

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
January 4, 2008

ADMINISTRATIVE PROCEEDING  
File No. 3-12923

In the Matter of

K.W. Brown & Company,  
21<sup>st</sup> Century Advisors, Inc.,  
K.W. Brown Investments, Inc.,  
Kenneth Brown, Wendy Brown,  
and Michael Cimilluca, Jr.

Respondents.

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE PROCEEDINGS  
PURSUANT TO SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTIONS 203(e) AND 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 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against K.W. Brown & Company (“Brown & Company”), 21<sup>st</sup> Century Advisors, Inc. (“21<sup>st</sup> Century”), K.W. Brown Investments, Inc. (“Brown Investments”), Kenneth Brown (“Ken Brown”), Wendy Brown (“Wendy Brown”) and Michael Cimilluca, Jr. (“Cimilluca”) (collectively, the “Respondents”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. RESPONDENTS**

1. **Brown & Company**, a Florida corporation headquartered in Delray Beach, Florida, is registered with the Commission as an investment adviser and broker-dealer. Brown & Company is owned by the Brown Family Trust, a trust owned and controlled by Ken and Wendy Brown.

2. **21<sup>st</sup> Century**, a Florida corporation, headquartered in Delray Beach, Florida, has been registered with the Commission as an investment adviser since 1985. Ken and Wendy Brown control 21st Century and own 100% of its stock.

3. **Brown Investments**, a Florida corporation with its principal place of business in Delray Beach, Florida, has been registered with the Commission as a broker-dealer since 1985. Ken and Wendy Brown own and control Brown Investments. From September 2002 through at least June 2006, Brown Investments operated as the broker-dealer executing trades for Brown & Company and 21<sup>st</sup> Century's advisory clients.

4. **Ken Brown**, age 59, resides in Manalapan, Florida. Ken Brown is a self-proclaimed "Nationally Recognized Financial Radio Talk Show Host" who hosts a talk show every weekday morning and evening on a Palm Beach, Florida radio station. He is a founding partner and the current chief financial officer, operating partner, managing partner, director, and chairman of the board of Brown & Company. Ken Brown is also a founding partner and the president of 21<sup>st</sup> Century and the CEO and a registered representative of Brown Investments. During the relevant time period, Ken Brown was the principal investment adviser for 21<sup>st</sup> Century and Brown & Company, as well as the registered representative for the proprietary trading account at Brown Investments.

5. **Wendy Brown**, age 55, resides in Manalapan, Florida. She is Ken Brown's wife, a founding partner and current secretary and treasurer of 21<sup>st</sup> Century, Brown & Company and Brown Investments. Wendy Brown is also a registered representative of Brown Investments.

6. **Cimilluca**, age 37, resides in Parkland, Florida. He has been a registered representative of Brown Investments since September 2002, when Ken Brown hired him to day trade the Brown Investments' proprietary account (the "Brown Trading Account" or "180 Account"). During the relevant time period, Cimilluca was the sole trader for the Brown Trading Account and the only person responsible for completing the sheets that informed Brown Investments' clearing firm how to allocate trades between the Brown Trading Account and the advisory client accounts.

## **B. ENTRY OF THE INJUNCTION**

7. On April 27, 2005, the Commission filed a civil injunctive action against the Respondents in the United States District Court for the Southern District of Florida, alleging the Respondents violated the anti-fraud and books and records provisions of the federal securities laws. See Securities and Exchange Commission v. K.W. Brown, et al., Case No. 0:05-CV-80367.

8. More specifically, the Commission's complaint alleged that beginning in September 2002, the Respondents profited, at the expense of clients who, through Ken Brown, held advisory accounts with 21<sup>st</sup> Century and Brown & Company, by allocating favorable trades to the proprietary account Cimilluca traded. Additionally, the complaint alleged the Respondents failed to implement policies and procedures to prevent this improper trading activity even though

the Commission's examination staff identified lax internal controls and numerous other violations, including breach of fiduciary duty and undisclosed conflicts of interest, as well as multiple books and records deficiencies.

9. On December 19, 2007, following a nine-day bench trial, the District Court entered a permanent injunction and final judgment against all Respondents, permanently enjoining them from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act of 1933 and Sections 206(1), 206(2), 207, 204 and Rules 204-1(a)(2) and 204-2(a)(8) of the Advisers Act. The Court also held the Respondents jointly and severally liable for disgorgement of \$4,796,147 plus prejudgment interest. Additionally, the Court imposed a third-tier civil penalty of \$4.5 million, collectively, on Brown & Company, 21<sup>st</sup> Century and Brown Investments; \$250,000 on Ken Brown; \$250,000 on Cimilluca; and \$100,000 on Wendy Brown.

10. The 71-page final judgment contained 136 paragraphs of factual findings and 26 pages of legal conclusions showing the Respondents violated the federal securities laws that served as the basis of the permanent injunction. The Court specifically found that from September 2002 through at least June 2006 the Respondents, knowingly or recklessly, engaged in a fraud upon the advisory clients of Brown & Company and 21<sup>st</sup> Century by using the discretionary authority Ken Brown exercised over the client accounts to allocate profitable trades to the proprietary trading account maintained by the advisers' affiliated broker-dealer, Brown Investments, while allocating unprofitable trades to the advisers' clients. This "cherry-picking" scheme netted the Respondents \$4.5 million dollars in ill-gotten gains while passing more than \$9 million of losses onto the unsuspecting advisory clients who had placed their trust and confidence in Ken Brown, Brown & Company and 21<sup>st</sup> Century.

### **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 are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against the Respondents pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 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 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 the Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them 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 the Respondents 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.

For the Commission, by its Secretary, pursuant to delegated authority.

Nancy M. Morris  
Secretary

### Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Public Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Christopher E. Martin, Esq.  
Brian K. Barry, Esq.  
Miami Regional Office  
Securities and Exchange Commission  
801 Brickell Avenue, Suite 1800  
Miami, FL 33131

K.W. Brown & Company  
c/o James B. Koch, Esq.  
Gardiner, Koch & Weisberg  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604

21st Century Advisors, Inc.  
c/o James B. Koch, Esq.  
Gardiner, Koch & Weisberg  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604

K.W. Brown Investments, Inc.  
c/o James B. Koch, Esq.  
Gardiner, Koch & Weisberg  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604

Mr. Kenneth Brown  
c/o James B. Koch, Esq.  
Gardiner, Koch & Weisberg  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604

Mrs. Wendy Brown  
c/o James B. Koch, Esq.  
Gardiner, Koch & Weisberg  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604

Mr. Michael Cimilluca  
c/o Thomas F. Burke, Esq.  
The Law Office of Thomas F. Burke, PC  
53 W. Jackson Blvd., Suite 1441  
Chicago, IL 60604

James B. Koch, Esq.  
Gardiner, Koch & Weisberg  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604  
(Counsel for K.W. Brown & Company, 21<sup>st</sup> Century Advisors, Inc., K.W. Brown Investments,  
Inc., Kenneth Brown, and Wendy Brown)

Thomas F. Burke, Esq.  
The Law Office of Thomas F. Burke, PC  
53 W. Jackson Blvd., Suite 1441  
Chicago, IL 60604  
(Counsel for Michael Cimilluca)