

EXHIBIT 20

**EXCERPTS FROM 30(b)(6)
DEPOSITION OF SMART ASSETS,
LLC**

TESTIMONY OF BRIAN J. SMART

JUNE 4, 2009

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

SECURITIES AND EXCHANGE COMMISSION,)	
Plaintiff,)	30(b)(6)
)	Deposition of:
vs.)	<u>BRIAN J. SMART</u>
BRIAN J. SMART and SMART ASSETS, LLC, a California limited liability company,)	2:09 CV 00224 DAK
Defendants.)	Judge Kimball

June 4, 2009 * 10:00 a.m.

Location: Securities and Exchange Commission
Salt Lake District Office
15 West South Temple, Suite 1800
Salt Lake City, Utah 84101

Reporter: Kathy H. Morgan, CSR, RPR
Notary Public in and for the State of Utah

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A P P E A R A N C E S

FOR THE PLAINTIFF:

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I N D E X

	<u>PAGE</u>
Examination by Mr. Fitzsimons and Mr. Ehrman	___ 6

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
P-3	Notice of Deposition_____	6
P-4	Check number 2797, Dagmar Chaplin, made out to Order Express Casa	

Brian J. Smart * June 4, 2009

84

1 Q. Warehouse?

2 A. Uh-huh (affirmative).

3 Q. Were you involved at all with this
4 investment?

5 A. No. On her side, huh-uh (negative).

6 Q. Where did Smart Assets, LLC get the money
7 to loan to Edwards?

8 A. I'd have to double check. I don't know.

9 Q. What are some of the sources?

10 A. I believe it was -- well, I won't say
11 "believe." It was Padilla.

12 Q. What is Padilla?

13 A. Sorry. Virginia Padilla.

14 Q. And who is Virginia Padilla?

15 A. She put money into the project.

16 Q. Were there any other sources of income?

17 A. I don't remember.

18 Q. Do you remember about how much
19 Virginia Padilla invested in this?

20 A. I don't.

21 MR. FITZSIMONS: We can get back to that.
22 Please mark a one-page document Bates stamped GRA007
23 as P-6.

24 (EXHIBIT P-6 WAS MARKED.)

25 BY MR. EHRMAN:

Brian J. Smart * June 4, 2009

85

1 Q. Mr. Smart, we've handed you what has been
2 marked as P-6. If you could please review that and
3 identify that for us if you can.

4 Mr. Smart, can you identify what has been
5 marked as Exhibit P-6?

6 A. Can I? Sorry?

7 Q. If you need more time, just let me know.
8 That's fine.

9 A. I actually have a question for my attorney
10 on the LLC.

11 MR. EHRMAN: Okay. Do you want to take a
12 break?

13 THE WITNESS: If we can take a break and
14 just go out in the hall.

15 MR. EHRMAN: Sure, let's take a break.
16 Off the record at 11:52.

17 (Recess)

18 MR. EHRMAN: Back on the record at
19 11:59 a.m.

20 BY MR. FITZSIMONS:

21 Q. Mr. Smart, have you had a chance to review
22 P-6?

23 A. I have.

24 Q. And do you recognize this document?

25 A. I take the Fifth.

Brian J. Smart * June 4, 2009

90

1 MR. EHRMAN: How about 12:30?

2 MR. DUVAL: That would be fine.

3 MR. FITZSIMONS: Please mark a one-page
4 document, a membership certificate Bates stamped
5 GRA0006, as P-7.

6 (EXHIBIT P-7 WAS MARKED.)

7 Let the record reflect that Mr. Smart has
8 been given P-7. Take your time to review the
9 document.

10 Q. (By Mr. Fitzsimons) Mr. Smart, do you
11 recognize the document, P-7?

12 A. I take the Fifth.

13 BY MR. EHRMAN:

14 Q. Mr. Smart, did you create this membership
15 certificate, Smart Assets, LLC, that we've marked as
16 Exhibit 7?

17 A. I take the Fifth.

18 BY MR. FITZSIMONS:

19 Q. Mr. Smart, is 200,000 units of membership
20 of Smart Assets, LLC a fictitious membership?

21 A. Take the Fifth.

22 Q. Mr. Smart, was this document created by
23 you to mislead Ms. Chaplin-Lee to invest money with
24 Smart Assets, LLC?

25 A. Take the Fifth.

1 Ms. Chaplin-Lee money in satisfaction of her request?

2 A. I take the Fifth.

3 Q. What was the source of the money that you
4 gave her?

5 A. I take the Fifth.

6 Q. Was her money held in an account separate
7 from other investors?

8 A. Explain.

9 Q. Ms. Chaplin gave you \$200,000 pursuant to
10 a promissory note; is that correct?

11 MR. DUVAL: Object. That calls for --
12 assumes facts not in evidence.

13 MR. EHRMAN: Can you answer the question?

14 A. Repeat it one more time.

15 Q. (By Mr. Fitzsimons) Was Ms. Chaplin-Lee's
16 money held in an account separate from other
17 investors' money?

18 A. Are you referring to this money?

19 MR. DUVAL: He's referring to the document
20 marked P-4.

21 BY MR. EHRMAN:

22 Q. I guess the meaning is: Did you ever
23 commingle any money provided by Ms. Chaplin-Lee with
24 the money of anyone else that provided money to Smart
25 Assets, LLC?

1 A. I take the Fifth on that. Are you
2 referring to this document? This money?

3 Q. What number of document are you holding
4 up?

5 A. P-4. I never received this money.

6 **BY MR. FITZSIMONS:**

7 Q. Did you tell Ms. Chaplin that you were
8 going to invest her money in low-risk
9 principal-guaranteed investments?

10 A. I take the Fifth.

11 Q. Did you intentionally mislead
12 Ms. Chaplin-Lee by telling her you were going to
13 invest her money in low-risk principal-guaranteed
14 investments?

15 A. Take the Fifth.

16 Q. Did you use Ms. Chaplin-Lee's money for
17 your own personal expenses?

18 A. Take the Fifth.

19 Q. Did you use Ms. Chaplin-Lee's money --

20 A. Go back to that. No. I have to go back
21 to that question. No. Repeat. Repeat the last one.

22 Q. Did you use Ms. Chaplin-Lee's money for
23 your own personal expenses?

24 A. No.

25 Q. Did you use Ms. Chaplin-Lee's money to

1 invest in real estate?

2 A. For you to say "use," I -- I did not touch
3 her money. Her money went directly to them. So I
4 don't understand the question itself.

5 Q. Whether you were an intermediary for her
6 money to reach your investment or not. Did you --

7 A. I had nothing to do --

8 Q. -- use her money?

9 A. I had nothing to do with these people, so
10 I don't -- I still don't understand the question,
11 because if I have no connection with these people,
12 how do I have any connection to use her money?

13 Q. Did you use Ms. Chaplin-Lee's money
14 pursuant to a real estate investment in Smart Assets,
15 LLC?

16 A. I take the Fifth. I don't understand.

17 **BY MR. EHRMAN:**

18 Q. Did Smart Assets, LLC receive any
19 compensation in connection with the \$200,000
20 investment that Ms. Chaplin-Lee made?

