

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3397 / April 18, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14851**

**In the Matter of**

**BRIAN J. SMART,**

**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 203(f) OF THE**  
**INVESTMENT ADVISERS ACT OF 1940**  
**AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Brian J. Smart (“Smart” or “Respondent”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. RESPONDENT**

1. Smart, 35 years old, is a resident of Lehi, Utah.
2. From 2003 until 2009, Smart owned and operated an unregistered investment adviser, Smart Assets, LLC (“Smart Assets”).

**B. ENTRY OF THE INJUNCTION**

3. On June 8, 2011, a final judgment was entered against Smart and Smart Assets, permanently enjoining defendants from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5, and ordering defendants to pay \$2,059,077 in disgorgement, prejudgment interest of \$597,426, and a civil penalty of \$2,059,077, in the civil action titled SEC v. Brian J.

Smart, et al., Civil Action Number 2:09-CV-00224, in the United States District Court for the District of Utah.

4. The Court found that Smart and Smart Assets, inter alia, misappropriated over \$2.05 million from investors through a “systematic program of deception and fraud.” The Court found that Smart falsely represented that he would place investor funds in safe, principal guaranteed investments. Instead, the Court found, Smart used investor money to pay personal expenses, to invest in risky real estate ventures and hard money loans, and to pay purported “dividends” to other investors.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary