

present, defendants raised at least \$1.7 million from at least five investors, some of whom are senior citizens, and defrauded them by misrepresenting the nature and risk of the investments offered and diverting their investments to fund Smart's own personal use and business operations, which appear to consist solely of a network of failed investments in real estate and a now defunct privately held company.

2. The fraud progressed through three distinct stages as defendants became increasingly desperate to obtain additional new investor money to pay off existing investors and the fraud began to collapse. Throughout the three stages, Smart pooled the investor money in one or more bank accounts that he controlled or in the name of Smart Assets LLC.

3. In the first stage of the fraud, Smart solicited investors, most of them elderly, from acquaintances and clients he had at the AIM Association ("AIM"), a financial planning and insurance firm in Anaheim, California. Smart was affiliated with AIM at one time, but was terminated in 2004. Despite being terminated, he continued to represent orally and in e-mail correspondence that he was still associated with the company. He told one investor in August 2007 that he was helping to set up an AIM office in Utah with the assistance of his supervisors when, in fact, he had not been associated with the company for over three years.

4. Smart represented to these investors that, through the various entities with which he was affiliated, he was providing a conservative, sound investment opportunity for them to receive regular, monthly income.

5. Smart went to great lengths to convince the investors that he was a sophisticated investment professional operating a legitimate investment planning service when in fact he was misappropriating funds for his own personal use and investing the remaining funds entrusted to him in illiquid and ill-fated real estate ventures.

6. In the second stage of the fraud, having invested the money in a failed real estate transaction instead of in conservative investments as promised, defendants began soliciting additional investors and providing these new investors with promissory notes and certificates to memorialize the monies invested.

7. Defendants provided at least one investor with a “Membership Certificate” for Smart Assets, LLC purportedly representing 200,000 units of membership in SALLC. The certificate, which resembles a stock certificate, was signed by Smart, and appears to memorialize an investment of \$200,000.

8. Smart provided the investors with promissory notes issued by SALLC and in his capacity as an individual. These promissory notes were for promised annual rates of return of 8.5% to 18% per annum.

9. In the third stage of the fraud, Smart represented to a group of investors that he was using the money invested with him to lend out at higher rates through a “hard lending” program. Smart issued promissory notes to these investors and told them that he would in turn lend out the money invested at higher interest rates. Some of the money he obtained was lent to a start-up company with which Smart was affiliated and the remainder was used to pay off earlier investors.

10. Throughout the relevant time period and through all three stages of the fraud, Smart failed to disclose to investors that he paid old investors with the money from new investors, the majority of the money that was invested was placed into risky real estate and other business ventures, and that he used their funds for his own personal use.

11. Smart misappropriated some investor funds for his personal use including purchasing a home and paying for his living expenses.

12. By engaging in the conduct described in this Complaint, defendants, directly and indirectly, are now and have been engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business that violate Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) and Rule 10b-5 thereunder (17 C.F.R. § 240.10b-5) and Section 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a)).

13. Accordingly, the Commission seeks an order permanently restraining and enjoining defendants and granting other equitable relief.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of the Securities Act of 1933 (15 U.S.C. §§ 77t(d)(1) and 77v(a)) and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78u(d), 78u(e), and 78aa). Defendants, directly or indirectly, have made use of the means in instrumentalities of interstate commerce or of the mails in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

15. Venue in this Court is proper pursuant to Section 22(a) of the Securities Act of 1933 (15 U.S.C. § 77v(a)) and Section 27 of the Exchange Act of 1934 (15 U.S.C. § 78aa), because certain of the conduct alleged in this Complaint took place within the District of Utah.

DEFENDANTS

16. Brian J. Smart: Defendant Smart is a resident of Lehi, Utah. He is the president of Smart Assets LLC and appears to be the only person exercising control over it.

17. Smart Assets, LLC: Defendant Smart Assets, LLC is a private, limited liability company registered in the State of California.

FACTS

18. From at least year 2003 to present, defendants engaged in a *Ponzi*-like scheme.
19. Through this scheme, defendants raised at least \$1.7 million from at least five investors, some of whom are senior citizens.

Stage One of the Scheme

20. Smart represented to investors that he was providing an investment opportunity for them to receive regular, monthly income from conservative investments.

21. One investor was told that some of the money would be invested in mutual funds and the rest of the money would be invested in an entity, Golden Key Investments, Inc. (“Golden Key”), and would generate income of \$3,000 a month. Smart indicated that Golden Key “offers decent returns on amounts \$500,000 and under, while offering principle [sic] guaranteed product.” Smart stated that the funds invested with Golden Key could later be turned into a “stretch” IRA, passing the gains tax free to its beneficiaries.

22. Smart materially misled the investors by telling them, among other things, that he was investing the majority of the funds in low risk or fixed rate funds with guaranteed protection of the principal amounts invested. Smart told investors that these investments would generate regular returns on a monthly basis. He indicated to one investor that the investment was not “flashy, but very solid and safe.” Smart characterized these regular returns as “dividends.”

