

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11059 / May 2, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6012 / May 2, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20838

In the Matter of

**TRUE LINK FINANCIAL
ADVISORS, LLC and KAI H.
STINCHCOMBE,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against True Link Financial Advisors, LLC (“True Link”) and Kai Stinchcombe (“Stinchcombe”) (together, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

Summary

1. From 2017 to the present, True Link, a registered investment adviser, has acted as the investment adviser to two pooled investment trusts (the "Pooled Trusts") managed in Orlando, Florida. These trusts currently hold approximately \$46 million in assets under management for over 380 beneficiaries, most of whom are disabled recipients of Medicaid or Social Security Supplemental Security Income ("SSI") benefits. Section 1917 of the Social Security Act, 42 U.S.C. § 1396p ("Section 1396p"), allows such recipients to remain eligible for benefits despite receiving substantial assets, such as from personal injury lawsuits, as long as those assets are irrevocably placed in a trust established and managed by a non-profit association.

2. From 2015 to the present, a for-profit corporation with its principal place of business in Orlando, Florida, ("FPC") and its principals, have profited from managing pooled investment trusts under the guise of their sham non-profit corporation located in Orlando, Florida ("NPC"). FPC promised beneficiaries they would remain eligible for Medicaid and SSI benefits by joining a valid Section 1396p trust managed by NPC as trustee. To the contrary, those benefits of the pooled trust investors have been put at risk because, in reality, FPC operated and managed the trusts for its own profit.

3. True Link, which is not affiliated with FPC or NPC, has acted as investment and asset manager for the Pooled Trusts amid warning signs of the improper management of the trusts by FPC for its profit. For example, Stinchcombe, True Link's Chief Executive Officer, signed a purported Marketing Agreement between True Link and FPC by which True Link has routed all trustee fees directly to FPC. True Link subsequently has received all fee disbursement instructions from – and sent all trustee fees directly to – FPC. True Link also has handled the investments at the direction of FPC (or even sometimes beneficiaries) with no involvement of NPC.

4. As a result of the conduct above, True Link and Stinchcombe caused violations of Section 17(a)(3) of the Securities Act and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

Respondents

5. True Link is a Delaware limited liability company with its principal place of business in San Francisco, California. True Link has been registered with the Commission as an investment adviser since 2018. True Link is a wholly-owned subsidiary of True Link Financial, Inc. In its Form ADV filed on February 8, 2022, True Link reported regulatory assets under

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

management of approximately \$726 million, most of which are associated with discretionary client accounts. True Link provides investment adviser services for at least 18 special needs pooled trust organizations.

6. Stinchcombe, 39, of Healdsburg, California, is the Chief Executive Officer of True Link Financial, Inc. and True Link, and a registered Investment Adviser Representative for True Link.

Background

7. Section 1396p permits Medicaid and SSI recipients to retain their benefits despite having received assets (*e.g.*, through personal injury settlements) that would otherwise disqualify them from those programs – as long as, among other things, the assets are placed in an irrevocable pooled trust “established and managed by a non-profit association.” Section 1396p expressly permits trust assets to be pooled for investment purposes, but the assets of each beneficiary must be held in a separate sub-account to hold and distribute funds for the sole benefit of that beneficiary.

8. The Social Security Administration maintains a Program Operations Manual System (“POMS”) with policy statements, guidelines for Section 1396p pooled trust operations, and interpretations of relevant laws. With respect to management of special needs pooled trusts, the POMS recognizes that non-profit trustees may use the services of other entities. However, “[i]f a non-profit association employs the services of a for-profit entity, the non-profit association must maintain ultimate managerial control over the trust . . . the use of a for-profit entity must always be subordinate to the non-profit managers.” The POMS identifies various forms of “authority that must vest in the non-profit association,” including determining the amount of the trust corpus to invest and making the day-to-day decisions regarding the health and well-being of the pooled trust beneficiaries.

FPC Manages the Pooled Trusts for Profit

9. FPC is a for-profit company. FPC offers a host of structured financial products, including the Pooled Trusts, primarily to the clients of personal injury lawyers. FPC markets the Pooled Trusts to these lawyers, whose clients include minors, severely injured persons and others in need of guardians, and to the general public through websites, blogs and seminars, among other means.

