

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Securities Act of Washington by:

7 Winchester Fund of Funds LP;
8 Winchester Management Company LLC;
9 Ali Taj,

Respondents

Order No.: S-18-2524-19-SC01

STATEMENT OF CHARGES AND NOTICE OF
INTENT TO ENTER ORDER TO CEASE AND
DESIST, DENY FUTURE REGISTRATIONS,
IMPOSE FINES, AND CHARGE COSTS

10 THE STATE OF WASHINGTON TO:

Winchester Fund of Funds LP
Winchester Management Company LLC
Winchester Fund Advisors LLC
Ali Taj

11 **STATEMENT OF CHARGES**

12 Please take notice that the Securities Administrator of the State of Washington has reason to believe
13 that Respondents Winchester Fund of Funds LP, Winchester Management Company LLC, Winchester Fund
14 Advisors LLC, and Ali Taj have each violated the Securities Act of Washington. The Securities Administrator
15 believes those violations justify the entry of an order against the Respondents to cease and desist from such
16 violations and to charge costs pursuant to RCW 21.20.390, and under RCW 21.20.395 to impose fines. The
17 Securities Administrator finds as follows:

18 **TENTATIVE FINDINGS OF FACT**

19 **Respondent**

20 1. Winchester Fund of Funds LP (“Winchester Fund”) is a Delaware limited partnership,
21 originally formed on October 29, 2004. From approximately March 2015 to the present (the “Relevant
22 Period”), Winchester Fund’s principal place of business has been Bellevue, Washington. Winchester Fund,
23

1 despite the “Fund of Funds” name, does not invest in other funds, but is a private fund which invests in early-
2 stage companies.

3 2. Winchester Management Company, LLC (“Winchester Management”) is a Delaware limited
4 liability company, originally formed on October 29, 2004. Winchester Management is the investment adviser
5 to Winchester Fund. From early 2015 to the present, Winchester Management’s principal place of business
6 has been Bellevue, Washington. Winchester Management’s Central Registration Depository (“CRD”) number
7 is 148400.

8 3. Winchester Fund Advisors, LLC (“Winchester Advisors”) is a Delaware limited liability
9 company, originally formed on October 29, 2004. Winchester Advisors is the general partner of Winchester
10 Fund. According to offering materials for Winchester Fund, Winchester Advisors “is responsible for
11 marketing [Winchester Fund] to new investors and for monitoring the performance of [Winchester
12 Management].”

13 4. Ali Taj is a resident of Bellevue, Washington and the control person of Winchester Fund,
14 Winchester Management, and Winchester Advisors (collectively “the Winchester entities”). Taj’s CRD
15 number is 3146053.

16 **Nature of the Conduct**

17 **Overview**

18 5. First, from approximately April 2015 to January 2018, after moving to Washington from
19 California, Taj and Winchester Advisors raised approximately \$1.63 million from nine investors for
20 Winchester Fund. In the course of offering and selling interests in Winchester Fund, Taj and Winchester
21 Advisors misrepresented or failed to disclose material information about the fund, in particular the fact that
22 Winchester Fund was no longer being independently audited to verify Taj’s valuations for the fund’s
23 investments.

1 6. Second, while operating Winchester Management from Washington as the investment adviser
2 to Winchester Fund, Taj and Winchester Management failed to appropriately register with the Securities
3 Division, circumventing a number of Washington laws and regulations designed to protect investors. In
4 particular, Taj and Winchester Management failed to comply with custody requirements designed to ensure
5 that investor funds are used appropriately by requiring third-party verification of fees and expenses. Taj and
6 Winchester Management, during at least part of the time they have operated in Washington, have also included
7 impermissible performance fees in their contract.

8 **Misrepresentations and Omissions in the Sale of Winchester Fund Interests**

9 7. While offering and selling interests in Winchester Fund from 2015 to 2018, Taj and Winchester
10 Advisors falsely represented in offering documents that Winchester Fund had an independent administrator
11 which would calculate the net asset value of the fund, and an auditor which would audit the fund’s annual
12 financial statements. In reality, Winchester Fund’s last audit was for its 2014 activities, and while it re-
13 engaged an auditor in 2019, it did not have any audits from at least 2015 to 2018—most or all of the time it
14 has operated in Washington. Information regarding the level of third-party oversight for a private fund is
15 material to a reasonable investor because having independent checks and balances substantially reduces the
16 likelihood of misappropriation or mismanagement of the fund’s money.