21 A. I take the Fifth.

22 **BY MR. FITZSIMONS:**

23 Q. Did you use any of Ms. Chaplin-Lee's money
24 for hard lending?

25 A. I take the Fifth.

1 Q. Did you intentionally mislead
2 Ms. Chaplin-Lee regarding how you were going to use
3 her money?

4 A. I take the Fifth.

5 Q. Did you pay other investors with some of
6 Mr. Chaplin-Lee's money?

7 A. Once again, how is it possible for me to
8 pay with her money if I've never received her money?

9 MR. EHRMAN: So the answer is no?

10 THE WITNESS: I take the Fifth.

11 MR. DUVAL: That's no?

12 THE WITNESS: No.

13 Q. (By Mr. Fitzsimons) Did you comingle
14 Mr. Chaplin-Lee's money with the money of other
15 investors?

16 MR. DUVAL: Object. You're calling for --
17 you're assuming facts not in evidence, the evidence.
18 You have no evidence he received any funds. The only
19 evidence you've offered is that funds were sent to
20 him pursuant to this before.

21 MR. EHRMAN: We're just asking him.

22 A. I'll keep on referring to P-4 and take the
23 Fifth.

24 Q. (By Mr. Fitzsimons) Did you ever receive
25 any money from Ms. Dagmar Chaplin-Lee?

1 A. I take the Fifth.

2 Q. Did you comingle Ms. Chaplin-Lee's money
3 with your own money?

4 A. I refer to P-4 and take the Fifth.

5 Q. Did you give Ms. Chaplin-Lee a fictitious
6 membership certificate in Smart Assets, LLC?

7 A. I take the Fifth.

8 Q. Did you give Ms. Chaplin-Lee fictitious
9 account statements?

10 A. Take the Fifth.

11 Q. Did you give Ms. Chaplin-Lee fictitious
12 product information sheets?

13 A. I take the Fifth.

14 Q. Did you intentionally mislead
15 Ms. Chaplin-Lee to think that you were affiliated
16 with AIM Association after you left AIM Association?

17 A. Take the Fifth.

18 Q. Did you repeatedly mislead Ms. Chaplin-Lee
19 regarding the status of her investment?

20 A. Say it again.

21 Q. Did you repeatedly mislead Ms. Chaplin-Lee
22 regarding the status of her investment?

23 A. I'm still -- sorry?

24

25 BY MR. EHRMAN:

1 A. I don't know.

2 Q. Did you ever send e-mails from an AIM
3 Association e-mail account because you wanted
4 Ms. Chaplin to think you were still affiliated with
5 AIM Association?

6 A. I take the Fifth. Can I take a break?

7 MR. EHRMAN: Let's go ahead and go off the
8 record at 12:16.

9 (Recess)

10 MR. EHRMAN: Back on the record at 12:17.

11 THE WITNESS: There was a question. What
12 was the question you just asked?

13 Q. (By Mr. Fitzsimons) Did you ever send
14 e-mails from an AIM Association account because you
15 wanted Ms. Chaplin-Lee to think that you were still
16 affiliated with AIM Association?

17 A. What was the question before that? I'm
18 sorry.

19 Q. Did you ever send e-mails to
20 Ms. Chaplin-Lee from the AIM Association e-mail
21 account after leaving AIM Association?

22 A. Okay, I answered that I don't know. There
23 was one that -- there was a question that stated did
24 I have an intent to do something. What was the
25 response on that?

1 A. It appears to be so.

2 Q. Do you know if the Browns ever received
3 this check?

4 A. I believe they did.

5 Q. Did they reinvest this money with you?

6 A. I don't know. I'll take the Fifth,
7 though.

8 MR. FITZSIMONS: Please mark a one-page
9 Smart Assets, LLC account statement, Bates stamped
10 GRA0337, as P-13.

11 (EXHIBIT P-13 WAS MARKED.)

12 Let the record reflect that Mr. Smart has
13 been handed the document P-13.

14 Q. (By Mr. Fitzsimons) Take your time to
15 review it.

16 A. Are we waiting for him?

17 Q. No. Are you ready? Have you had a chance
18 to review the document?

19 A. Oh, I'm sorry, uh-huh (affirmative).

20 Q. Did you create this account statement,
21 Mr. Smart?

22 A. Say it again.

23 Q. Did you create this account statement,
24 Mr. Smart?

25 A. I take the Fifth.

1 Pacific Legacy Investment is?

2 A. I take the Fifth.

3 BY MR. EHRMAN:

4 Q. Other than you, is there anyone who knows
5 what these words "Pacific Investment Combined Account
6 Statement" refers to?

7 A. I continue to take the Fifth.

8 MR. FITZSIMONS: Please mark a one-page
9 document entitled "Smart Assets, LLC Safe Guard VI,"
10 Bates stamped GRA0005, as P-14.

11 (EXHIBIT P-14 WAS MARKED.)

12 Let the record reflect Mr. Smart has been
13 handed P-14.

14 BY MR. FITZSIMONS:

15 Q. Take your time to review this document.

16 A. Okay.

17 Q. Can you explain this document in detail?

18 A. I'll take the Fifth. When I get counsel
19 for myself, personally, I'll have no problem
20 explaining it.

21 Q. On P-14, the account listed as [REDACTED],
22 is this different than the account number [REDACTED]?

23 A. I take the Fifth.

24 Q. Can you explain to me what Safe Guard VI
25 is?

1 A. I take the Fifth.

2 Q. Is P-14 a false and misleading product
3 information sheet?

4 A. I take the Fifth.

5 Q. Was P-14 created in order to prompt the
6 investment in Smart Assets, LLC?

7 A. I take the Fifth.

8 Q. Does P-14 contain misrepresentations?

9 A. I take the Fifth.

10 Q. Does P-14 reflect any product offered by
11 Smart Assets, LLC?

12 A. I take the Fifth.

13 Q. When was P-14 created?

14 A. I don't know.

15 Q. Is P-14 a false and misleading document
16 that you created --

17 A. I take the Fifth.

18 Q. -- to mislead the Browns?

19 A. I'm sorry, I thought you were done. I
20 take the Fifth.

21 Q. Was Paul Brown placed in a care facility
22 for his Alzheimer's condition in 2005?

23 A. I believe so.

24 Q. After Paul Brown was placed in this care
25 facility, did you begin providing money to

1 Q. Mr. Smart, how did you calculate the 6
2 percent interest rate on P-15?

3 A. I take the Fifth.

4 Q. How did you calculate the 12 percent
5 interest rate on P-15?

6 A. I take the Fifth.

7 Q. Mr. Smart, did you come up with this false
8 and misleading 6 percent interest rate?

9 A. I take the Fifth.

10 Q. Mr. Smart, did you come up with this false
11 and misleading 12 percent interest rate on P-15?

12 A. I take the Fifth.

13 Q. Mr. Smart, on P-15 is the interest earned
14 year to date of \$6,499 a false figure of interest
15 earned for the Browns?

