INITIAL DECISION RELEASE NO. 320
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12267

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	INITIAL DECISION
BRADLEY T. SMITH	:	September 29, 2006

APPEARANCES: Steven J. Levine, Andrea R. Wood, and Erik J. Lillya for the Division of Enforcement, Securities and Exchange Commission

Karl E. May of Cowden, Humphrey, Nagorney & Lovett Co., L.P.A., for Respondent Bradley T. Smith

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Bradley T. Smith (Smith) from association with any broker or dealer or investment adviser. Smith was previously enjoined from violating the antifraud provisions of the securities laws based on his misrepresentations in connection with private securities offerings for two businesses that he founded and controlled.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) initiated this proceeding by an Order Instituting Proceedings on April 19, 2006, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act) and Section 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act).

The undersigned held a three-day hearing on July 10-12, 2006, in Columbus, Ohio. Twenty-one witnesses, including Smith, testified, and numerous exhibits were admitted into evidence.[1]

[1] Citations to the transcript will be noted as "Tr. __." The Division of Enforcement's exhibits will be noted as "Ex. P-__," and Respondent's, as "Resp. Ex. __."

The findings and conclusions in this Initial Decision are based on the record. Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the following posthearing pleadings were considered: (1) the Division of Enforcement's (Division) August 18, 2006, Proposed Findings of Fact and Conclusions of Law and Post-Hearing Brief; (2) Respondent's August 18, 2006, Post-Hearing Memorandum; (3) the Division's September 12, 2006, Response; and (4) Respondent's September 12, 2006, Reply. All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Smith was permanently enjoined in December 2005 against violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, based on misconduct that occurred during 2002 to 2004. The OIP alleges that Smith was the founder, Chairman, President, Treasurer, and sole director of a state-licensed investment adviser and owner, registered representative, and President of an NASD-registered broker-dealer during the relevant period. The OIP alleges that Smith violated the antifraud provisions by misrepresenting the use of proceeds from private securities offerings for two businesses that he founded and controlled – Continental Midwest Financial, Inc. (Continental), and Scioto National, Inc. (Scioto) – in that he used most of the money raised for his own personal expenses, contrary to the representations in private offering memoranda. The Division requests broker-dealer and investment adviser bars.

Respondent argues that, although he made mistakes, bars are unnecessary in the public interest and an unnecessarily harsh punishment. Specifically, he argues: his conduct was not egregious, the violations were isolated in nature, he acknowledges the wrongful nature of his conduct, there was no scienter, there are sincere assurances against future violations, and the limited role planned for his future in providing bank stock research to the state-registered investment adviser Bancshareholders of America (BSA) does not present opportunities for future violations. Additionally, he questions the degree of harm caused to investors and argues that a bar would not have any additional deterrent effect beyond the consequences that have already resulted from his conduct and would harm investors and clients of BSA and even Continental and Scioto.

II. FINDINGS OF FACT

A. The Injunction

Smith was (and is) permanently enjoined from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[2] SEC v. Smith, No. C2-CV-04-739 (S.D. Ohio Dec. 6, 2005); Exs. P-127, P-130. Smith is appealing the judgment. The court's Opinion and Order concluded that Smith violated Sections 17(a)(1), (2), and (3) of the

[2] He was also ordered to pay a civil penalty of $120,000 and, jointly and severally with others, disgorgement of $2,095,517.93 plus prejudgment interest.

Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the Continental and Scioto offerings, and is liable as a control person under Section 20(a) of the Exchange Act for Continental's and Scioto's violations of Exchange Act Section 10(b) and Rule 10b-5. SEC v. Smith, No. C2-CV-04-739 (S.D. Ohio Sept. 27, 2005); Ex. P-127.

