

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
Case No. S-10-185
Order No. S-10-185-10-CD01

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ARKANSAS SECURITIES DE

IN THE MATTER OF
KEITH R. WINGAD, TAATS and
TAATS3

Respondents

CEASE AND DESIST ORDER

On June 14, 2010, the staff of the Arkansas Securities Department, (Staff), filed its Request for Cease and Desist Order, stating that it has information and certain evidence that indicates Keith R. Wingad, TAATS and TAATS3 have violated provisions of the Arkansas Securities Act, (Act), codified at Ark. Code Ann. §§ 23-42-101 – 509. On July 14, 2010, the Staff filed an Amended Request for Cease and Desist Order (Amended Request). The Arkansas Securities Commissioner (Commissioner), has reviewed the Amended Request, and based upon representations made therein, finds that:

Findings of Fact

1. The Amended Request asserts the following representations of fact:
 - a. TAATS is an Arkansas general partnership that was formed on August 5, 2005. The stated purpose of the partnership is to invest member assets so as to achieve an above average return. Profits and losses are to be borne equally by investors in proportion to their investments. TAATS is located at 1155 Dave Creek Parkway, Fairfield Bay, Arkansas.
 - b. TAATS3 is an Arkansas general partnership that was formed on March 15, 2007. The stated purpose of the partnership is to invest member assets to achieve an above average return by investing in various investment strategies as determined by the

partnership's investment manager and partnership membership. Profits and losses are to be borne equally by investors in proportion to their investments. TAATS3 is located at 1155 Dave Creek Parkway, Fairfield Bay, Arkansas.

- c. Keith R. Wingad (Wingad) is the investment manager (IM) of TAATS and the investment partner (IP) of TAATS3. Wingad's last known address is 1155 Dave Creek Parkway, Fairfield Bay, Arkansas 72088. Wingad is not registered in any capacity pursuant to the Act.
- d. TAATS is an acronym for "Things Aren't As They Seem." Wingad formed these partnerships and sold partnership units to others as investments. Unlike normal general partnerships, Wingad does all that there is to do to achieve the partnerships' purpose, which is to achieve above average returns. As the IM of TAATS and the IP of TAATS3, Wingad acts as the executive officer of both partnerships. Investors are given monthly or periodic statements generated by or at the direction of Wingad. Wingad also sends out emails to investors in which he discusses his trading strategies and philosophies.
- e. TAATS was formed as a general partnership. The partnership agreement states that it was formed on August 5, 2005, between Wingad and fifteen others and "shall continue until December 31, 2006, and thereafter from year-to-year unless earlier terminated." The partnership's purpose is "to achieve an above average return (e.g., our goal is 50%)." The partnership agreement further provides that each partner can "make one contribution at the formation of the partnership," but can make withdrawals or additions only at "each annual meeting, starting with the second annual meeting." Investor funds are to be placed into "Capital Accounts," in which

“any increase or decrease in the value of the partnership” will be reflected.

According to the partnership agreement, meetings are to be held on about the tenth day of each month, and an annual meeting will be held each year within thirty days of the end of the calendar year. Partners are not permitted to withdraw from the partnership at will. According to the partnership agreement, because a partner’s withdrawal could “have an untimely and negative impact on the investments made, . . . no voluntary withdrawals will be allowed,” and partners wishing to withdraw can only do so “on December 31, 2006 and as of the last business day of each calendar year thereafter.”

- f. Wingad’s role as the IM of TAATS is spelled out in the partnership agreement.

The agreement recites in the first numbered paragraph that it was a general partnership formed under the laws of the state of Arkansas. “All decisions, except the daily investment decisions” are to be made by the partners owning “a majority of the value” of the funds invested in the partnership. Although the “partnership shall rely on the input of each of its’ members to identify potential investments,” the “implementation of the trades and strategies identified” by the partners, “or in the absence of such input, shall be made solely by the Investment Manager (IM).”

However, “The IM, a partner, has full discretion as to all investment activity with or without partnership approval or prior review.”

- g. As a practical matter, only Wingad makes the decisions concerning investments in the TAATS partnership and only he knows in what he has invested. Although the partnership agreement allows the use of a broker “for the execution of partnership investment transactions,” Wingad has never shared with any investors any account

statements from any broker-dealer showing actual trades of securities or equity positions held by TAATS. The monthly account statements prepared by or at the direction of Wingad only state the investors' balances with changes of value from month to month. Only in a few of the emails to investors has Wingad mentioned specific securities into which he had invested, and those emails did not provide a complete accounting of investment activity.

- h. According to the TAATS partnership agreement, the IM is paid a \$2,500 fee for each investment for reimbursement of expenses and a yearly bonus keyed on the amount of profits. According to the TAATS partnership agreement, the bonus for the IM will go from nothing for annual profits of up to \$25,000 up to 15% of annual profits of \$250,001 or more.
- i. TAATS3 was also set up as a general partnership for the purpose of achieving "an above average return by investing in various investment strategies as determined by the partnership's IP and partnership membership." Monthly meetings are required by the partnership agreement, but the date of those meetings is not set, and an annual meeting is set within thirty days of the end of the calendar year, which is the partnership's fiscal year. Participants are divided between Investment Club (IC) members and Qualified Investors. Investments by members of either class of participants can be no less than \$10,000. IC members' investments can be no more than \$50,000 each, and the total of IC member investments can comprise no more than 33% of the IC's assets." Although the term "Investment Club" is used in several places in the partnership agreement, it is never defined. In one section it refers to the management of "each Investment Club," but in another section

concerned with investment decisions it refers to “the IC.” Qualified Investors are those whose net worth is \$1 million or more or whose annual income is \$200,000. Qualified Investors are permitted to participate in monthly investment meetings, “but are not required to offer this input to the IP before he implements investments on their behalf.” In all other respects, Qualified Investors are treated the same as IC members. All investor funds of both classes of participants are to be placed into “Capital Accounts,” in which “any increase or decrease in the value of the partnership” would be reflected. According to the partnership agreement, it was formed to take effect on March 15, 2007 and will “continue year-to-year at the discretion of the Investment Partner (IP).” New members can only join between January 1 and 15 of each year. The partnership agreement provides that because of the nature of the investments and the “possibility that a withdrawal will have an untimely and negative impact on the investments made,” members cannot withdraw except “on December 31st of any calendar year.”

- j. Wingad’s role as the IP of TAATS3 is set out in the partnership agreement. The continuation of the partnership is “at the discretion of the Investment Partner (IP).” Under the section subtitled Management, the agreement provides that “The IP will be responsible for all matters related to investing the partnerships assets to include, but not be limited to, daily trading activity, selecting broker-dealer relationships and what portion of the partnerships’ to have invested.” Later, under the section of the agreement subtitled Investment Decisions, it is stated that the partnership would rely on member input “to identify potential investments and investment strategies,” but the IP is responsible to implement those investments and strategies. In the next

subsection, subtitled "Investment Club (IC) Members," the agreement states that a majority vote of those present at the monthly meetings would make investment decisions, but that the members "understand that the IP will invest mainly by selling naked call and put options along with buying equities or selling same short." "Due to the nature of options and the unpredictability of the markets," this subsection of the agreement provides for a three member committee of IC members to represent the IC between monthly meetings "to implement recommendations of the IP."

Although the agreement contemplates the IP's seeking approval of this committee to implement investment decisions not discussed at the last monthly meeting, the agreement further provides that "The IP will have discretion to implement investment decisions and strategies as to time, price and quantity between meetings." In a later subsection of the partnership agreement subtitled "Risk Management of Investment Activities," it is recognized that "[d]ue to the nature of the investments and investing strategies utilized by the IP . . . , the overall value of partnership assets will experience considerable volatility." Accordingly, "The partnership vests the IP with the authority and responsibility to manage the volatility, however, if at any point the net asset value" falls to 50% of the initial capital value on January 15 of the current year, the IP is to cease trading and call a special meeting. Should the net asset value rise to 50% of initial capital again, the IP may resume trading, and the special meeting will still be held to discuss the situation.

- k. As a practical matter, only Wingad makes the decisions concerning investments in the TAATS3 partnership and only he knows in what he has invested. As noted

earlier, the IP was empowered to select any broker-dealer arrangements. Wingad has never shared with any investors any account statements from any broker-dealer showing actual trades of securities or equity positions held by TAATS3. The monthly account statements prepared by or at the direction of Wingad only state the investors' balances with changes of value from month to month. Only in a few of the emails to investors has Wingad mentioned specific securities into which he had invested, and those emails did not provide a complete accounting of investment activity.

- l. According to the TAATS3 partnership agreement, the IP is paid a fee of 1% of every investment for expenses and is also given a yearly bonus according to the "Investment Partner's (IP) Bonus Schedule," which was noted as attached to the agreement, but which the Staff does not have. The IP would be paid at all only if the partnership "achieves a minimum profit from all investments and income of ten percent (10%)" over the previous calendar year. Earlier in the agreement this bonus is referred to as a "performance payment," which is described as follows: "Whereas performance bonus' may contribute to attempts by one making investments on behalf of others, it is the IC member's belief that this form of compensation for the IP is appropriate and in the partner's best interests." The logical inference is that as the amount of money made by the partnership goes up, so does the IP's compensation, just as the compensation plan provided in TAATS.
- m. Wingad represents to investors in both TAATS and TAATS3 that he has developed a system that allows him to make money in the stock market, regardless of whether the market is up or down. According to Wingad, he cannot lose. As set out plainly

in the TAATS3 partnership agreement and in many of his emails to investors in both TAATS and TAATS3, what Wingad represented he was doing was investing in put and call options in equity stocks. His assurances of this ability have persuaded others to invest with him. Practically, Wingad in TAATS and TAATS3 acts as the general partner in a limited investment partnership. He, alone, makes the decisions as to what positions to take, how much to invest, and when to take any particular action, i.e., buy or sell. Wingad reports his actions to the investors, who in reality are in the position of limited partners of an investment partnership, in his emails, in the monthly statements and at the meetings held with investors.