16 A. I take the Fifth.

17 Q. Mr. Smart, did you list this false
18 interest earned on this statement of \$6,499?

19 A. I take the Fifth.

20 Q. Mr. Smart, is P-15 a false and misleading
21 account statement?

22 A. I take the Fifth.

23 Q. Does P-15 contain numerous misstatements?

24 A. I take the Fifth.

25 Q. Did you create P-15 to mislead Ms. Brown

1 to invest her money through you?

2 A. I take the Fifth.

3 Q. What did you tell Ms. Logan Brown about
4 how you were going to invest her money?

5 A. I take the Fifth.

6 Q. How did Smart Assets, LLC invest
7 Ms. Katherine Brown's \$118,000?

8 A. I take the Fifth.

9 Q. Did you ever use -- did Smart Assets, LLC
10 ever use Ms. Logan Brown's money to purchase real
11 estate property?

12 A. I take the Fifth.

13 Q. Did you ever use, or Smart Assets, LLC,
14 ever use Ms. Logan Brown's money to purchase and
15 subsequently sell the home in La Mirada, California?

16 A. I take the Fifth.

17 Q. Did you ever purchase Ms. Logan a cruise
18 to the Caribbean?

19 A. I take the Fifth.

20 Q. Did you use other investor money to
21 purchase Ms. Logan Brown a cruise to the Caribbean?

22 A. I take the Fifth.

23 Q. Do you have documentation that supports
24 that the money that you gave Ms. Logan Brown to go on
25 a cruise came from her account?

1 Q. Did Ms. Logan Brown ever request account
2 statements for Smart Assets, LLC?

3 A. I take the Fifth.

4 Q. Did Ms. Logan Brown ever request a paper
5 summarizing her investment with Smart Assets, LLC?

6 A. I take the Fifth.

7 Q. Did you ever invest Ms. Logan Brown's
8 money in a property in Hawaii?

9 A. I take the Fifth.

10 Q. Did you ever invest Ms. Logan Brown's
11 money in a company called Pharma-Med?

12 A. I take the Fifth.

13 Q. Did you ever use any materials, after you
14 left AIM, when interacting with either of the Browns?

15 A. I take the Fifth.

16 Q. Did you ever send e-mail to
17 Ms. Logan Brown from an AIM Association e-mail
18 account?

19 A. I take the Fifth.

20 Q. Did you send e-mails from an AIM
21 Association account to Ms. Logan Brown after you
22 left?

23 A. Say it again.

24 Q. Did you send e-mails from an AIM
25 Association account after you left AIM Association to

1 Ms. Logan Brown so that she would think you're still
2 affiliated with AIM Association?

3 A. I take the Fifth.

4 Q. Was Ms. Logan Brown's money always kept in
5 its own separate account?

6 A. I take the Fifth.

7 Q. Was Ms. Logan Brown's money ever pooled
8 with other investors' money?

9 A. I take the Fifth.

10 Q. Did you always know the exact monetary
11 value of Ms. Logan Brown's account at a certain point
12 in time?

13 A. I take the Fifth.

14 Q. Did you ever use any of the money that
15 Ms. Logan Brown gave Smart Assets, LLC for your own
16 personal expenses?

17 A. I take the Fifth.

18 Q. Did you ever give any of Ms. Logan Brown's
19 money to any of the other investors?

20 A. I take the Fifth.

21 Q. What was your source of income while
22 Ms. Logan Brown was a client of Smart Assets, LLC?

23 A. I take the Fifth.

24 Q. How did you make money when you were with
25 Smart Assets, LLC?

1 A. I take the Fifth.

2 Q. How was your compensation calculated when
3 Ms. Brown was a client --

4 A. I take the Fifth.

5 Q. -- of Smart Assets, LLC?

6 Please name all the investments that you
7 made with the Browns' money?

8 A. I take the Fifth.

9 Q. Did you ever invest any of the Browns'
10 money with a company called Icy Springs, LLC?

11 A. I take the Fifth.

12 Q. Did you forge the names of the Browns on
13 their annuity surrender document?

14 A. I take the Fifth.

15 Q. Did you use the proceeds of the
16 surrendered annuity --

17 A. Sorry, what?

18 Q. Did you use the proceeds of the
19 surrendered annuity to invest?

20 A. I take the Fifth.

21 Q. Did you tell Ms. Logan Brown that you were
22 going to invest her money in safe,
23 principal-guaranteed investments?

24 A. I take the Fifth.

25 Q. Did you tell Ms. Logan Brown that you were

1 going to invest her money in a product called Safe
2 Guard VI?

3 A. I take the Fifth.

4 Q. Did you use Ms. Logan Brown's money for
5 reasons other than what you told her you'd use it
6 for?

7 A. I take the Fifth.

8 Q. Did you use Ms. Logan Brown's money to
9 invest in real estate?

10 A. I take the Fifth.

11 Q. Did you use Ms. Logan Brown's money for
12 hard lending?

13 A. I take the Fifth.

14 Q. Did you intentionally mislead
15 Ms. Logan Brown regarding how you were going to use
16 her money?

17 A. No.

18 Q. Did you mislead Ms. Logan Brown regarding
19 how you were going to use her money?

20 A. Speculative, but I take the Fifth.

21 Q. Did you comingle Ms. Brown's money with
22 the money of other investors in a single account?

23 A. I take the Fifth.

24 Q. Did you comingle Ms. Brown's money with
25 your own money in a single account?

1 A. I take the Fifth.

2 Q. Did you give Ms. Brown fictitious account
3 statements?

4 A. I take the Fifth.

5 Q. Did you give Ms. Brown false and
6 misleading account statements?

7 A. I take the Fifth.

8 Q. Did you give Ms. Brown fictitious product
9 information sheets?

10 A. I take the Fifth.

11 Q. Did you give Ms. Brown false and
12 misleading product information sheets?

13 A. Take the Fifth.

14 Q. Did you pay other investors with some of
15 Ms. Logan Brown's money?

16 A. I take the Fifth.

17 Q. Did you intentionally mislead
18 Ms. Logan Brown to think you were affiliated with AIM
19 Association after you were fired?

20 A. No.

21 Q. Or after you left AIM Association?

22 A. No.

23 Q. Did you mislead Katherine Logan Brown to
24 think you were affiliated with AIM Association after
25 you were fired?

1 MR. DUVAL: Object. Calls for speculation
2 as to what she thought.

3 Q. (By Mr. Fitzsimons) Answer the question.

4 A. The same, the same.

5 MR. EHRMAN: What?

6 THE WITNESS: Can I say that?

7 MR. EHRMAN: No. You've got to answer it.

8 A. Can't say that? I take the Fifth.

9 Q. (By Mr. Fitzsimons) Did you mislead
10 Ms. Logan Brown regarding the status of her
11 investment in Smart Assets, LLC?

12 A. I take the Fifth.

13 Q. Did you intentionally mislead
14 Ms. Logan Brown regarding the status of her
15 investment with Smart Assets, LLC?

16 A. No.

17 Q. Did you routinely mislead Ms. Logan Brown
18 with regard to the status of her investment with
19 Smart Assets, LLC?

20 A. I take the Fifth.

21 MR. FITZSIMONS: Do you want to take a
22 break and go off the record?

23 MR. EHRMAN: Off the record at 2:24.

24 (Recess)

25 MR. EHRMAN: On the record at 2:29.

1 A. On the last one, you can take that off. I
2 take the Fifth. I don't know either one of those. I
3 don't recall.

4 Q. Around March 2005, was
5 Ms. Lisa-Marie Padilla appointed sole trustee of the
6 Padilla Family Trust?

7 A. I don't know.

8 Q. In 2005, after Ms. Padilla became sole
9 trustee, did you meet with her in a hotel room in
10 La Palma, California to discuss the trust assets?

11 A. I take the Fifth.

12 Q. Did you tell Ms. Padilla that instead of
13 investing in annuities she should invest her money
14 with Smart Assets, LLC?

15 A. I take the Fifth.

16 MR. FITZSIMONS: Please mark a one-page
17 e-mail, Bates stamped GRA0164, as P-16.

18 (EXHIBIT P-16 WAS MARKED.)

19 Let the record reflect that P-16 has been
20 handed to Mr. Smart.

21 Q. (By Mr. Fitzsimons) Please take an
22 opportunity to review P-16.

23 A. Okay.

24 Q. Is  your e-mail
25 address?

1 A. I take the Fifth.

2 **BY MR. FITZSIMONS:**

3 Q. What three products or funds were you
4 referring to in P-16?

5 A. I take the Fifth.

6 Q. Did you invest Ms. Padilla's money as
7 outlined in P-16?

8 A. I take the Fifth.

9 Q. Do you have any written information about
10 these funds referred to in P-16?

11 A. I take the Fifth.

12 Q. What low-risk funds were you referring to
13 in P-16?

14 A. I take the Fifth.

15 Q. Did you give Ms. Padilla prospectuses for
16 these funds listed in P-16?

17 A. I don't know.

18 **BY MR. EHRMAN:**

19 Q. Did Smart Assets, LLC ever generate a
20 prospectus for anything?

21 A. I take the Fifth.

22 Q. Explain to me in detail how you invested
23 the money referenced in P-16.

24 A. I take the Fifth.

25 Q. Did you invest this money in the property

1 you used to get Ms. Padilla to invest her money with
2 Smart Assets, LLC?

3 A. I take the Fifth.

4 Q. P-16 refers to paying for the expenses of
5 Ms. Lisa-Marie Padilla's mother. Can you tell us
6 about these expenses?

7 A. I take the Fifth.

8 Q. Why did you write this e-mail to
9 Ms. Lisa-Marie Padilla, P-16?

10 MR. DUVAL: Object. Assumes facts not in
11 evidence.

12 A. I take the Fifth.

13 Q. (By Mr. Fitzsimons) Did you send
14 Ms. Padilla e-mails from an AIM Association e-mail
15 account?

16 A. Take the Fifth.

17 Q. Did you send e-mails from an AIM
18 Association account after you left AIM Association to
19 Ms. Padilla?

20 A. I take the Fifth.

21 Q. Did you send e-mail from AIM Association
22 because you wanted Ms. Padilla to think you were
23 still affiliated with AIM Association?

24 A. Take the Fifth.

25 Q. Did Ms. Lisa-Marie Padilla ever request

1 A. I take the Fifth.

2 Q. Did you always know the exact value of
3 Ms. Padilla's account at a certain point in time?

4 A. Take the Fifth.

5 Q. Did you ever use any of the money that
6 Ms. Padilla gave you for personal expenses?

7 A. Take the Fifth.

8 Q. Did you ever give any of Ms. Padilla's
9 money to other investors?

10 A. Take the Fifth.

11 Q. What were your sources of income while
12 Ms. Padilla was a client of Smart Assets, LLC?

13 A. Take the Fifth.

14 Q. How did you make money when Ms. Padilla
15 was a client of Smart Assets, LLC?

16 A. Take the Fifth.

17 Q. How was your compensation calculated when
18 Ms. Padilla was a client of Smart Assets, LLC?

19 A. Take the Fifth.

20 Q. Please name all the investments that you
21 made with Ms. Padilla's money.

22 A. I take the Fifth.

23 Q. Do you know a person named Kenny Western?

24 A. Yes.

25 Q. How do you know Kenny Western?

1 A. I take the Fifth.

2 Q. Did you always know the exact value of
3 Ms. Padilla's account at a certain point in time?

4 A. Take the Fifth.

5 Q. Did you ever use any of the money that
6 Ms. Padilla gave you for personal expenses?

7 A. Take the Fifth.

8 Q. Did you ever give any of Ms. Padilla's
9 money to other investors?

10 A. Take the Fifth.

11 Q. What were your sources of income while
12 Ms. Padilla was a client of Smart Assets, LLC?

13 A. Take the Fifth.

14 Q. How did you make money when Ms. Padilla
15 was a client of Smart Assets, LLC?

16 A. Take the Fifth.

17 Q. How was your compensation calculated when
18 Ms. Padilla was a client of Smart Assets, LLC?

19 A. Take the Fifth.

20 Q. Please name all the investments that you
21 made with Ms. Padilla's money.

22 A. I take the Fifth.

23 Q. Do you know a person named Kenny Western?

24 A. Yes.

25 Q. How do you know Kenny Western?

1 Hollinger?

2 A. I take the Fifth.

3 Q. Did you convince Ms. Lisa-Marie Padilla to
4 surrender the Padilla Family Trust annuity?

5 A. It's speculation, but I take the Fifth.

6 Q. Did you use the annuity proceeds that were
7 surrendered to invest in Smart Assets, LLC?

8 A. I take the Fifth.

9 Q. Did you tell Ms. Lisa-Marie Padilla that
10 you were going to invest the surrendered proceeds in
11 low-risk principal-guaranteed funds?

12 A. I take the Fifth.

13 Q. Did you tell Ms. Lisa-Marie Padilla that
14 you were going to invest in low-risk
15 principal-guaranteed funds?

16 A. I take the Fifth.

17 Q. Did you mislead Ms. Lisa-Marie Padilla
18 about how you were going to invest her money?

19 A. I take the Fifth.

20 Q. Did you intentionally mislead
21 Ms. Lisa-Marie Padilla about how you were going to
22 invest her money?

23 A. No.

24 Q. Did you use Ms. Lisa-Marie Padilla's money
25 for personal expenses?

1 A. I take the Fifth.

2 Q. Did you use Ms. Lisa-Marie Padilla's money
3 to invest in real estate?

4 A. I take the Fifth..

5 Q. Did you use Ms. Lisa-Marie Padilla's money
6 for hard lending?

7 A. I take the Fifth.

8 Q. Did you give some of Lisa-Marie Padilla's
9 money to other investors?

10 A. I take the Fifth.

11 Q. Did you comingle Lisa-Marie Padilla's
12 money with the money of other investors in a single
13 account?

14 A. I take the Fifth.

15 Q. Did you comingle Lisa-Marie Padilla's
16 money with your own money in a single account?

17 A. I take the Fifth.

18 Q. Did you give Ms. Lisa-Marie Padilla
19 fictitious account statements?

20 A. I take the Fifth.

21 Q. Did you give Ms. Lisa-Marie Padilla false
22 and misleading account statements?

23 A. I take the Fifth.

24 Q. Did you give Ms. Lisa-Marie Padilla
25 fictitious product information sheets?

1 A. I take the Fifth.

2 Q. Did you give Ms. Lisa-Marie Padilla false
3 and misleading product information sheets?

4 A. Sorry, for some reason that sounded like
5 the same question from before. Say it one more time.
6 I apologize, Brian.

7 Q. Did you give Ms. Lisa-Marie Padilla false
8 and misleading product information sheets?

9 A. I take the Fifth.

10 Q. Did you mislead Ms. Lisa-Marie Padilla to
11 think that you were affiliated with AIM Association
12 after you were fired from AIM Association?

13 A. I take the Fifth.

14 MR. DUVAL: Object. Calls for facts not
15 in evidence.

16 Q. (By Mr. Fitzsimons) Did you mislead
17 Ms. Lisa-Marie Padilla to think that you were
18 affiliated with AIM Association after you left AIM
19 Association?

20 A. I take the Fifth.

21 Q. Did you intentionally mislead
22 Ms. Lisa-Marie Padilla to think that you were
23 affiliated with AIM Association after you left AIM
24 Association?

25 A. No.

1 Q. Did you mislead Mr. Lisa-Marie Padilla
2 regarding the status of her investment with Smart
3 Assets, LLC?

4 A. I take the Fifth.

5 Q. Did you routinely mislead
6 Ms. Lisa-Marie Padilla regarding the status of her
7 investment in Smart Assets, LLC?

8 A. I take the Fifth.

9 Q. And did you intentionally mislead
10 Lisa-Marie Padilla regarding the status of her
11 investment in Smart Assets, LLC?

12 A. I take the Fifth.

13 Q. Mr. Smart, did anyone else besides
14 Lisa-Marie Padilla, Dagmar Chaplin-Lee and
15 Katherine Logan Brown invest with Smart Assets, LLC?

16 A. I take the Fifth.

17 Q. Did Mary Jo O'Brien invest money with
18 Smart Assets, LLC?

19 A. Can I have a couple minutes?

20 Q. Sure.

21 MR. EHRMAN: Let's go off the record at
22 2:50.

23 (Recess)

24 MR. EHRMAN: Back on the record at 3:00.

25 MR. FITZSIMONS: I believe there was a

1 A. I really don't. I don't know, no.

2 Q. Do you remember what you told the O'Briens
3 before they invested money?

4 A. No.

5 Q. Did you tell the O'Briens what you would
6 be investing their money in?

7 A. I take the Fifth.

8 Q. Did the O'Briens ever invest with Smart
9 Assets, LLC pursuant to a promissory note?

10 A. I don't know if there's a promissory note.
11 I, once again, don't recall if it was with Smart
12 Assets or Brian Smart.

13 MR. FITZSIMONS: Please mark a two-page
14 document, Bates stamped MJ000037 00038, as P-17.

15 (EXHIBIT P-17 WAS MARKED.)

16 Let the record reflect that P-17 has been
17 handed to Mr. Smart.

18 Q. (By Mr. Fitzsimons) Mr. Smart, after
19 reviewing P-17, do you now know whether or not any
20 money was invested with Smart Assets, LLC by
21 Morris O'Brien?

22 A. I take the Fifth.

23 Q. Do you recognize your signature --

24 A. It appears to be mine.

25 Q. -- on P-17?

1 the document states it.

2 MR. FITZSIMONS: Please mark a two-page
3 document, Promissory Note and Loan Agreement, Bates
4 stamped MJ00042, as P-18.

5 (EXHIBIT P-18 WAS MARKED.)

6 Let the record reflect that P-18 has been
7 handed to Mr. Smart and that he's reviewing it.

8 Q. (By Mr. Fitzsimons) Did Mr. Morris O'Brien
9 invest an additional \$10,000 with Smart Assets, LLC
10 around January 27, 2006?

11 A. What is the date again?

12 Q. On P-18 there's a date listed on the page.

13 A. Yes, sorry. Ask the question one more
14 time. Sorry.

15 Q. Did Mr. Morris O'Brien invest an
16 additional \$10,000 with Smart Assets, LLC?

17 A. No.

18 Q. So Mr. Morris O'Brien only invested
19 \$10,000 once with Smart Assets, LLC?

20 A. Yes.

21 Q. Can you explain why P-18 has a different
22 date than P-17?

23 A. I can once I get counsel. Until then I
24 take the Fifth.

25 Q. You said earlier that Mr. and Mrs. O'Brien

1 invested over \$100,000 with Smart Assets, LLC,

2 Brian --

3 A. Brian Smart.

4 Q. -- J. Smart.

5 A. Approximately.

6 Q. Did they invest all this money pursuant to
7 promissory notes?

8 A. I don't know.

9 Q. Do you recall how you invested their
10 money?

11 A. I take the Fifth.

12 MR. FITZSIMONS: Please mark a one-page
13 Smart Assets, LLC account statement, Bates stamped
14 MJ000086, as P-19.

15 (EXHIBIT P-19 WAS MARKED.)

16 Let the record reflect that Mr. Smart is
17 reviewing P-19.

18 THE WITNESS: Okay.

19 Q. (By Mr. Fitzsimons) Did you create account
20 statement P-19?

21 A. I take the Fifth.

22 Q. Did you give P-19 to Mary O'Brien?

23 A. I take the Fifth.

24 Q. I'm sorry, back up. P-19 to Mary O'Brien?
25 I'm sorry, to Morris O'Brien.

1 A. I do.

2 Q. Is that your phone number?

3 A. That's my cell phone.

4 Q. And [REDACTED], do you recognize that
5 number?

6 A. Vaguely.

7 Q. Is it your number?

8 A. I think so.

9 Q. How many phone numbers have you had in the
10 last five years?

11 A. Three or four.

12 Q. You don't know if this is your phone
13 number?

14 A. I don't. If I tell you what number I
15 think it is, it's speculation. I think it's the
16 number to the office in Santa Ana.

17 MR. FITZSIMONS: Please mark the Smart
18 Assets account statement, Bates stamped MJ000087, as
19 P-20.

20 (EXHIBIT P-20 WAS MARKED.)

21 Let the record reflect that P-20 is being
22 reviewed by Mr. Smart.

23 THE WITNESS: Okay.

24 Q. (By Mr. Fitzsimons) Did you create this
25 Smart Assets account statement?

1 A. I take the Fifth.

2 Q. Did you give this Smart Assets, LLC
3 account statement to Mary O'Brien?

4 A. I take the Fifth.

5 Q. Does the amount \$67,595, pursuant to
6 account number [REDACTED] on P-20, reflect
7 Mary O'Brien's investment in Smart Assets, LLC?

8 A. I take the Fifth.

9 Q. Please explain why the account balance for
10 [REDACTED], account number, is different under
11 Summary of Deposit Account versus under Your
12 Qualified Account.

13 A. Repeat the question.

14 Q. Can you please explain why the account
15 balance \$67,595 under the Summary of Your Deposit
16 Accounts header is different than the account balance
17 for the same account under the header Your Qualified
18 Account?

19 A. I take the Fifth.

20 Q. How did Smart Assets, LLC invest its
21 money?

22 A. I take the Fifth.

23 Q. What did you tell Mary O'Brien regarding
24 how you were going to invest this money?

25 A. I take the Fifth.

1 A. I take the Fifth.

2 Q. Did you tell the O'Briens that you were
3 going to invest their money in low-risk
4 principal-guaranteed funds?

5 A. I take the Fifth.

6 Q. Did you misrepresent to the O'Briens about
7 how you were going to invest their money?

8 A. Did you say the Browns or O'Briens?

9 Q. O'Briens.

10 A. I take the Fifth.

11 Q. Did you use the O'Briens' money for
12 personal expenses?

13 A. I take the Fifth.

14 Q. Did you use the O'Briens' money to invest
15 in real estate?

16 A. I take the Fifth.

17 Q. Did you use the O'Briens' money for hard
18 lending?

19 A. I take the Fifth.

20 Q. Did you use the O'Briens' money to give to
21 other investors?

22 A. I take the Fifth.

23 Q. Did you comingle the O'Briens' money with
24 the money of any other investors in a single account?

25 A. I take the Fifth.

1 Q. Did you comingle the money of the O'Briens
2 with your own money in any single account?

3 A. I take the Fifth.

4 Q. Did you give the O'Briens fictitious
5 account statements regarding their investments in
6 Smart Assets, LLC?

7 A. I take the Fifth.

8 Q. Did you give the O'Briens false and
9 misleading account statements regarding their
10 investment with Smart Assets, LLC?

11 A. I take the Fifth.

12 Q. Did you give the O'Briens fictitious
13 product information sheets regarding their
14 investments with Smart Assets, LLC?

15 A. I take the Fifth.

16 Q. Did you give the O'Briens false and
17 misleading product information sheets regarding their
18 investments with Smart Assets, LLC?

19 A. I take the Fifth.

20 Q. Did you mislead the O'Briens to think that
21 you were affiliated with AIM Association after you
22 left AIM Association?

23 A. I take the Fifth.

24 Q. Did you intentionally mislead the O'Briens
25 to think that you were affiliated with AIM

1 Association after you were -- after you left AIM
2 Association?

3 A. I take the Fifth.

4 Q. Did you mislead the O'Briens regarding the
5 status of their investments?

6 A. I take the Fifth.

7 Q. Did you mislead the O'Briens regarding how
8 you were investing their money?

9 A. I take the Fifth.

10 Q. Did you routinely mislead the O'Briens
11 regarding the status of their investments?

12 A. I take the Fifth.

13 Q. Let's move on. Did Shawn McCord ever
14 invest money with Smart Assets, LLC?

15 A. I don't know.

16 Q. Did Shawn McCord ever invest money with
17 you and/or Smart Assets, LLC?

18 A. I take the Fifth.

19 Q. Do you know generally how much
20 Shawn McCord invested with you or Smart Assets, LLC?

21 MR. DUVAL: Objection. Assumes facts not
22 in evidence.

23 Q. (By Mr. Fitzsimons) You can answer.

24 A. I take the Fifth.

25 Q. How do you know Shawn McCord?

1 that Mr. Smart is reviewing P-27.

2 THE WITNESS: I'm ready.

3 Q. (By Mr. Fitzsimons) Is this the account
4 statement for October 2006 for Smart Assets, LLC's
5 Wells Fargo bank account?

6 A. Appears to be so.

7 Q. Please turn to the second page.

8 A. I'm there.

9 Q. Can you explain the transaction on
10 October 4th, the withdrawal of \$3,173.75, payable to
11 Virginia Padilla?

12 A. I take the Fifth.

13 Q. Can you explain why this transfer was made
14 to their account?

15 A. I take the Fifth.

16 Q. Can you please explain the October 18th
17 transaction, "a withdrawal made in a branch/store"
18 for \$23,000?

19 A. I take the Fifth.

20 Q. Was the \$23,000 used for personal
21 expenses?

22 A. I take the Fifth.

23 Q. How was this \$23,000 used?

24 A. I take the Fifth.

25 Q. Why did you withdraw this \$23,000 from

1 this account?

2 A. I take the Fifth.

3 Q. Can you please turn to the third page.

4 A. I'm there.

5 Q. Can you please explain the October 23rd
6 transaction, a withdrawal of \$5,000 transferred to
7 Bank of America, Katherine Brown?

8 A. I take the Fifth.

9 Q. Why was \$5,000 transferred to
10 Katherine Brown from this account?

11 A. I take the Fifth.

12 Q. Can you please explain the October 24th
13 transaction, withdrawal of \$5,000 to transfer to
14 Katherine Brown's account at Bank of America?

15 A. I take the Fifth.

16 Q. Why was this \$5,000 transfer made to
17 Katherine Brown?

18 A. I take the Fifth.

19 MR. FITZSIMONS: Please mark a one-page
20 document, Wells Fargo photocopy of a cashier's check,
21 Bates stamped RFPA-WF-00250, as P-28.

22 (EXHIBIT P-28 WAS MARKED.)

23 MR. EHRMAN: Mr. Smart, I've handed you
24 what's previously been marked as Exhibit P-28.

25 THE WITNESS: Thank you.

1 MR. FITZSIMONS: Let the record reflect
2 that Mr. Smart is reviewing P-28.

3 THE WITNESS: Okay.

4 Q. (By Mr. Fitzsimons) Did Kelli Smart
5 receive a check for the \$23,000 that was withdrawn
6 pursuant to P-27?

7 A. It appears to be so.

8 MR. DUVAL: P-27? Or was that P-28?

9 MR. FITZSIMONS: P-27 was the former
10 statement that I just showed Mr. Smart where there
11 was a \$23,000 withdrawal in October.

12 Q. (By Mr. Fitzsimons) Does this represent
13 that withdrawal?

14 A. It appears to be so.

15 Q. Can you explain why Kelli Smart received a
16 \$23,000 check from the Smart Assets, LLC account?

17 A. I take the Fifth.

18 Q. Do you know what Kelli Smart used the
19 \$23,000 for?

20 A. I take the Fifth.

21 Q. What else can you tell me about this
22 \$23,000 check to Ms. Smart?

23 A. I take the Fifth.

24 MR. FITZSIMONS: Please mark a five-page
25 document for Smart Assets, LLC's Wells Fargo bank

1 LLC's Wells Fargo bank account?

2 A. It appears to be so.

3 Q. Can you please turn to the second page.

4 A. I'm there.

5 Q. Can you please explain the February 2006
6 withdrawal for \$3,256.49 to Brian J. Smart's Chase
7 account?

8 A. I take the Fifth.

9 Q. Is this a credit card payment for your
10 personal credit card?

11 A. I take the Fifth.

12 Q. Do you charge personal expenses on your
13 Chase credit card?

14 A. I take the Fifth.

15 MR. FITZSIMONS: Please mark a three-page
16 document for statement period June 2007 for Smart
17 Assets, LLC for the Wells Fargo Bank account, Bates
18 stamped WF00088 through WF00090, as P-31.