B. Underlying Facts

The following facts were found in the court's Opinion and Order: Smith, a resident of Columbus, Ohio, specializes in small community bank stocks and holds himself out to the public as an expert in them. His business primarily consists of establishing and operating private companies whose stated purpose is to serve as vehicles for investors to buy small community bank stocks. Smith founded Continental in 2002, and Scioto in 2004. During the time at issue Smith was Chairman, President, Treasurer, and sole director of, and therefore controlled, each. Each was in the business of investing in financial services companies and small banks located primarily in the Midwest. Smith had other businesses in addition to Continental and Scioto. He founded BSA, an Ohio-registered investment adviser, in 1998, and was its President and part owner. BSA had two clients: Community Bank Stock Equity Trust and Bankstock Investment Partners Series # 1, L.P. Smith founded Bancshares Investors Brokerage, Inc. (BSIB), in 2001 and was its Chairman, President, Treasurer, and sole director. Additionally, Smith was President and CEO of BancShares First, Inc. (BancShares First), a broker-dealer registered with the NASD.

Continental held a private offering of its common stock between July 2002 and September 2003. In connection with the offering, Smith prepared a private offering memorandum (POM), dated July 22, 2002, which was distributed to investors. The POM stated that the purpose of the offering was to raise a maximum of $2.27 million to invest in "financial services companies and minority interests in small banks located primarily in the Midwest" and that 80% of the offering's proceeds would be invested in small bank stocks. Smith and his employees also provided potential investors with Continental's Business Plan before they invested. Similar to Continental's POM, its Business Plan stated that Continental planned to use 81% of the $2,272,500 it planned to raise from the offering to "build a community bank stock portfolio" and to use $350,000 for "working capital." Smith testified that "working capital" referred to general administrative and operating expenses for Continental only. Smith and his employees conducted the sale, which raised $1,272,665 from forty-nine investors. Smith, as an individual and as Continental's Chairman, President, Treasurer, and sole director, admitted that he used the proceeds in a manner contrary to the POM's representations. Only 9% of the proceeds was used to purchase small bank stocks. Smith used some of the proceeds to pay for his personal expenses. He spent $133,532.38 of the proceeds to pay BSA's bills. Also, he used the proceeds to pay himself and his employees and to pay taxes and rent for his offices. Smith and his employees did not tell Continental investors that their money would be used to pay the expenses of Smith's other businesses or to cover Smith's personal expenses. As of June 30, 2004, the Continental investments were worth approximately $10,000. Eventually, all of the investments were liquidated. After the Commission filed the injunctive action, Smith resigned his position as an officer and director of Continental.

Starting in January 2004, Smith conducted a private offering of the common stock of Scioto. Similar to the Continental offering, Smith provided each potential investor with a POM, dated January 9, 2004, and other marketing materials that Smith drafted. The Scioto POM stated that the purpose of the offering is to raise money to invest in "financial services companies and minority interests in small banks located in the Midwest." It stated that a maximum of $1,008,000 would be raised and that approximately 70% of the proceeds would be used to "purchase . . . stock in small banks." The offering raised $822,852 from twenty-nine investors. About $170,000, or 21%, of the proceeds was transferred into an investment account. However, Smith spent $503,208 of Scioto investor funds on expenses of his other businesses and $86,092 for his personal use, including $41,499 in salary. After the Commission filed the injunctive action, Smith resigned his position as an officer and director of Scioto. Smith has yet to pay back Continental and Scioto for his personal expenses that he charged to the companies' American Express Card.

The court ruled that the Continental and Scioto POMs and other marketing materials had been provided to investors "in connection with" the purchase or sale of the Continental and Scioto securities within the meaning of the federal securities laws despite Smith's argument that he had provided the POMs to investors along with their stock certificates after they had actually invested. Noting that the POMs specifically provided that "no person has been authorized to give any information or to make any representations not contained in this Offering Memorandum, the Subscription Agreement or any other documents accompanying this Offering Memorandum and, if given or made, such information or representation must not be relied upon," the court rejected Smith's claim that any misrepresentations had been corrected through oral statements to investors. The court ruled that Smith's degree of scienter was recklessness.

C. Additional Relevant Facts

Smith has worked in the securities industry for thirty-five years and would like to continue that career. Tr. 229-30. Smith confirmed that, at the time of the Continental and Scioto offerings, he was associated with the broker-dealer BancShares First and with the state-registered investment adviser BSA. Tr. 230-31, 235-36. Smith held Series 7, 24, and 63 securities licenses; he no longer has those licenses due to the statutory disqualification resulting from SEC v. Smith. Tr. 230. He was licensed in Ohio as a securities salesperson and investment adviser representative; he withdrew those licenses in November 2004. Tr. 71.