23. Defendants provided the investors with account statements reflecting their amounts invested to create the appearance that Smart was a financial advisor and that he was investing their money in mutual funds or similar securities. Defendants printed and disseminated promotional materials that contained false and materially misleading statements such as

“[c]lients can realize above average returns without risking loss of principal” and that the investment is “[d]esigned for clients primarily interested in a fixed rate strategy.”

Stage Two of the Scheme

24. In stage two of the scheme, Smart continued to portray himself as a financial adviser and that he was seeking to invest money on behalf of persons seeking conservative investments and regular monthly income. In addition to providing account statements reflecting the amount invested and false and misleading promotional materials to these investors, defendants provided promissory notes and membership certificates to memorialize the amount of investment.

25. Through SALLC and in Smart’s individual capacity, defendants offered and sold Promissory Notes to at least one investor promising a rate of approximately 8.5% interest per annum. Smart memorialized the Promissory Notes in writing stating the amount invested, the interest rate, and a fixed term. In one instance, an investor received a promissory note reflecting an investment of \$200,000 and a “Membership Certificate” for Smart Assets, LLC listing 200,000 units.

26. During this stage, Smart again falsely and misleadingly stated that the money invested with him and SALLC would be kept in safe investments and that investors could have ready access to principal when necessary.

Stage Three of the Scheme

27. During stage three of the scheme Smart appeared to change tack from a financial planner and characterized himself and SALLC as seeking investors for his “hard money” lending business.

28. Smart told one investor that he was seeking money to lend out for real estate transactions. In fact, Smart invested some of the money in a private company, Vision Natural Resources, LLC (“Vision”) an entity with which Smart was affiliated, either as an employee or a consultant, and used the remainder to pay off old investors. The investor received a promissory note memorializing the investment with defendants.

Characteristics of All Three Stages of the Scheme

29. Throughout the entire duration of defendants’ fraudulent scheme:
- a. Smart pooled the investor funds into bank accounts in his name, the name of Smart Assets LLC or other accounts that he controlled;
 - b. Smart communicated the manner in which he would invest the money in written form and orally to the investors;
 - c. Defendants paid old investors with the money from new investors and used investors’ funds for Smart’s personal use;
 - d. Smart failed to disclose to investors that defendants paid old investors with the money from new investors and that Smart used the investors money for his own personal use; and
 - e. Smart, individually and through SALLC, has acted and is acting with *scienter*.
30. The defendants’ knowing fraudulent conduct is ongoing and there is a high likelihood that it will continue if they are not enjoined.

FIRST CLAIM FOR RELIEF

**(Violations of Section 10(b) of the Securities Exchange Act of 1934
and Rule 10b-5 Thereunder)**

31. Plaintiff repeats and re-alleges paragraphs 1 thorough 30.

32. Defendants, with *scienter*, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

33. By reason of the forgoing, defendants violated Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) and Rule 10b-5 thereunder (17 C.F.R. § 240.10b-5), and unless restrained and enjoined will continue to do so.

SECOND CLAIM FOR RELIEF

(Violations of Section 17(a) of the Securities Act of 1933)

34. Plaintiff repeats and re-alleges paragraphs 1 thorough 33.

35. Defendants directly or indirectly, knowingly, recklessly, or negligently, in the offer or sale of securities, by use of means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would have operated as fraud or deceit upon purchasers of securities.

36. By reason of the forgoing, defendants violated Section 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a)) and unless restrained and enjoined will continue to do so.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Enter judgment in favor of the Commission finding that the defendants committed the violations alleged in this Complaint.

II.

Issue, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, Orders temporarily restraining and preliminarily and permanently enjoining the defendants and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the Order by personal service or otherwise, and each of them, from engaging in the transactions, acts, practices and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) and Rule 10b-5 thereunder (17 C.F.R. § 240.10b-5), and Section 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a)).

III.

Issue, in a form consistent with Rule 65(e) of the Federal Rules of Civil Procedure, an Order freezing defendants' assets, an Order expediting discovery, an Order preventing the destruction or alteration of documents, and an Order for accountings of investor funds and other assets.

IV.

Enter an Order enjoining defendants from accepting, taking control of, or depositing in any financial institution additional funds from actual or potential investors.

V.

Enter an Order directing defendants to disgorge all ill-gotten gains from the illegal conduct alleged in this Complaint, together with prejudgment interest thereon.

VI.

Enter an Order directing the defendants to pay civil fines and/or penalties pursuant to Section 20(d) of the Securities Act of 1933 (15 U.S.C. § 77t(d)), and Section 21(d)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)).

VII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

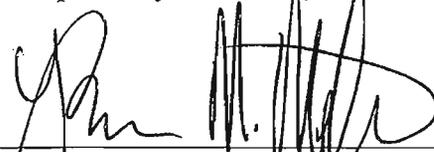
VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

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Respectfully submitted,



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