19 (EXHIBIT P-31 WAS MARKED.)

20 MR. EHRMAN: Mr. Smart, I'm handing you
21 what has previously been marked as Exhibit P-31.

22 THE WITNESS: Thank you. Okay.

23 Q. (By Mr. Fitzsimons) Mr. Smart, is this the
24 account statement for June 2007 for Smart Assets, LLC
25 with Wells Fargo Bank?

1 Q. So why was \$8,000 withdrawn?

2 A. To -- withdrawn and sent to them?

3 Q. Pardon me?

4 A. Withdrawn by them?

5 Q. Why was \$8,000 withdrawn and/or
6 transferred to Waterfront Furnishings?

7 A. I take the Fifth. Once again, easy
8 explanation.

9 **BY MR. EHRMAN:**

10 Q. If there's an easy explanation, why don't
11 you go ahead and explain. We'd love an explanation.

12 A. I know, but I have -- but when I get
13 proper counsel for myself.

14 MR. EHRMAN: Okay.

15 **BY MR. FITZSIMONS:**

16 Q. Can you please refer to the June 14th
17 transaction, a transfer of \$5,000, an online transfer
18 to checking beginning 6452262 on June 14th, 2007.
19 Can you explain that?

20 A. I take the Fifth.

21 Q. As you mentioned earlier, this is the
22 college checking account number for you and
23 Kelli Smart; is that correct?

24 A. Appears to be so.

25 Q. Why would you transfer \$5,000 from your

1 Smart Assets, LLC account to your personal checking
2 account?

3 A. I take the Fifth.

4 Q. Please turn to the third page, Mr. Smart.

5 A. I'm there.

6 Q. Can you please explain to me the June 27th
7 \$300,000 withdrawal made in a branch/store?

8 A. Oh, there we are. I take the Fifth.

9 Q. Do you know why this withdrawal was made?

10 A. I take the Fifth.

11 Q. Do you know where this money went?

12 A. I take the Fifth.

13 Q. Can you please explain to me the June 25th
14 transaction, an online transfer of \$15,000 to
15 checking beginning 6452262 on June 23rd, 2007?

16 A. I take the Fifth.

17 Q. Why was this transfer of \$15,000 made?

18 A. I take the Fifth.

19 Q. Why did you transfer \$15,000 from your
20 Smart Assets, LLC account to your personal checking
21 account?

22 A. I take the Fifth.

23 MR. FITZSIMONS: Please mark a three-page
24 document, statement period November of 2007 for Smart
25 Assets, LLC's Wells Fargo bank account, Bates number

1 WF00102 through WF00104, as P-32.

2 (EXHIBIT P-32 WAS MARKED.)

3 MR. EHRMAN: Mr. Smart, I'm handing you
4 what has previously been marked as Exhibit P-32.

5 THE WITNESS: Thank you.

6 MR. DUVAL: Can I have a copy of that?

7 MR. FITZSIMONS: Sure. I'm sorry.

8 Q. (By Mr. Fitzsimons) Have you had a chance
9 to review P-32?

10 A. Yeah.

11 Q. Is P-32 a statement for November 2007 for
12 Smart Assets, LLC's Wells Fargo Bank account?

13 A. It appears to be so.

14 Q. Can you please explain to me, on the first
15 page, the November 1st \$10,000 transfer to checking
16 account ending 2964 on November 1st, 2007?

17 A. I take the Fifth.

18 Q. Why did you transfer \$10,000 from your
19 Smart Assets, LLC account to your checking account?

20 A. I take the Fifth.

21 Q. Was any of this money that you transferred
22 belonging to any of the investors of Smart Assets,
23 LLC?

24 A. I take the Fifth.

25 Q. Can you please explain the \$50,000

1 withdrawal made on November 2nd made in a
2 branch/store?

3 A. I take the Fifth.

4 Q. Why was this withdrawal made?

5 A. I take the Fifth.

6 Q. Was any of this money used for personal
7 expenses?

8 A. I take the Fifth.

9 Q. Would you please turn to page 2.

10 A. Yes.

11 Q. Can you please explain the November 6th
12 transaction, the withdrawal and/or transfer of
13 \$2,580.16 to Katherine Brown's Bank of America
14 account?

15 A. I take the Fifth.

16 Q. Can you explain why this transfer was
17 made?

18 A. I take the Fifth.

19 Q. Does it represent a dividend payment to
20 Katherine Brown from Smart Assets, LLC?

21 A. I take the Fifth.

22 Q. Can you please explain the November 19th
23 transaction for \$6,037.50? Appears to be a
24 withdrawal and a transfer to Countrywide Mortgage,
25 November of 2007.

1 A. I take the Fifth.

2 Q. Did Countrywide Mortgage ever hold a
3 mortgage on your house?

4 A. I take the Fifth.

5 Q. Were you paying your mortgage payments
6 through your Smart Assets, LLC account?

7 A. I take the Fifth.

8 Q. This November 19th transaction on P-32 for
9 \$6,037.50 that states: "Countrywide Mortgage
10 November 2007, account ending 0185, Smart BJ," is
11 this your mortgage that's being paid?

12 A. I take the Fifth.

13 Q. Do you typically pay your mortgage
14 payments through your Smart Assets, LLC account?

15 A. I take the Fifth.

16 Q. Can you turn to the third page, Mr. Smart.

17 A. Okay, I'm there.

18 Q. Can you explain to me the November 28th
19 transaction for \$1,415.33 called "Greenpoint Mortgage
20 payment, 071128, account ending 9357, Smart, Brian
21 J"?

22 A. I take the Fifth.

23 Q. Does this represent a payment on your own
24 mortgage through your Smart Assets, LLC account?

25 A. I take the Fifth.

1 MR. FITZSIMONS: Please mark a three-page
2 document for statement period December 2007 for Smart
3 Assets, LLC's Wells Fargo Bank account, Bates stamped
4 WF00105 through WF00107, as P-33.

5 (EXHIBIT P-33 WAS MARKED.)

6 MR. EHRMAN: Mr. Smart, I'd like to hand
7 you what's previously been marked as Exhibit P-33.

8 THE WITNESS: Thank you. I'm ready.

9 Q. (By Mr. Fitzsimons) Have you had a chance
10 to review P-33?

11 A. Yeah.

12 Q. Would you please turn to the second page
13 of P-33.

14 A. I'm there.

15 Q. Can you please explain the December 28th
16 transaction, a withdrawal of \$3,299.34, payable to
17 Discover, E-payment 071228, account ended 6066,
18 Smart, Brian?

19 A. I take the Fifth.

20 Q. Does this payment reflect a payment of
21 your personal credit card?

22 A. I take the Fifth.

23 Q. Did you use your credit card to pay for
24 personal expenses?

25 A. I take the Fifth.

1 Q. And can you please explain to me the
2 December 28th transaction for \$2,770.01 titled
3 "American Express elec remittance," which I believe
4 is electronic remittance, for account ending 6835 to
5 Kelli R. Smart?

6 A. I take the Fifth.

7 Q. Does this \$2,770.01 payment to American
8 Express reflect a payment to Kelli Smart's personal
9 credit card?

10 A. I take the Fifth.

11 Q. Why are you paying personal credit card
12 expenses with your Smart Assets, LLC account?

13 A. I take the Fifth.

14 MR. FITZSIMONS: Please mark a three-page
15 document for the period January of 2008, statement
16 for Smart Assets, LLC for the Wells Fargo Bank
17 account, Bates stamped WF00108 through WF00110, as
18 P-34.

19 (EXHIBIT P-34 WAS MARKED.)

20 MR. EHRMAN: Mr. Smart, I'm handing you
21 what has previously been marked as Exhibit P-34.

22 THE WITNESS: Thank you. Okay.

23 Q. (By Mr. Fitzsimons) Have you had a chance
24 to review P-34?

25 A. Yes.

1 Q. Please explain the December 28th
2 transaction, a withdrawal of \$3,299.34, payable to
3 Discover, E-payment 071228, account ended 6066. It's
4 on the first page.

5 A. No, I know. I take the Fifth.

6 Q. Were you paying your personal mortgage
7 expense through the Smart Assets, LLC account?

8 A. I take the Fifth.

9 Q. Can you please explain the January 3rd
10 \$5,000 withdrawal transferred to DDA number ending
11 1213?

12 A. I take the Fifth.

13 Q. Turn to the second page. Can you please
14 explain the January 29th \$3,000 withdrawal, seems to
15 be a wire transfer to Norman Banbury, account ended
16 4901?

17 A. I take the Fifth.

18 Q. Can you please explain the January 24th
19 transaction for \$299.03 to Costco?

20 A. I take the Fifth.

21 Q. Can you please explain the \$269 withdrawal
22 to Maverik Country Store on January 24th?

23 A. I take the Fifth.

24 MR. DUVAL: I'm sorry, where's that?

25 THE WITNESS: It's not Maverik.

1 MR. FITZSIMONS: Sure. You have to remind
2 me sometimes.

3 THE WITNESS: I'm ready.

4 Q. (By Mr. Fitzsimons) Have you had a chance
5 to review P-35?

6 A. I did.

7 Q. Can you please explain to me on the first
8 page of the transaction February 4th the \$3,493.46
9 payment to Discover E-payment for account ending
10 6066, Smart, Brian?

11 A. I take the Fifth.

12 Q. Is this your personal credit card that
13 you're paying through your Smart Assets, LLC account?

14 A. I take the Fifth.

15 Q. Did you pay personal expenses with your
16 Discover card, Mr. Smart?

17 A. I take the Fifth.

18 Q. Could you please explain the February 4th
19 \$1,334 bill pay, Greenpoint Mortgage, recurring
20 payment, account ending 8901?

21 A. I take the Fifth.

22 Q. Is this for your home mortgage, Mr. Smart?

23 A. I take the Fifth.

24 Q. Is this in conjunction with the
25 Countrywide mortgage for your home residence?

1 A. I take the Fifth.

2 Q. Is it fair to say that some of Smart
3 Assets, LLC's money was commingled in the Smart
4 Assets, LLC account?

5 A. I take the Fifth.

6 Q. Was any of your money commingled in the
7 Smart Assets, LLC account?

8 A. Take the Fifth.

9 Q. Is it fair to say that you transferred
10 money at various times from the Smart Assets, LLC
11 account to your own personal checking account?

12 A. Take the Fifth.

13 Q. Did you pay various personal expenses
14 through your Smart Assets, LLC account?

15 A. Take the Fifth.

16 Q. Did you pay for your personal residence,
17 your home residence mortgage, through your Smart
18 Assets, LLC account?

19 A. I take the Fifth.

20 Q. Did you pay for your personal credit cards
21 through your Smart Assets, LLC bank account?

22 A. I take the Fifth.

23 Q. Did you pay various investors through your
24 Smart Assets, LLC bank account?

25 A. I take the Fifth.

1 Q. Did you withdraw and issue a \$23,000 check
2 to your wife through the Smart Assets, LLC bank
3 account?

4 A. I take the Fifth.

5 Q. Have you recently used any investor money
6 for personal expenses?

7 A. I take the Fifth.

8 Q. Did you ever pay later investors with
9 earlier investor money?

10 A. I take the Fifth.

11 Q. Did you orchestrate a scheme to defraud
12 investors?

13 MR. DUVAL: When you say "you," who are
14 you talking to?

15 MR. FITZSIMONS: Mr. Smart in his capacity
16 as Smart Assets, LLC.

17 A. I take the Fifth.

18 Q. (By Mr. Fitzsimons) Did you mislead
19 investors repeatedly about how you were investing
20 their money?

21 A. I take the Fifth.

22 Q. Did you repeatedly mislead investors about
23 the status of their money?

24 A. I take the Fifth.

25 Q. Did you comingle investor money with your

1 own money?

2 A. I take the Fifth.

3 Q. Did you comingle investor money with the
4 money of other investors?

5 A. I take the Fifth.

6 Q. Did you repeatedly mislead investors to
7 think you were affiliated with AIM Association after
8 you left AIM Association?

9 A. I take the Fifth.

10 Q. Did you repeatedly mislead investors by
11 telling them that you were going to invest their
12 money in low-risk principal-guaranteed funds, but
13 instead used the money for your own personal
14 expenses?

15 A. I take the Fifth.

16 Q. Did you repeatedly mislead investors by
17 telling them that you were going to invest their
18 money in low-risk principal-guaranteed funds but
19 instead used their money for real estate investments?

20 A. I take the Fifth.

21 Q. Did you repeatedly mislead investors by
22 telling them that you were going to invest their
23 money in low-risk principal-guaranteed funds, but
24 instead used the money for hard lending?

25 A. I take the Fifth.

1 Q. Is there anything else you want to tell
2 us, Mr. Smart?

3 A. No. I just -- just on the record, the
4 last couple hours all the questions have been
5 directed to Brian Smart and not the LLC. That's my
6 opinion.

7 Q. So that's the Smart Assets, LLC account
8 statements that we were just going over; is that
9 correct?

10 A. Yeah, that was. I'm just saying --

11 Q. Do you have anything to add?

12 A. No. I'm sorry.

13 Q. Is there anything that you want to add?
14 Do you want to explain to us how this is a great
15 misunderstanding?

16 A. There are some misunderstandings,
17 definitely, but they will be explained when I get
18 proper counsel for Brian Smart. I have nothing else
19 to add at this time.

20 MR. FITZSIMONS: Do you want to take a
21 break?

22 MR. EHRMAN: Why don't we take a break,
23 and then I think we'll sum up here in just a few
24 minutes, sum it up, and then after that, if you guys
25 have the time, we'll meet and confer. We've got to