

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

**SECURITIES ACT OF 1933**  
**Release No. 11023 / January 18, 2022**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 93993 / January 18, 2022**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5947 / January 18, 2022**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 34471 / January 18, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20706**

**In the Matter of**  
  
**Daniel J. Swinyar**  
  
**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, SECTIONS 15(b) AND 21C OF  
THE SECURITIES EXCHANGE ACT OF  
1934, SECTIONS 203(f) AND 203(k) OF  
THE INVESTMENT ADVISERS ACT OF  
1940, AND SECTION 9(b) OF THE  
INVESTMENT COMPANY 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Daniel J. Swinyar (“Swinyar” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V below, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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<sup>1</sup> that:

### Summary

These proceedings arise from an offering fraud scheme perpetrated by George S. Blankenbaker (“Blankenbaker”) and his three companies: StarGrower Commercial Bridge Loan Fund 1, LLC, StarGrower Asset Management LLC (“StarGrower Asset”), and Blankenbaker Investments Fund 17 LLC (collectively, “StarGrower”), in which they raised approximately \$11.4 million from at least 109 investors through unregistered and fraudulent securities offerings.

Between October 2017 and October 2018, Swinyar acted as an unregistered broker on behalf of StarGrower Asset in connection with an unregistered offering of securities for which there was no applicable exemption (“StarGrower Asset Offering”). Swinyar raised approximately \$3,549,140 for StarGrower Asset from the offer and sale of securities in unregistered transactions to 16 investors who were clients of his state-registered investment advisory firm or customers of Swinyar’s retirement planning business. Swinyar received approximately \$105,103 in transaction-based compensation from StarGrower Asset from those sales. Swinyar was not registered as a broker-dealer with the Commission or associated with a registered broker-dealer during this time period. Swinyar also failed to disclose to his advisory clients that he received transaction-based compensation from StarGrower Asset in the offer or sale of securities and the material conflict of interest that this compensation created.

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<sup>1</sup> 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.

## **Respondent**

1. Swinyar, age 34, resides in Mansfield, Texas. He wholly owns and controls Green Hill Capital Management LLC (“Green Hill”), an investment adviser registered with Texas. Swinyar also provides retirement planning services to customers who are not advisory clients. Swinyar holds a Series 65 license.

## **Other Relevant Individuals and Entities**

2. Blankenbaker, of Westfield, Indiana, solely owned, controlled, and was the sole employee of StarGrower Asset. On March 31, 2021, the Commission filed a partially settled civil injunctive action against Blankenbaker and StarGrower in connection with the conduct that is the subject of this action. *SEC v. George S. Blankenbaker, et al.*, 21-cv-00790 (S.D. Ind. 2021). Blankenbaker consented to entry of an order permanently enjoining him from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, imposing an officer-and-director bar, and ordering him to pay disgorgement, prejudgment interest, and a civil penalty in amounts to be determined by the Court at a later date. On March 31, 2021, Blankenbaker was charged with two counts of wire fraud and one count of money laundering in a related criminal action. *USA v. George S. Blankenbaker*, 21-cr-102 (S.D. Ind. 2021). On July 28, 2021, Blankenbaker was sentenced to 60 months incarceration and ordered to pay restitution of \$1,180,503.92.

3. StarGrower Asset is an Indiana limited liability company, with a principal place of business in Indianapolis, Indiana. StarGrower Asset issued the securities described herein. It has never been registered with the Commission in any capacity. In *SEC v. Blankenbaker, et al.*, StarGrower Asset consented to the entry of a judgment permanently enjoining it from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and ordering the payment of disgorgement of \$4,924,275 with prejudgment interest of \$272,366 on a joint-and-several basis with the two other StarGrower entities.

## **Facts**

### **Background**

4. Between August 2016 and May 2019, Blankenbaker and his companies raised approximately \$11.4 million from at least 109 investors through fraudulent and unregistered securities offerings, including the StarGrower Asset Offering. Between May 2017 and May 2019, Blankenbaker and StarGrower Asset raised approximately \$8 million from at least 88 investors in nine states. Many of the investors in the StarGrower Asset Offering were elderly, and the majority were unaccredited. The StarGrower Asset Offering was not registered with the Commission.

5. In approximately October 2017, Swinyar began to actively solicit investors as a sales agent for the StarGrower Asset Offering. Between October 2017 and October 2018, Swinyar raised approximately \$3,549,140 for StarGrower Asset from the offer and sale of securities in

unregistered transactions to 16 investors. Eleven investors were customers of his retirement planning service business and five were clients of Green Hill's investment advisory business.

6. Swinyar had an agreement with Blankenkaker to offer and sell securities in the StarGrower Asset Offering in exchange for a transaction-based commission of up to 2.4% of the principal amount invested by his investors. Swinyar received approximately \$105,103 in transaction-based compensation through the StarGrower Asset Offering. During that time, Swinyar was not registered as a broker-dealer or associated with a registered broker-dealer in accordance with Section 15(b) of the Exchange Act.

