

FINAL ORDER - THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER OF THE COMMISSION ON FEBRUARY 19, 2013 PURSUANT TO RULE 21F-10(f) OF THE EXCHANGE ACT

Notice of Covered Action: 2011-136

SEC v. Brian J. Smart and Smart Assets, LLC, 2:09-cv-00224-DAK (D. Utah 2009)

PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF

In response to the above-referenced Notice of Covered Action, the Securities and Exchange Commission (the “Commission”) received a whistleblower award claim. Pursuant to Section 21F of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 21F-10 promulgated thereunder, the Claims Review Staff has evaluated the claim in accordance with the criteria set forth in Rules 21F-1 through 21F-17. The Claims Review Staff has recommended that the Commission make no award to Claimant with respect to the Notice of Covered Action. The basis for this determination is as follows:

The Claimant did not submit a Form WB-APP for the Notice of Covered Action to the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action as required by Rule 21F-10(b) of the Exchange Act in order to be considered for an award.

By: Claims Review Staff

Dated: December 19, 2012