

Christopher C. Ehrman (pro hac vice)
Jacob D. Krawitz (pro hac vice)
Brian T. Fitzsimons (pro hac vice)
Attorneys for Plaintiff
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Tel. 202-551-4590

Thomas M. Melton (4999)
Attorney for Plaintiff
U.S. Securities and Exchange Commission
15 West South Temple, Suite 1800
Salt Lake City, Utah 84101
Tel. 801-524-5796

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

BRIAN J. SMART, and
SMART ASSETS, LLC, a California limited liability
company,

DEFENDANTS.

**PLAINTIFF'S MOTION
FOR SUMMARY
JUDGMENT AGAINST
DEFENDANTS BRIAN J.
SMART AND SMART
ASSETS, LLC**

Civil No. 2:09cv00224 (DAK)

Judge Dale A. Kimball

Plaintiff, Securities and Exchange Commission (the "Commission"), by and through its counsel of record, respectfully submits this Motion for Summary Judgment against defendants Brian J. Smart ("Smart") and Smart Assets, LLC ("Smart Assets"). As set forth in the accompanying memorandum, the undisputed facts prove that Mr.

Smart and Smart Assets violated the antifraud provisions of the federal securities laws and that the Commission is entitled to a judgment as a matter of law.

As more fully set forth in the Commission's Memorandum in Support of Plaintiff's Motion for Summary Judgment, defendants Smart and Smart Assets are perpetrating a Ponzi-like scheme by fraudulently offering unregistered promissory notes and investments contracts to investors. Promising large monthly returns and guaranteed safety, the defendants have raised at least \$2 million from at least 6 investors.

Smart and Smart Assets made a variety of misrepresentations to investors. Some investors were told that their money was invested in "hard money" real estate loans, while others were told that they were invested in "S&P" and other mutual funds. Smart told at least three investors that the bulk of their assets were invested in low risk, principal guaranteed funds offering "above average returns." In reality, most of the invested funds appear to have been lost in speculative, high-risk real estate and commercial lending deals, used to make "dividend" or "interest" payments to investors, and used for personal spending by those involved in this scheme.

Smart did not appear at his duly noticed Rule 30 deposition. Smart did, however, testify on behalf of Smart Assets at the entity's Rule 30(b)(6) deposition. At the 30(b)(6) deposition, Smart exercised his Fifth Amendment right against self-incrimination for testimony that implicated himself personally.

Based upon the foregoing, the Commission respectfully requests that this Court grant the Commission's Motion for a Summary Judgment on all claims asserted against Smart and Smart Assets.

Respectfully submitted this 25th day of August, 2009.

Dated: August 25, 2009

/s/ Jacob D. Krawitz
Thomas M. Melton
Christopher C. Ehrman
Jacob D. Krawitz
Brian T. Fitzsimons
Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2009, I filed the MOTION, MEMORANDUM IN SUPPORT OF THE PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT AGAINST DEFENDANTS BRIAN J. SMART AND SMART ASSETS, LLC, SUPPORTING DECLARATION, AND EXHIBITS through the Court's CM ECF System, and sent a true and correct copy of the same to:

Robert G. Wing
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
rgw@princeyeates.com
Fax: (801) 524-1098
Court-appointed Receiver
Via CM ECF System

Brian J. Smart
2166 Aspen Wood Loop
Lehi, UT 84043
Defendant
Via FedEx Overnight Service

Smart Assets, LLC
c/o Gordon W. Duval
Duval & Moody, P.C.
947 South 500 East, Suite 200
American Fork, UT 84005
info@utahvalleylaw.com
Fax: (801) 763-8379
Defendant
Via CM ECF System

/s/ Brian T. Fitzsimons