

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

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 28841 / August 3, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13568**

**In the Matter of**

**RYAN DOUGLAS SMITH,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER PURSUANT TO SECTIONS 9(b)  
AND 9(f) OF THE INVESTMENT  
COMPANY ACT OF 1940**

**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 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Ryan Douglas Smith (“Smith” 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, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that

#### Respondent

1. Smith, 34 years old, is a resident of Kansas City, Missouri. Smith served as president of Bellwether Capital Fund I, Inc. from December 31, 2004 through May 11, 2007. From February 1999 through September 2004, Smith was associated as a registered representative with multiple registered broker-dealers and held Series 7 and 55 licenses.

#### Other Relevant Entity

2. Bellwether Capital Fund I, Inc. ("Bellwether")<sup>2</sup> is a Maryland corporation located in Irvine, California. Bellwether was originally incorporated as Landmark Microcap Fund, Inc., changed its name to Rhino Microcap Fund, Inc. in November 2002, changed its name to Tiger Fund, Inc. in January 2003, and then changed its name to Bellwether in March 2005. Bellwether operated as a closed-end investment company from at least February 2003 through September 2005. It has never been registered with the Commission as an investment company.

#### Facts

3. On November 11, 2002, Bellwether filed a Form N-6F with the Commission, indicating its intent to operate as a business development company ("BDC") and be subject to Sections 55 through 65 of the Investment Company Act ("BDC provisions"). Bellwether, however, neither had a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") nor had it filed a registration statement pursuant to Section 12 of the Exchange Act for a class of its equity securities. As such, Bellwether could not comply with the requirements of Section 54(a) of the Investment Company Act and was ineligible to elect BDC status. In addition, Bellwether never made the appropriate filing on Form N-54A to elect BDC status. As a result of the above, Bellwether never became a BDC.

4. In addition, Bellwether never registered as an investment company under Section 8 of the Investment Company Act. Nevertheless, Bellwether held itself out to the public, and operated, as an investment company. In offering documents filed with the Commission, Bellwether described itself as a "recently organized, externally managed, non-diversified closed end management investment company."

5. In August 2004, Bellwether filed a Form 1-E with the Commission as part of its efforts to raise capital in a public offering of its securities. Form 1-E is required by Regulation E, which provides that a closed-end investment company that has elected, or intends to elect, to be

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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.

<sup>2</sup> On July 31, 2009, the Commission filed a civil action against Bellwether related to the conduct described herein, entitled SEC v. Omar Ali Rizvi, Bellwether Venture Capital Fund I, Inc., and Strategy Partners, LLC, Civil Action No. 4:09-CV-371 (N.D. Tx.).

regulated as a BDC may issue, in a one-year period, up to \$5 million of its securities in an offering exempt from registration under the Securities Act of 1933.

6. From August 2004 through September 2005, Bellwether raised approximately \$1.9 million through the offer and sale of its securities to at least 173 investors located throughout the United States. Bellwether used approximately \$673,000 of those funds to purchase controlling interests in two publicly traded companies.

7. In December 2004, during the time Bellwether was conducting an offering of its securities, Smith was hired to serve as Bellwether's president. Prior to that time, Smith had never operated, managed, or worked for a BDC. However, Smith did not manage the day-to-day operations of Bellwether, but instead spent the majority of his time managing the daily operations of one of Bellwether's portfolio companies.

8. Smith reviewed Bellwether's website, assisted in preparing and signed a new Form 1-E in or around August 2005, which included an offering circular with a "Risk Factors" section that stated Bellwether had not yet elected to be regulated as a BDC. In addition, Commission staff sent Smith a letter in September 2005 stating that Bellwether had not elected BDC status, a fact that indicated that Bellwether was likely operating as an unregistered investment company. Yet, in May 2007, when Smith resigned as president, Bellwether had not elected BDC status or registered with the Commission as an investment company.

9. During the period when Smith was Bellwether's president and knew that Bellwether was offering its securities to the public, Bellwether was an investment company within the meaning of Section 3(a)(1) of the Investment Company Act. Section 3(a)(1) defines "investment company" to mean, among other things, any issuer that "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities" or "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets . . . on an unconsolidated basis." Bellwether did not meet any statutory exclusion from the definition of an "investment company," and was not exempted from complying with any provisions of that act or the rules thereunder.

### **Violations**

10. As a result of the conduct described above, Bellwether violated Section 7(a) of the Investment Company Act, which prohibits an investment company not registered with the Commission from engaging in any business in interstate commerce, including offering, selling, purchasing, or redeeming interests in the investment company.

11. As a result of the conduct described above, Smith willfully aided and abetted and caused Bellwether's violation of Section 7(a) of the Investment Company 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 Smith's Offer.

Accordingly, pursuant Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Smith cease and desist from causing any violations and any future violations of Section 7(a) of the Investment Company Act.

B. Respondent Smith be, and hereby is 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, with the right to reapply for association after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. Any reapplication for association by Respondent Smith 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent Smith, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy  
Secretary