1. Smith's Additional Private Offerings

The Continental and Scioto offerings that were the subject of SEC v. Smith followed three similar offerings. BancInvestment Group (BIG), of which Smith was president and director, held a private offering in 1999; BSA held a private offering in 2000; and BSIB held a private offering in 2001. Tr. 232-234; Exs. P-7, P-8, P-10. Until September 2004, Smith was the primary decision-maker for the five companies, was responsible for how they would spend their money, and was responsible for deciding whether they would invest in bank stocks. Tr. 235. He made the determinations as to the representations in the offering materials as to the use of proceeds from the offerings. Tr. 239, 242, 251.

The private placement memorandum (PPM) for BIG, to raise $1,002,000, stated that it would invest $912,000 of the proceeds in bank stocks, with the remainder going to offering and operating expenses. Tr. 238-39; Ex. P-7 at 3. However, only about $170,000 was raised. Tr. 239, 324-25; Ex. P-113. None of the proceeds was invested in bank stocks. Tr. 240; Ex. P-113. The PPM for BSA, to raise a maximum of $2,000,000 and a minimum of $150,000, stated that its purpose was to invest in a portfolio of securities of community banks, to become a registered investment adviser, to start up and invest in shares of a registered investment company, and to provide investment advisory services to the investment company and other clients for a fee. Ex. P-8 at 1. A maximum of $1.4 million, and a minimum of $50,000, depending on the amount raised, was to be invested in bank stocks, and a maximum of $290,000 was to be spent on offering and operating expenses. Ex. P-8 at 5. BSA raised $797,750 in the offering. Tr. 243, 324-25; Ex. P-113. A portion of the proceeds, $209,104, was invested in bank stocks, but at least some of that portfolio was liquidated and spent on expenses of BSA. Tr. 59, 244. The POM for BSIB, to raise $1,050,000, stated that it would use $445,000 of the proceeds to purchase stock in small banks and $170,000 as net capital for an NASD subsidiary (BancShares First). Tr. 249-253; Ex. P-10 at 9. The offering raised $698,700. Tr. 250, 324-25; Ex. P-113. None of the proceeds was used as capital for BancShares First. Tr. 254-55. BSIB did not invest $445,000 in bank stocks; it did buy some bank stocks, but liquidated the investment and spent the proceeds on company expenses. Tr. 251-252. Smith stated that investing $445,000 was contingent on raising $1,050,000 and that language explaining this "somehow got left out" of the POM. Tr. 251-52.

The five offerings followed a pattern: when the proceeds of an offering by one company were largely exhausted, a new offering would be conducted by another start-up company. Tr. 42-70; Ex. P-113. Approximately $3.7 million was raised in the five offerings over a five-year period; at the time that SEC v. Smith was filed, most of that sum had been spent; all that remained was $180,000 invested in bank stocks and $63,000 in bank accounts that were frozen.[3] Tr. 70, 77. Smith explained this by stating that, contrary to representations in the offering materials, his concept was that the offerings were to raise seed capital, rather than to invest in bank stocks, and that most of the money to buy bank stocks would be raised at some time in the future. Tr. 259-61, 339-40, 358.

2. Regulatory Compliance

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[3] Like his use of the proceeds of the Continental and Scioto offerings, Smith largely used the proceeds of the BIG, BSA, and BSIB offerings to pay himself, including for his personal expenses, and the expenses of his other businesses. Tr. 50-69; Ex. P-113. A document provided to potential Scioto investors, entitled "Capital Formation Plan Overview," described a proposed future corporate structure with Continental as the holding company of BSA, BSIB, and Scioto. Tr. 374; Ex. P-53 at 2. It contained a table entitled "Potential Capital of the Consolidated Companies" that included the amounts raised in the BSA, BSIB, and Continental offerings as well as the amount intended to be raised in the Scioto offering. Tr. 376-78; Ex. P-53 at 3. However, as Smith conceded, most of the proceeds of the BSA, BSIB, and Continental offerings had been spent by the time of the Scioto offering. Tr. 376-78.

The Continental and Scioto offering materials stated that the shares were being sold in reliance on the exemption provided by Section 4(2) of the Securities Act of 1933 and Rule 506 of Regulation D thereunder. Exs. P-1 at 16, P-4 at 15. Continental filed a Form D with the Commission and a copy with the Ohio Division of Securities, as required by Ohio law. Tr. 70; Exs. P-62, 92. However, Scioto never filed a copy of a Form D with the Ohio Division of Securities. Tr. 70-71, 80-81.

Approximately ten Continental investors and eight Scioto investors were not "accredited investors" within the meaning of Rule 501 of Regulation D (17 C.F.R. § 230.501). Ex. P-128 at 19, Ex. P-133. Among those were Michael Hagerty, Deborah Mercier, Stella Herman, and Timothy O'Leary, who were told that their financial status was not a problem and merely required a formality such as checking a box on a document entitled Suitability Standards. Tr. 99-100, 115-16, 123-24, 150-51, 160-62, 438.

Smith stated that he provided the PPM or POM to investors, if at all, along with their share certificates after he received their payments.[4] Tr. 239, 242, 255, 265, 327-331. He followed this practice despite statements in the offering memoranda, that investors should not rely on information not contained in the memorandum, and subscription agreements, that authorized the company to use investors' funds for the purpose specified in the memorandum. Exs. P-1, P-4, P-8, P-10. He testified, variously, that he was unaware, or only vaguely aware, that Continental and Scioto were required to provide certain information pursuant to 17 C.F.R. § 230.502(b) to unaccredited investors, including a "description of . . . the use of the proceeds from the offering." Tr. 346-52, 362. Nonetheless, he said, he "left a paragraph out of" the Continental POM when he created it by cutting and pasting from another POM. Tr. 350. Further, the document that he said he provided to Continental investors did not describe the use of the proceeds. Tr. 351-52. Likewise, the description of the use of the proceeds in the POM that he said was provided to Scioto investors was wildly at variance with his concept of using the proceeds as seed capital as well as with as the actual use of the proceeds as found by the court. Tr. 363-65; Ex. P-4 at 10.

3. BSA

BSA is the only one of the five companies that is currently operational. Tr. 563. Smith resigned as sole officer and director of BSA and the other companies at the time of the lawsuit in approximately September 2004. Tr. 232-34. He recruited William Rowland, whom he had first involved in the companies in May 2004, to replace him as chief operating officer, and sole employee, of BSA (as well as of BSIB, Continental, and Scioto).[5] Tr. 516-17, 564, 574.

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[4] Smith's testimony as to his practice was contradicted by several witnesses who testified that they received offering memoranda before their investments. Tr. 426-27 (Continental, Scioto investor Kenneth Groves) 471 (Scioto investor Richard Napierala), 673 (Continental investor Charles Huber), 727 (BSA, Continental, and Scioto investor Loren Sigler).

[5] When Rowland first became involved with the companies, he found that their books were either nonexistent or inaccurate for at least the two preceding years. Tr. 583-85. He recreated the books for the companies for 2002-2004 using QuickBooks. Tr. 586.

Rowland has extensive experience with investments as well as other business experience. Tr. 553-59, 563-64. Smith and Rowland recruited three directors for BSA: Kenneth Groves, James Pohlman, and Ron Springsteen. Tr. 415-16, 450-51, 744-45. The three were shareholders in one or more of Smith's companies but had little or no experience in running an investment management business. Tr. 410, 415-16, 431, 444, 446, 741, 751.

Smith describes his current role with BSA as consultant. Tr. 280. In the view of Rowland and several investors, Smith is knowledgeable about stocks of small banks that are thinly traded in the Pink Sheets or not traded. Tr. 436, 473, 569-71, 614-15, 657-58, 663-64, 670, 681-82, 694-95, 736, 742, 776. His knowledge complements Rowland's more general expertise. Tr. 569-71. Smith provides research and recommendations about bank stocks, introduces Rowland to clients, and provides marketing ideas. Tr. 416, 418, 452, 505, 569-74, 745-46, 759. Rowland takes Smith to meetings with clients and allows him to explain recommendations made by Rowland, but Smith does not meet with clients by himself. Tr. 574. Smith has no access to funds or any role with respect to the finances of BSA or the other companies. Tr. 417, 452, 574.