### **Blankenkaker Fraudulently Offered and Sold Unregistered Securities in StarGrower**

7. Blankenkaker and his companies falsely represented that investor funds would be used to make short-term loans to food exporters in Asia, that the investors would receive interest payments from the profits generated from the loans, and that investments were secured by shipping containers holding the food products.

8. Contrary to his representations, Blankenkaker commingled the approximately \$11.4 million of StarGrower investors' money. Unbeknownst to investors, Blankenkaker misused at least \$8.1 million of their money, including by directing at least \$4 million to hemp companies. He also misappropriated at least \$1.7 million in investor funds for his own personal benefit. Blankenkaker also used at least \$965,000 in new investor funds to make Ponzi-style payments to prior investors.

### **Swinyar Offered and Sold StarGrower Asset Securities as an Unregistered Broker**

9. Between October 2017 and October 2018, Blankenkaker provided Swinyar with the offering and marketing documents that he had created for the StarGrower Asset Offering, described the offering to Swinyar, instructed Swinyar on what to tell investors about the investment, and answered Swinyar's questions.

10. Using the information and offering and marketing documents Blankenkaker had provided him, Swinyar repeated Blankenkaker's representations to prospective investors about how investor funds would be used and the safety of their investments. Swinyar presented the StarGrower Asset Offering to his customers and clients in person, telephonically, and by email. When investors had questions Swinyar could not answer, he sought answers from Blankenkaker on behalf of the investors. Swinyar advised his customers and clients to invest in the StarGrower Asset Offering.

11. When customers or clients decided to invest, Swinyar assisted them in completing the necessary investment documents and in mailing them to StarGrower Asset. Swinyar also sent one investor's funds to StarGrower Asset. After Blankenkaker signed the investment documents, he returned them to Swinyar, who provided them to his customers or clients, or maintained them in his own files. Swinyar later advised the investors whether to re-invest in StarGrower Asset or to request the return of their principal.

12. Between October 2017 and October 2018, Swinyar solicited his customers and clients to invest in the StarGrower Asset Offering. He provided them with a Memorandum of Indebtedness (“MOI”) created by Blankenbaker. The MOI provided for monthly interest payments for a nine-month period and paid a 7% annualized return. Swinyar sold \$3,549,140 of StarGrower Asset securities to 16 investors, at least four of whom were unaccredited.

### **Swinyar Failed to Disclose a Material Conflict of Interest to Advisory Clients**

13. At the time he was advising his Green Hill advisory clients to invest in the StarGrower Asset Offering, Swinyar had an agreement with Blankenbaker to offer and sell StarGrower Asset securities in exchange for transaction-based compensation. Although Swinyar did not charge clients a management fee on assets they invested in the StarGrower Asset Offering, he did receive transaction-based compensation for those investments.

14. During the relevant period, Green Hill’s Form ADV Part 2A represented that it and Swinyar did not receive any compensation for the sales of securities other than asset under management fees. The Form ADV was misleading because it failed to disclose that Swinyar would, and did, receive transaction-based compensation from StarGrower Asset for successfully recommending his clients invest in the StarGrower Asset Offering. Swinyar was obligated to disclose this fact and the material conflict of interest it created to his Green Hill advisory clients, but failed to do so.

### **Violations**

15. As a result of his conduct, Swinyar willfully<sup>2</sup> violated:

a. Section 5(a) of the Securities Act, which states that “[u]nless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such a security through the use or medium of any prospectus or otherwise, or (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale”;

b. Section 5(c) of the Securities Act, which states that “[i]t shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or

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<sup>2</sup> “Willfully,” for purposes of imposing relief under Sections 15(b) of the Exchange Act and 203(e) or (f) 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).”

communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security”;

c. Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit fraudulent conduct in the offer or sale of securities. A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-702 (1980);

d. Section 15(a)(1) of the Exchange Act, which prohibits any broker or dealer, to effect any transaction in, or to induce or attempt 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 or is a natural person who is associated with a registered broker or dealer; and

e. Section 206(2) of the Advisers Act, which prohibits fraudulent conduct by an investment adviser with respect to any client or prospective client. Scienter is not required to establish a violation of Section 206(2), but 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, 194-195 (1963)).

#### **Disgorgement and Prejudgment Interest**

16. The disgorgement and prejudgment interest referenced in paragraph IV.D is consistent with equitable principles and does not exceed Respondent’s net profits from his violations and will be distributed to harmed investors, if feasible. The Commission will hold funds paid pursuant to paragraph IV.D in an account at the United States Treasury pending a decision whether the Commission in its discretion will seek to distribute funds. If a distribution is determined feasible and the Commission makes a 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.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Swinyar’s Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Swinyar cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), 17(a)(2), and 17(a)(3) of the Securities Act, Section 15(a)(1) of the Exchange Act, and Section 206(2) of the Advisers Act.

B. Respondent be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$105,103 and prejudgment interest of \$13,099 to the Securities and Exchange Commission. 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 transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$60,000 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) 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 Daniel J. Swinyar 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 Steven L. Klawans, Assistant Regional Director, Chicago Regional Office, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd. Suite 1450, Chicago, IL 60604.

F. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

**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 Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 Respondent 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