Although the partnership agreements in TAATS and TAATS3 provide that these partnerships are general partnerships, the agreements, themselves, give Wingad more control, and as this business went forward, Wingad acted as a general partner, regardless of the provisions of the partnership agreements.

- n. One investor, AR1, invested a large amount of money in TAATS. In approximately one and one-half years, it appeared from Wingad's statements that the investor had made a 73% profit. After Wingad delivered a check for the original amount, plus the purported 73% profit, AR1 reinvested the original investment with return, plus additional funds, into TAATS. Just short of two years later, Wingad gave AR1 the balance in AR1's capital account, which was approximately 17% of the total invested by AR1.
- o. AR2 invested in TAATS3. Wingad lost approximately 75% of AR2's investment in slightly less than two years.

- p. Investors do nothing to achieve their expected return on investments, their expectations of a return are based solely on Wingad's efforts, and their investments are totally passive.
- q. A search of the records of the Arkansas Securities Department finds no record of registration of these securities sold by Respondents, no proof of exemption from the registration requirements of the Act and no notice filing showing that these securities are covered securities under federal law.
- r. A search of the Central Registration Depository (CRD), the electronic registration system set up and run by the Financial Industry Regulatory Agency (FINRA) for the securities industry in North America, shows that Wingad was formerly registered under CRD No. 833986 as an agent of a number of broker-dealers. His most recent registration ended in 1992, and he has not been registered in any capacity since then.

Conclusions of Law

2. Because investors do nothing to achieve their expected return on investments, and their expectations of a return are based solely on Wingad's efforts, their investments in TAATS and TAATS3 are passive, and these investments are investment contracts, which are securities. Ark. Code Ann. §23-42-102(15)(A)(xi).

3. It is unlawful for any person to offer or sell any security in Arkansas unless that security is registered in accordance with the Act, is exempt from registration pursuant to the Act or is a covered security. Ark. Code Ann. §23-42-501. Because the interests in TAATS and TAATS3 sold by the Respondents were not registered, exempt from registration, or covered securities, the offer and sale of the securities was in violation of Ark. Code Ann. §23-42-501.

4. It is unlawful for any person to transact business in this state as an investment adviser or agent of an investment adviser unless he is registered under the Act as such. Wingad advised the investors in TAATS and TAATS3 by means of his monthly statements, his emails and in exercising control over what purchases and sales were made with investor funds. He did all this for a fee and, thus, acted as an investment adviser. Because he was not registered as an investment adviser, Wingad violated Ark. Code Ann. §23-42-301(c).

5. Whenever upon sufficient grounds or evidence satisfactory to the Commissioner it appears to the Commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of the Act or any rule or order issued pursuant to the Act, the Commissioner may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. §23-42-209.

6. Wingad, TAATS, and TAATS3 have engaged in conduct that violates the Act. Based on the nature of the violations committed by Wingad, TAATS, and TAATS3, the opportunity to commit future violations, the degree of harm to investors resulting from violations, and the remedial function to be served by a cease and desist order, this cease and desist order is in the public interest and is appropriate.

7. The Commissioner is empowered by Ark. Code Ann. §23-42-205(a) to make any public or private investigations within or outside of Arkansas which he deems necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or order issued or promulgated under the Act or to aid in the enforcement of the Act. Based upon the representations made by the Staff in its Amended Request, it is appropriate that the Staff continue its investigation into Wingad, TAATS, TAATS3, and any other investment vehicles Wingad might have formed or might form to offer and sell securities, to determine if

other violations of the Act and Rules of the Arkansas Securities Commissioner (Rules) have occurred. This investigation should include but not be limited to a determination of the total amount and type of securities offered and sold by Wingad, TAATS and TAATS3, the methods used and representations made in connection with the offer and sale of securities, and the disposition of any funds invested. Specifically, the Department should determine the nature of the investments made by Wingad with the funds used by Arkansas investors to purchase interests in TAATS, TAATS3, or any other investment vehicle offered by Wingad.

Order

8. Keith R. Wingad, TAATS, and TAATS3 shall immediately cease and desist from further violations of Ark. Code Ann § 23-42-501 and refrain from selling any security in Arkansas unless such security is registered under the Act, exempt from registration, or a covered security.

9. Keith R. Wingad shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-301 and refrain from acting as an investment adviser until such time as Wingad is properly registered or shown to be exempt from registration pursuant to the Act.

10. The Staff of the Arkansas Securities Department shall continue its investigation into Wingad, TAATS, TAATS3, and any other investment vehicles promoted by Wingad in accordance with Paragraph 7 above.

11. A hearing on this Cease and Desist Order shall be held if requested by any of the Respondents in writing within thirty days of the date of the entry of this Cease and Desist Order, or if otherwise ordered by the Commissioner. Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner
201 East Markham, Suite 300
Little Rock, Arkansas 72201

If no hearing is requested and none is ordered by the Commissioner, this Cease and Desist Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. §23-42-209(a)(2)(B).

Dated: July 14, 2010


A. Heath Abshure
Arkansas Securities Commissioner