BSA, operating as an Ohio-registered investment adviser, has about fifty-five accounts and about $4 million under management. Tr. 563, 565, 572. Two accounts, Smith-founded Community Bank Stock Equity Trust and Bankstock Investment Partners Series # 1, L.P., represent about half of the assets under management. Tr. 589. BSA is currently in Chapter 11 bankruptcy proceedings, and its income is minimal. Tr. 479, 575, 588.

Several investors expressed faith in Smith, want to continue doing business with him, and want BSA to continue. Tr. 420-21, 425 (Groves), 437 (O'Leary), 453-54 (Pohlman), 473, 475 (Napierala), 659 (Cohen), 664 (Hays), 674 (Huber), 683-84 (Elder), 725 (Sigler), 750-51 (Springsteen), 777 (Timothy Smith). BSA would lose accounts or cease operating without Smith. Tr. 416, 418, 422, 454, 638, 748.

4. Mistakes

Smith acknowledged mistakes. Tr. 350, 515-16, 524-25. However, he blamed the plight of his businesses on others, such as the Commission or incompetent employees. He blamed the demise of the "thriving, growing broker-dealer" BancShares First and BSA's, Continental's, and Scioto's failure to thrive on the Commission's filing suit against him. Tr. 253-54, 508, 523, 538. Smith excused the use of funds raised in the Continental offering to pay the expenses of other businesses by saying that a plan to consolidate all the companies was close to execution but was not executed because of the Commission's lawsuit. Tr. 381-82.

Smith downplayed his responsibility for a representation in offering material for Continental entitled "Business Plan Executive Summary" that "81%" of the proceeds from the private placement would be invested in a community bank stock portfolio. Tr. 263-65, 269; Ex. P-2 at 8. He stated that the "81%" representation "was actually written by the guy that we hired to put together the business plan and executive summary, and that one slipped by me. I would not have permitted that to go through." Tr. 269.

The Scioto POM represented that shares were being offered through its officers "who will not be paid a commission upon the sales." P-4 at 1. However, the Scioto "Subscription and Commission Tracking Sheet" indicated that Smith received commissions on specified sales and the entries tied to checks payable to Smith. Tr. 366-372, 542; Exs. P-6, P-135, P-136, P-137. Smith denied receiving commissions, stating the entries were in error and the checks were erroneously made out by a former employee. Tr. 366-67, 372. Further, he could not recall whether he returned the money he received pursuant to the checks. Tr. 372. Rowland testified that Smith told him that the checks were salary draws that were "misconstrued by someone who was putting reports together." Tr. 566-68.

Although Smith denied that he gave the Scioto POM to investors before they invested, he also stated that he created it by cutting and pasting, using Microsoft Word, but, after seeking help with the cutting and pasting from others, found to his chagrin that they were already mailing out a draft version to investors that contained many errors. Tr. 521-22. However, inconsistently, he also testified that he did not correct the errors because he did not discover the problem until after the Commission's lawsuit had been filed. Tr. 539-40.

Smith blamed a failure by BSA to pay payroll taxes on an accountant who did not follow his instructions and had a nervous breakdown; BSA's overdue tax bill was ultimately paid by Continental. Tr. 387-90.