17 8. Since 2011, Taj has been subject to a bar by the Financial Industry Regulatory Authority
18 (“FINRA”) on association with any broker-dealer, due to his refusal to provide FINRA with documents during
19 an investigation. Although Taj and Winchester Fund updated their offering materials in September 2015 to
20 disclose the FINRA action and bar, Taj and Winchester Fund failed to disclose it for at least one offer and
21 sale of Winchester Fund interests in or about April 2015.

1 **Winchester Management Company Investment Adviser Issues**

2 9. While operating from Bellevue, Washington, from approximately March 2015 to the present,
3 Taj and Winchester Management advised Winchester Fund, for compensation, as to the advisability of
4 investing in, purchasing, or selling securities. In doing so, Taj and Winchester Management (a) entered into
5 contracts containing improper performance fees; (b) failed to comply with the asset custody requirements of
6 Washington law; (c) failed to disclose material conflicts of interest to clients in writing; and (d) failed to
7 appropriately register with the Securities Division as an investment adviser or investment adviser
8 representative.

9 10. Taj and Winchester Management, for the nine investors during the Relevant Period, entered
10 into contracts which contained performance fees prohibited by Washington law. Investment advisers may
11 charge fees based on a percentage of assets under management, but may not enter into a contract to charge
12 the client a percentage of the gains received unless the client meets the definition of a “qualified client” as
13 provided in WAC 460-24A-150. For example, if an adviser’s client had a portfolio of \$500,000, the adviser
14 could charge the client a fee of 1% of the assets under management, i.e. \$5,000. However, if the portfolio
15 gained in value by \$50,000 for the year, the adviser could not charge the client a fee based directly on those
16 gains, unless they were a qualified client.¹ As a result, private funds are often open only to qualified clients,
17 so that the fund adviser can charge both performance fees and assets under management fees without the
18 additional administrative issues of determining which fees can be charged to which investors.²

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20 _____
21 ¹ To be a qualified client, an investor generally must have at least one million dollars managed by the adviser, or have a total net
worth of at least \$2.1 million excluding their primary residence. A high-level director or manager of the investment adviser, or a
lower-level employee of the adviser who participates in the investment activities of the fund, can also be a qualified client.

22 ² For instance, in a “2-and-20” structure, the adviser charges a management fee of 2% of assets under management, and a
23 performance fee of 20% of the gains over a certain period, as defined in their contract with investors. The specific numbers vary
depending on the fund.

1 11. In December 2015 and June 2016, Taj withdrew a combined total of \$159,252.71 in
2 performance fees, based on gains from the sale of one of the fund's assets. Although the Respondents asked
3 investors whether they were accredited investors, they made no inquiry whatsoever as to whether the investors
4 were qualified clients. The net worth threshold for qualified clients is currently \$2.1 million not including the
5 investor's primary residence, double the \$1 million threshold for accredited investors.³ Thus, an investor can
6 be an accredited investor without being a qualified client if their net worth falls between \$1 million and \$2.1
7 million. At least one Winchester Fund investor was neither an accredited investor nor a qualified client. It is
8 unknown whether the remaining investors were qualified clients, and Taj testified before the Securities
9 Division that he believed "accredited investor" and "qualified client" had the same definition. Despite Taj and
10 Winchester Management's lack of information about whether their investors were qualified clients, all of
11 Winchester Fund's contracts with investors included performance fees of 15% of Winchester Fund's net
12 profits attributable to that particular investor.

13 **Custody Requirements and Expenses**

14 12. In total, from March 2015 to October 2018, Taj transferred a total of \$843,741.97 from
15 Winchester Fund accounts to Winchester Management or his personal accounts. Taj has represented to the
16 Securities Division that \$225,609.19 of this amount represented management fees, \$159,252.71 represented
17 performance fees on gains from the sale of a fund asset, and \$458,880.07 represented expense reimbursements
18 for Winchester-related business. Taj provided documentation relating to the expenses to the Securities
19 Division for late 2017 to late 2018, which showed significant expenses for travel, meals, and accommodations
20 (largely in Southern California, where Taj formerly resided), but he did not specifically describe how they

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22 ³ The qualified client threshold was increased from \$2 million on August 15, 2016. Winchester Fund did not inquire about qualified
23 client status under either the old or new threshold.

1 were linked to a business purpose for Winchester. It is unclear how Taj determined that these expenditures
2 were necessary for the business of the fund, or whether he (or any other person) performed any evaluation of
3 whether he could reduce expenditures while still achieving the fund's goals.⁴

4 13. In several instances, Taj has made payments from Winchester's accounts for expenses which
5 are specifically excluded in the fund's offering documents. The full extent of these payments is unknown
6 because Taj made many expenditures on his personal credit card and has only provided the Securities Division
7 with several months of records, but at minimum, the payments include tens of thousands of dollars in rent. As
8 described above, Taj paid approximately half the rent for his personal residence—a total of \$42,900 from
9 August 2017 to August 2018—from Winchester's accounts, characterizing the payments as "office space."
10 The private placement memorandum for the fund, however, stated that both Winchester Management and
11 Winchester Advisors would "pay [their] own general operating and overhead type expenses," including rent.
12 Taj failed to disclose to investors that, contrary to the PPM, the Winchester entities were not bearing their
13 own expenses for office space, and further failed to disclose that these rent expenses were, in part, defraying
14 his personal rent payments.

15 14. Had Taj been appropriately registered, Washington's securities regulations would have
16 substantially reduced the risk of these improper payments. Washington's securities regulations include
17 specific requirements for investment advisers who have custody of client funds, with additional duties for
18 advisers who can directly deduct fees from client accounts and advisers who manage pooled investment
19 vehicles. Winchester Fund was a pooled investment vehicle, and Taj and Winchester Management had
20 custody of client funds and the ability to directly deduct fees from client accounts. As a result, Washington
21 law imposed several different duties on Taj and Winchester Management to help assure that they use investor
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23 ⁴ The Pakistan-based accounting firm referenced above indicated that, during a year-end audit, it recommended reversal of
\$110,000 in transfers to Taj previously classified as operating expenses from 2015 to 2018.

1 funds appropriately. These duties include, but are not necessarily limited to: (a) engaging a qualified custodian
2 to send account statements to investors or an independent CPA to examine and verify the fund's assets; (b)
3 providing clients with itemized invoices when deducting fees; and (c) engaging an independent party to
4 authorize fee withdrawals or providing investors with yearly audited financial statements.

5 15. From at least 2015 to 2018, Taj and Winchester Management did not engage either a qualified
6 custodian to send account statements to investors or an independent CPA to verify the fund's assets. Taj and
7 Winchester Management also did not provide clients with itemized invoices when taking fees, and never
8 provided investors with audited financial statements. Finally, although Taj and Winchester Management
9 contracted with a Pakistan-based accounting firm to review fees and operating expenses, Taj testified before
10 the Division that some of his fee withdrawals had not been specifically authorized by the accounting firm.⁵

11 16. Because Taj and Winchester Management were not providing investors with audited financial
12 statements, Washington law also required them to have an independent party review and authorize all
13 withdrawals for expenses from Winchester Fund; the independent party must then forward its approval to the
14 qualified custodian to authorize the withdrawal. Taj and Winchester Management did not provide evidence
15 of such forwarding, despite a specific request from the Securities Division for the information.

16 **Failure to Disclose Material Conflicts of Interest**

17 17. Taj and Winchester Management failed to disclose material conflicts of interest to clients in
18 writing, as required by Washington regulations. For most of the Relevant Period, Winchester Fund was
19 invested in a total of five companies. In addition to Winchester Fund's investment, Taj himself, or his family
20 trust, owned stock in at least two of these companies. Taj also received a total of \$40,000 in director's
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23 ⁵ The Pakistan-based accounting firm is not a licensed CPA, and its contract with Winchester does not require it to act in the best
interest of Winchester's investors, as required by Washington law in order to satisfy the definition of an "independent party."

1 compensation from one of the companies, and an additional \$3,000 from the same company for setting up
2 investor meetings. Taj and Winchester Management failed to disclose in writing either Taj's personal stock
3 ownership in companies also owned by Winchester, or his director's and other compensation.

4 **Jurisdiction and Registration Status**

5 18. During the Securities Division's investigation, Taj asserted that he did not need to follow
6 Washington's securities laws because Washington did not have jurisdiction over Winchester's activities. Taj
7 claimed that the Winchester entities had no place of business in Washington, and that their actual place of
8 business was his attorney's office in New York. However, Taj's practices in operating Winchester Fund, his
9 testimony, and various fund documents contradict his claim that he has no place of business in Washington.
10 Between January 2016 and September 2018, while living in Washington, Taj took over \$225,000 from
11 Winchester in fund management fees.⁶ Taj has also paid just under half of the rent for his personal residence
12 directly from Winchester Fund since at least August 2017; in testimony, Taj referred to these payments as an
13 expense for "office space." Taj also testified that he has conducted business meetings and phone calls while
14 physically present in Washington in connection with Winchester's investments in multiple companies.
15 Winchester Fund has also listed its Bellevue address in K-1 tax forms provided to investors, and the
16 accompanying cover letters, for its activities since 2015. Taj also has not paid New York state income taxes
17 on his Winchester income at any point since at least the beginning of 2015. Finally, Taj testified that he has
18 visited his attorney's New York office only one or two times per year since the beginning of 2015, and could
19 not describe any specific Winchester functions which he carries out while present at that office.

20 19. Winchester Fund is not and has never been registered to sell its securities in the State of
21 Washington, nor has it filed a claim of exemption from registration.

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23 ⁶ Documents provided by Taj indicate that the fund has also accounted for an additional \$240,000 in management fees to be paid to Taj.

1 5. Winchester Management Company LLC violated RCW 21.20.030 by entering into investment
2 advisory contracts which failed to provide in writing that it would not be compensated on the basis of a share
3 of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

4 6. Ali Taj and Winchester Management Company LLC violated RCW 21.20.020 by engaging in
5 an act, practice, or course of business which operated as a fraud on its investors by failing to comply with the
6 requirements of:

7 a. WAC 460-24A-105, by failing to engage either a qualified custodian to send account
8 statements to clients or an independent CPA to verify client funds and securities;

9 b. WAC 460-24A-106, by failing to provide itemized invoices to clients or provide notice to the
10 qualified custodian of any fee deductions;

11 c. WAC 460-24A-107, by failing either to have an independent party authorize all withdrawals
12 from Winchester Fund of Funds LP's pooled account, or to provide audited financial
13 statements for the fund to all investors.

14 d. WAC 460-24A-220(11), by failing to disclose material conflicts of interest to clients in writing.

15 7. Ali Taj, Winchester Fund Advisors LLC, and Winchester Fund of Funds LP have each violated
16 RCW 21.20.010, because, as set forth in the Findings of Fact, they made untrue statements of material fact or
17 omitted to state material facts necessary to make the statements made, in light of the circumstances in which
18 they were made, not misleading.

19 **NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST**

20 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities
21 Administrator intends to order, pursuant to RCW 21.20.390(1), that:

- 22 • Respondents Ali Taj and Winchester Management Company LLC, and their agents and employees,
23 each shall cease and desist from violations of RCW 21.20.020 and RCW 21.20.040.

- Respondents Ali Taj and Winchester Fund of Funds LP, and their agents and employees, each shall cease and desist from violations of RCW 21.20.010 and RCW 21.20.140.
- Respondent Winchester Management Company LLC, and its agents and employees, shall cease and desist from violations of RCW 21.20.030.

NOTICE OF INTENT TO DENY FUTURE REGISTRATIONS

Pursuant to RCW 21.20.110, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that any future applications for registration as an investment adviser, investment adviser representative, broker-dealer, or securities salesperson, by Respondents Ali Taj, Winchester Fund of Funds LP, Winchester Management Company LLC, or any other entity under Ali Taj’s actual or effective control, shall be denied.

NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Ali Taj shall be liable for and shall pay a fine of \$60,000.

NOTICE OF INTENT TO CHARGE COSTS

Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Ali Taj shall be liable for and shall pay the costs, fees, and other expenses incurred in the administrative investigation and hearing of this matter, in an amount not less than \$5,000.

AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. The Respondents, Ali Taj, Winchester Management Company LLC, and Winchester Fund of Funds LP, may each make a written request for a hearing as set forth in the NOTICE

1 OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If a
2 Respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt
3 the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease
4 and desist as to that Respondent, to impose any fines sought against that respondent, and to charge any costs
5 sought against that Respondent.

6 Signed and Entered this 22nd day of April, 2020.

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11 _____
William M. Beatty
Securities Administrator

12 Approved by:

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15 _____
Suzanne Sarason
Chief of Enforcement

16 Presented by:

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19 _____
Adam N. Yeaton
Financial Legal Examiner

20 Reviewed by:

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23 _____
Jack McClellan
Financial Legal Examiner Supervisor