10. Since 2015, NPC has been the named trustee of the Pooled Trusts. NPC has no employees, revenues, operating assets, or email addresses. Rather, FPC’s principals have FPC employees perform work in connection with the Pooled Trusts or perform it themselves without any written agreements with NPC or invoices to NPC regarding any such work. For all practical purposes, FPC is the trustee of and maintains managerial control over the Pooled Trusts.

11. Beneficiaries of the Pooled Trusts are charged both a one-time flat \$500-\$550 joinder fee and an annual trustee fee calculated as a percentage of assets under management. Beneficiaries were told NPC was the trustee of the Pooled Trusts. However, FPC receives 100% of the trustee fees as part of its for-profit control of the Pooled Trusts.

12. NPC, as the named trustee, has legal authority over the handling and investment of the Pooled Trusts' assets, yet FPC is the actual manager of the Pooled Trusts exercising that authority.

13. Interests in the Pooled Trusts have been publicly offered to individuals in exchange for the transfer of monetary settlements or other assets. From 2017 to the present, the vast majority of the assets of the Pooled Trusts have been invested in exchange-traded funds ("ETFs") with the expectation of certain financial returns, which were dependent on the efforts of FPC and other third parties through investments.

14. The Pooled Trusts' assets are pooled for investment purposes, but are accounted for in sub-accounts in which profits and losses from investments are apportioned according to the investment portfolio in which the interests of each beneficiary are invested.

15. FPC is an investment adviser to the Pooled Trusts' beneficiaries because it acts as the de facto trustee, induces beneficiaries to join the Pooled Trusts based in part on promised investment performance, has had discussions with individual beneficiaries or their legal representatives about investment options, and has the authority to invest each beneficiary's funds. In return, FPC receives an annual fee based on the amount of assets under management.

True Link Contributes to FPC's Management of the Pooled Trusts

16. From 2017 to the present, True Link, which is not affiliated with FPC or NPC, has provided investment and asset management services to the Pooled Trusts, including the creation and maintenance of investment model ETF portfolios and custodial accounts at broker-dealers and banks. True Link holds itself out as an expert in the special needs trust area. Nonetheless, True Link has provided services to the Pooled Trusts when it should have known they are not managed by a non-profit trustee.

17. True Link agreed to act as investment and asset manager for an annual fee of 0.75% of assets under management, and understood the trustee fee to be an additional 0.75%. To that end, Stinchcombe extensively negotiated and signed an Administrative Services Agreement pursuant to which True Link deducted 1.5% from the Pooled Trusts' beneficiary subaccounts. True Link has sent half of it (0.75%) to FPC as the trustee fee. Stinchcombe also negotiated a separate Marketing Agreement which called for True Link to send this 0.75% to FPC, allegedly for marketing True Link's services. However, True Link has never paid any marketing fees to FPC. Rather, True Link has only sent the 0.75% trustee fee to FPC and has never sent any fees to NPC, which was the trustee in name.

18. After signing these agreements, Stinchcombe directed True Link employees to communicate and engage in True Link business with FPC employees. FPC and NPC had common officers and directors; however, True Link never saw an agreement or other written evidence that FPC or its employees had authority to act with respect to the Pooled Trusts. True Link adopted a procedure for FPC employees to approve the trustee fee each quarter, and True Link processed the checks from the Pooled Trusts' accounts in the amount of the trustee fee approved by FPC employees and payable directly to FPC.

19. True Link also accepted investment portfolio selections from lower-level FPC employees, whose instructions sometimes indicated the beneficiaries were making the investment choice with no involvement of the named trustee (or even FPC).

Violations

20. As a result of the conduct described above, True Link and Stinchcombe caused violations by FPC, NPC, and two of FPC's principals of Section 17(a)(3) of the Securities Act, which prohibits any person in the offer or sale of securities from engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser. Proof of scienter is not required to establish a violation of Section 17(a)(3) of the Securities Act. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

21. As a result of the conduct described above, True Link and Stinchcombe caused violations by FPC and two of FPC's principals of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents True Link and Stinchcombe's Offer.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 8A of the Securities Act and Section 203(k) of the Advisers Act, Respondents True Link and Stinchcombe cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.
- B. True Link shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$200,000.00 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

- C. Stinchcombe shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000.00 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Link and Stinchcombe 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 Glenn Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131.

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, Respondents agree that in any Related Investor Action, Respondents shall not argue that Respondents are entitled to, nor shall Respondents 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, Respondents agree that they 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(s) 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 Stinchcombe, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Stinchcombe 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 Stinchcombe 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
Secretary