

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 98354 / September 12, 2023**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6415 / September 12, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21652**

**In the Matter of**

**True Capital Management,  
LLC,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT  
OF 1934 AND SECTION 203(e) 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 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940 against True Capital Management, LLC (“Respondent” or “True Capital”).

**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 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) 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 finds that:

#### Summary

1. These proceedings arise from True Capital acting as an unregistered broker. True Capital, an investment adviser that marketed itself to professional athletes, entertainers, and entrepreneurs, provided brokerage services in connection with the sale of equity interests to its advisory clients, including both individuals and funds. For at least nine years, True Capital, despite not being registered with the Commission as a broker-dealer, was regularly paid transaction-based compensation by the sellers, and by its fund clients, for acting as a broker in these securities transactions. As a result, True Capital violated Section 15(a)(1) of the Exchange Act.

#### Respondent

2. **True Capital** is a Delaware limited liability company with its principal place of business in San Francisco, California. It was registered with the Commission as an investment adviser from January 2007 until May 2023, when it terminated its registration after selling certain of its assets, and assigning its advisory contracts, to another investment adviser. True Capital's individual clients were primarily high-net-worth individuals. True Capital was also the investment adviser to a number of private funds, including funds whose objective was investing in real estate (the "fund clients"). The investors in these fund clients were True Capital's pre-existing individual clients. True Capital has never been registered with the Commission as a broker-dealer.

#### Background

3. True Capital created investment plans for its individual clients, and advised them on traditional investments, such as equities and fixed income, as well as on alternative investments in private equity, venture capital, and real estate. The alternative investments were often offered to the individual clients through funds that True Capital created and advised. True Capital also provided a suite of wealth management services to some individual clients, including bookkeeping, paying bills, and tax and estate planning.

4. Since at least 2012, True Capital regularly received transaction-based compensation for arranging sales to its clients of equity interests in companies whose sole purpose was owning a particular real estate property. The sellers, who were unaffiliated private equity firms, ("Sellers") paid True Capital for investments made in their sole-purpose companies by True Capital's individual and fund clients. True Capital also received transaction-based compensation in other similar transactions from its fund clients. Between September 2017 and June 2021, True Capital received transaction-based compensation in at least 27 transactions.

5. At the outset of its relationship with each of the Sellers, True Capital negotiated the percentage fee the Seller would pay to True Capital. One Seller paid 1.5%, and the other paid 3%,

of the amount of capital that True Capital's clients invested in their transactions. In other transactions where there was no compensation from the Sellers, True Capital charged its fund clients 2% of the amount of capital invested, which was primarily intended to compensate True Capital for the time its employees spent on due diligence on the transactions. True Capital did not charge transaction-based fees to its individual clients, who made the same investments. Regardless of whether True Capital received transaction-based compensation, True Capital in all instances charged its fund and individual clients advisory fees.

6. For each of the Sellers' real estate investments, True Capital negotiated with the Sellers regarding the amount of money that True Capital's clients would invest, and whether its individual clients would be able to invest directly or only through its fund clients.

7. True Capital served as the intermediary between the Sellers and the clients. For example, after learning that a Seller was offering a real estate investment, True Capital determined, among other things, for which of its existing individual clients the offering was suitable. True Capital then solicited its individual clients who it thought the investment was suitable for to invest in the transaction, and for those who agreed to invest, made arrangements for the investment. After True Capital conducted due diligence on the real estate investment, True Capital also placed its fund clients in the investment. For all of True Capital's fund clients and some of its individual clients, True Capital sent the investors' money to the Sellers.

8. True Capital also advised its individual and fund clients on the merits of the investments; for example, it advised its individual clients why it believed the investments were suitable for them, and gave information to its individual clients about projected investment returns.

9. On December 6, 2021, following an examination by the Commission staff, Respondent voluntarily paid back some of the transaction-based compensation to its fund clients, ceased accepting transaction-based compensation from sellers and charging it to fund clients, and offered to take additional remedial steps.

### **Violation**

10. As a result of the conduct described above, Respondent willfully violated Section 15(a)(1) of the Exchange Act, which prohibits any broker or dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security unless the broker or dealer is registered in accordance with Section 15(b) of the Exchange Act. "Broker" is defined in Section 3(a)(4) of the Exchange Act as "any person engaged in the business of effecting transactions in securities for the account of others."

### **Disgorgement**

11. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid

pursuant to paragraph IV.C in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

### **Respondent's Remedial Efforts**

12. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

#### 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 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent is censured.

C. Respondent shall pay disgorgement of \$594,897, prejudgment interest of \$76,896 and a civil monetary penalty of \$150,000, totaling \$821,793 as follows:

(i) Within ten (10) days of the entry of this Order, Respondent shall pay \$413,990 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). If timely payment of disgorgement or prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil monetary penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- a. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- b. 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
- c. 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 True Capital Management, LLC as 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 Jeremy Pendrey, Assistant Director, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery St. Ste 2800, San Francisco, CA 94104.

(ii) Within ten (10) days of the entry of this Order, Respondent shall deposit \$407,803 (the “Distribution Fund”) into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Distribution Fund shall bear the name and the taxpayer identification number of the Distribution Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. §3717.

(iii) Respondents shall be responsible for administering the Distribution Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondents and shall not be paid out of the Distribution Fund.

(iv) Respondent shall distribute from the Distribution Fund to the underlying investors in the two harmed fund clients an amount representing the net amount of transaction-based fees it charged to its fund clients between September 2017 and June 2021 and, from the remaining funds, reasonable interest paid at the Federal short term rate plus three percentage points, compounded quarterly, from the dates of the last investments of the two harmed fund clients until the expected payoff date, pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The money in the Distribution Fund will be distributed to the underlying investors in the fund clients. The Calculation shall be subject to a *de minimis* threshold. No portion of the Distribution Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(v) Respondent shall, within ninety (90) days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and

supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(vi) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum, (1) the name of each affected investor; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid. The Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

(vii) Respondent shall disburse all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph (xi) of this Subsection C. Respondent shall notify the Commission staff of the dates and the amount paid in the initial distribution.

(viii) If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any other factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final accounting provided for in Paragraph (x) of this Subsection C is submitted to the Commission staff.

(ix) A Distribution Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with the Distribution Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.

(x) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. The Respondent shall then submit to the Commission staff a final accounting and certification of the

disposition of the Distribution Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Distribution Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies True Capital Management, LLC as the Respondent, and the file number of these proceedings, to Jeremy Pendrey, Assistant Director, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery St. Ste 2800, San Francisco, CA 94104. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xi) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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.

By the Commission.

Vanessa A. Countryman  
Secretary