entry of this Order, Respondent shall pay \$150,000; and (ii) within 90 days of the entry of this Order, Respondent shall pay the balance of \$150,000 and any accrued interest. 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 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 Andrew Dean, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

D. 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.

E. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 24-27, above.

By the Commission.

Vanessa A. Countryman
Secretary