

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3442 / August 7, 2012**

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

**In the Matter of**

**BRIAN J. SMART,**

**Respondent.**

**ORDER MAKING FINDINGS,  
AND IMPOSING REMEDIAL  
SANCTIONS PURSUANT TO SECTION  
203(f) OF THE INVESTMENT ADVISERS  
ACT OF 1940**

**I.**

On April 18, 2012, the Securities and Exchange Commission (“Commission”) instituted public administrative proceedings pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Brian J. Smart (“Smart” or “Respondent”).

**II.**

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, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. Brian J. Smart, 35 years old, is a resident of Lehi, Utah. From at least 2003 to 2009, Smart was the founder and sole member of Smart Assets, LLC, which was an unregistered investment adviser.

2. On June 8, 2011, in the civil action titled Securities and Exchange Commission v. Brian J. Smart, et al., Civil Action Number 2:09-CV-00224, in the United States District Court for the District of Utah, the Court entered a final judgment against Smart and his company Smart Assets, LLC. The Court found, *inter alia*, that during the period 2003 through 2008, Smart and Smart Assets, LLC misappropriated over \$2.05 million from investors. The Court's final judgment against Smart and Smart Assets permanently enjoins them from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and orders them to pay \$2,059,077 in disgorgement, \$597,426 in prejudgment interest, and a \$2,059,077 civil penalty.

### IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Smart 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.

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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, 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