

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2810 / November 25, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13301

In the Matter of

THOMAS J. SMITH,

Respondent.

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

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 Thomas J. 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, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section

203(f) of the Investment Advisers Act of 1940, 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. From February 2001 until December 2004, Smith acted as an investment adviser and managed approximately \$6.15 million in client assets. During this period, Smith’s clients were certain of his relatives. Smith, 51 years old, is a resident of Franklin, Tennessee.

2. On October 20, 2008, a final judgment was entered by consent against Smith, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 10b-5, and Sections 206(1), (2) and (3) of the Advisers Act, in the civil action entitled *Securities and Exchange Commission v. Thomas J. Smith* Civil Action Number 1:08-cv-01640, in the United States District Court for the District of Columbia. The final judgment also orders Smith to pay a penalty of \$25,000 but does not impose a greater penalty based on Smith’s sworn statements in his statement of financial condition and other materials provided to the Commission.

3. The Commission’s complaint alleged that, during the period from March 2002 through December 2004, Smith breached the trust of his investment advisory clients, all of whom were Smith’s relatives, and fraudulently misappropriated approximately \$676,223 from those clients. Smith orchestrated a fraudulent trading scheme involving at least 554 matched orders in at least 43 different stocks among various brokerage accounts that he controlled and managed as an investment adviser. To accomplish this, Smith used thinly traded stocks, and executed his matched orders in the less liquid after-hours market. Smith placed near-simultaneous matching limit orders to buy and sell the same security between his and his clients’ accounts in order to misappropriate his clients’ funds. Through these matched orders, Smith engaged in prohibited principal trades with his clients. Smith neither provided written disclosure to his clients before the completion of these transactions nor obtained his clients’ consent to these transactions.

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, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Smith be, and hereby is barred from association with any investment adviser.

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.

Florence E. Harmon
Acting Secretary