III. CONCLUSIONS OF LAW

Smith has been permanently enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act. Even if he is appealing his injunction, the pendency of an appeal does not preclude "follow-up" action based on the injunction. Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002). Smith is precluded from relitigating in this proceeding the District Court's findings of fact or conclusions of law. Michael Batterman, 84 SEC Docket 1349, 1356 & n.18 (Dec. 3, 2004); Robert Sayegh, 54 S.E.C. 46, 51 (1999); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998). Further, Smith's misconduct underlying the injunctive action occurred while he was associated with a broker-dealer, BancShares First, and with an investment adviser, BSA.[6]

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[6] In his prehearing brief Smith argued that his conduct did not relate to his role as an associated person of a broker-dealer or investment adviser. However, Exchange Act Section 15(b) and Advisers Act Section 203(f) authorize the Commission to impose sanctions against an associated person of a broker-dealer and investment adviser, respectively, if he has been enjoined from engaging in conduct in connection with the purchase or sale of any security. The law does not limit the sanctions to those whose violative conduct occurred in their capacity as associated persons. Christopher A. Lowry, 55 S.E.C. 1133, 1144 & n.25 (2002), aff'd, 340 F.3d 501 (2003); see also Ahmed Mohamed Soliman, 52 S.E.C. 227, 231 (1995) (Commission revoked respondent's investment adviser registration and barred him from association with a broker-dealer or investment adviser based on his conviction for submitting fraudulent documents to the Internal Revenue Service).

IV. SANCTIONS

The Division requests broker-dealer and investment adviser bars. For the reasons discussed below, Smith will be barred from association with any broker-dealer or investment adviser.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act. The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 80 SEC Docket 2812, 2814 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006).

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. Melton, 80 SEC Docket at 2814. "An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules or regulations." Id. at 2822. The Commission considers an antifraud injunction to be particularly serious. Id. at 2823. The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

B. Sanctions

Smith's conduct was egregious, recurrent and involved a reckless degree of scienter. In urging the contrary, Smith is essentially attempting to relitigate the court's rulings. Smith argues that he corrected misrepresentations in offering materials in oral presentations to prospective investors. However, the court rejected Smith's claim that any misrepresentations had been corrected by oral presentations. Indeed, Smith's belief that he could say one thing in offering materials and another when soliciting prospective investors orally highlights the egregiousness of his conduct. Smith argues that his violation was isolated, but the conduct that was the subject of SEC v. Smith went on for two years. Additionally, the evidence adduced in this proceeding shows that it was a continuation of similar conduct in connection with three previous private offerings. Smith argues that he lacked scienter, but the court ruled that he had a reckless degree of scienter.

Smith has acknowledged, generally, the wrongful nature of his conduct. However, the impact of his remorse is tempered by the fact that he blamed others or presented incredible excuses for specific shortfalls. For example, he maintained that misrepresentations in offering materials resulted from cutting and pasting gone awry. Likewise, he blamed others for slipping a representation into Continental's offering materials that 81% of the proceeds would be invested in bank stocks, for drawing checks payable to Smith (that he cashed), and for failing to pay payroll taxes. Any assurances against future violations must be set against his past lack of attention to compliance with regulations and to the basic obligation to avoid misrepresentation. His occupation – a thirty-five-year career in the securities industry that he desires to continue – presents opportunities for future violations.

Smith's violations are recent, ending only when SEC v. Smith was filed in 2004. The degree of harm to investors is quantified in the court's disgorgement order: Smith was ordered to disgorge ill-gotten gains of $2,095,517.93 plus prejudgment interest. Smith argues that a bar will deprive investors of his skill in investing in bank stocks, which he could use to attempt to remedy his investors' losses. This future deprivation to current investors in Smith's companies and to clients of BSA is outweighed by the likelihood of harm to investors, both current and prospective, in Smith's companies. As the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975).

Finally, Smith argues that a bar is punitive and would not add to the deterrent effect of the sanctions to which he is already subject, stressing his current limited role with BSA and arguing that it is unlikely that he would be permitted to resume association with a broker or dealer even absent a bar. Nonetheless, absent investment adviser and broker-dealer bars, Smith's occupation will provide opportunities for future violations. Smith has significant securities experience, and, absent a bar, could return to unrestricted association with an investment adviser or broker or dealer. See Thomas J. Donovan, 86 SEC Docket 2652, 2663 (Dec. 5, 2005).

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on September 13, 2006.

VI. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, BRADLEY T. SMITH IS BARRED from associating with any broker or dealer.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, BRADLEY T. SMITH IS BARRED from associating with any investment adviser.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge