

STATE OF NEW JERSEY
BUREAU OF SECURITIES
153 Halsey Street
P.O. Box 47029
Newark, New Jersey 07101

IN THE MATTER OF: :

Maxwell Baldwin Smith, III :
(CRD NO. 600012) :

: **ADMINISTRATIVE**
: **CONSENT ORDER**
:

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities (the "Bureau Chief") by the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (the "Securities Law"), and after investigation of the facts involving Maxwell B. Smith, III, the Bureau Chief and Maxwell B. Smith, III, through counsel (Robert A. Weir, Jr., Esq. of Weir & Plaza, LLC) now desire to resolve this matter and consent to the form and entry of this Administrative Consent Order.

Solely for the purpose of settling this proceeding only, and without Maxwell B. Smith III admitting or denying the findings set forth below, the Bureau Chief, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Maxwell B. Smith, III ("Smith"), CRD # 600012, residing in Fair Haven, New Jersey, was registered with the Bureau as an agent with various firms from July 1974 through April 2009.

2. Smith was registered with the Bureau as an agent with Cantone Research Inc. ("Cantone") in Tinton Falls, New Jersey, CRD# 26314 from January 7, 2005 until April 3, 2009.

3. For more than seventeen (17) years, from November 1992 until April 2009, Smith promoted and sold what purported to be a tax exempt interest bearing investment, "Heath Care Financial Partnership Direct Municipal Loan" ("HCFP Loan"), which was an unregistered security.

4. Smith solicited and sold the HCFP Loan to more than ten (10) people who invested a total of approximately \$10 million in HCFP Loans.

5. Smith used his title of Senior Vice President and position at various broker dealers with which he was associated to gain the confidence of prospective investors. In some instances, the investors Smith solicited and sold the HCFP Loan to were elderly, unsophisticated investors. Most, if not all, investors were clients of the broker dealers which employed Smith.

6. Smith created a prospectus that contained false representations for the HCFP Loan, which was provided to investors.

7. Smith opened a personal securities account at Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Smith instructed investors to make their investment checks payable to "Merrill Lynch A/C 36641", in order to purchase the HCFP Loan. Investors were instructed to send their checks to "Health Care

Financial" at 331 West 57th Street, Department PMB-451, New York, NY 10019. At times, Smith hand wrote the account name and number on the check after receiving the check from the investor.

8. The Health Care Financial address was actually a Mail Boxes, Etc. store.

9. By instructing investors to make their checks out to Merrill Lynch, Smith mislead investors by lending authenticity of a large institutional bank to the HCFP Loan. Additionally, Smith sent out letters to investors confirming their investments on fictitious Health Care Financial letterhead, which included fabricated direct loan investment numbers, interest rates and maturity date of the loan.

10. In truth and fact, the HCFP Loan did not exist and was fictitious. Rather, the entire investment was a scheme to defraud, where in some instances Smith paid early investors with money collected from that investor's own money or from new investors.

11. Smith deposited the investor checks into his personal securities account at Merrill Lynch, where the money was invested in money market securities. Smith then transferred the money to other personal accounts for the purpose of misapplying the funds for his personal use and for third parties.

12. Smith used the investor money: a) to pay investors their bogus interest payment in an effort to continue to deceive investors

regarding the status of their investments; and b) for his personal use and for third parties.

13. Smith made false and misleading statements to investors regarding the HCFP Loan, including but not limited to, that the:

- a) HCFP Loan was a safe securities investment;
- b) investment returns on the HCFP Loan were exempt from federal income taxes; and
- c) HCFP Loan had a guaranteed interest rate, ranging from 7.5% to 9.0% paid semi-annually.

14. Smith failed to disclose to investors that:

- a) he commingled investor money into his personal accounts;
- b) he used investor monies to "pay" other investors; and
- c) the HCFP Loan was not registered with the Bureau.

CONCLUSIONS OF LAW

I

SMITH EMPLOYED A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD IN VIOLATION OF N.J.S.A. 49:3-52(a)

15. Smith employed a scheme to defraud investors by engaging in the conduct described in the preceding paragraphs.

16. Smith's scheme included, but was not limited to:

- a) creating, promoting and selling a fictitious security, by using a misleading prospectus and a false company address for over seventeen (17) years;
- b) continuing to mislead investors regarding their investments by instructing investors to make their checks out to Merrill Lynch; and
- c) misappropriating investor funds for his use and personal benefit.

17. Each violation of N.J.S.A. 49:3-52(a) by Smith upon each investor is a separate violation.

II

SMITH MADE MATERIALLY FALSE AND MISLEADING STATEMENTS AND/OR OMITTED MATERIAL FACTS IN VIOLATION OF N.J.S.A. 49:3-52(b)

18. Smith directly and/or indirectly, made materially false and misleading statements or omitted material facts to investors in connection with the offer and sale of securities.

19. The misleading statements, among others, were that the:

- a) HCFP Loan was a safe securities investment;
- b) investment returns on the HCFP Loan were exempt from federal income taxes; and
- c) HCFP Loan had a guaranteed interest rate, ranging from 7.5% to 9.0% paid semi-annually.

20. Smith failed to disclose to investors that:

- a) he commingled investor money into his personal accounts;
- b) he used investor monies to "pay" other investors; and
- c) the HCFP Loan was not registered with the Bureau.

21. Each omission or materially false or misleading statement made by Smith is a separate violation of N.J.S.A. 49:3-52(b).

III

SMITH SOLD UNREGISTERED SECURITIES IN VIOLATION OF N.J.S.A. 49:3-60

22. The HCFP Loan sold by Smith is a security, as defined in N.J.S.A. 49:3-49(m) of the Securities Law.

23. The HCFP Loan was not registered with the Bureau.

24. The HCFP Loan sold by Smith was not exempt from registration with the Bureau nor was it a federally covered security.

25. The HCFP Loan offered for sale and/or sold by Smith was required to be registered with the Bureau.

26. Therefore, each offer and sale by Smith of the unregistered security is a separate violation of N.J.S.A. 49:3-60.

PUBLIC INTEREST

27. It is in the public interest to revoke the exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b) and N.J.S.A. 49:3-56(c).

The Bureau Chief finds that the sanctions imposed below are in the public interest for the protection of investors and consistent with the policy and purposes intended by the Securities Law.

It is on this 18th day of November 2009,

ORDERED that:

1. Maxwell B. Smith, III shall hereby cease and desist from future violations of the Securities Law.
2. Maxwell B. Smith, III shall make no offer or sale of securities within the scope of the Securities Law.
3. Maxwell B. Smith, III is barred from being a partner, control person, officer or director of an issuer, broker-dealer or investment adviser, or from occupying a similar status or performing a similar function or from directly or indirectly controlling or being controlled by an issuer, broker-dealer or investment adviser, or from acting as a broker-dealer, agent or investment adviser in New Jersey. Except that Smith may obtain employment with an issuer in a position that is not regulated by the Bureau or affecting its authority.
4. Maxwell B. Smith, III is denied all exemptions contained in N.J.S.A. 49:3-50 subsection (a) paragraph 9, 10, and 11 and subsection (b).
5. The exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c) and N.J.S.A. 49:3-56(g) are hereby revoked.

6. Maxwell B. Smith, III is ordered to pay \$7,847,823.49 in restitution pursuant to N.J.S.A. 49:3-69(a)(2).

7. Maxwell B. Smith, III shall fully and promptly cooperate with the Attorney General and any personnel within the Department of Law and Public Safety regarding, among other things, his activities in soliciting, offering and selling the HCFP Loan securities, and/or any other investigations and/or proceedings brought pursuant to N.J.S.A. 49:3-47 et seq.

8. Maxwell B. Smith, III's full and prompt cooperation shall include, but is not limited to, interviews by the Department of Law and Public Safety personnel, testifying, depositions, production of documents and any other reasonable requests.

9. The Bureau Chief has relied on Maxwell B. Smith, III's representation that he will voluntarily and completely cooperate with the Bureau and any other departments within the Department of Public Law and Safety. If the Bureau Chief determines that Maxwell B. Smith, III has fulfilled his cooperation obligations, then the Bureau Chief or his designee may inform other appropriate law enforcement authorities in writing of such cooperation. If the Bureau Chief determines that Maxwell B. Smith, III has not fulfilled his cooperation obligations, then the Bureau Chief may, upon seven (7) business days written notice to Maxwell B. Smith, III (which notice shall constitute good and sufficient notice by overnight mail to Robert A. Weir, Jr., Esq.), vacate this Administrative Consent

Order. The Bureau Chief may then pursue any and all remedies against Maxwell B. Smith, III, including, but not limited to, filing a Verified Complaint and seeking an asset freeze or the appointment of a Receiver. Maxwell B. Smith, III shall be precluded from asserting any time defenses.

FINAL JUDGMENT

10. It is further agreed that pursuant to N.J.A.C. 1:1-19.1(d) that this Administrative Consent Order shall be deemed the final decision as to Maxwell B. Smith, III. As such, final judgment in the amount of \$7,847,823.49 is entered against Maxwell B. Smith, III, representing his restitution obligation pursuant to N.J.S.A. 49:3-69(a)(2).

General Provisions

11. To the extent that restitution is paid, in whole or in part, pursuant to orders entered in The State of New Jersey v. Maxwell B. Smith, III, Docket No: S-2009-102872-1412, or United States of America v. Maxwell B. Smith, III, Docket No. 09-4057, then Maxwell B. Smith, III shall be entitled to credit toward his restitution obligation to the Bureau in equal amount.

12. No employee or official of, or person representing, the Bureau or the State of New Jersey has made any additional promise or representation to the Maxwell B. Smith, III regarding this Administrative Consent Order.

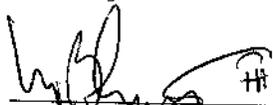
13. Nothing in this Administrative Consent Order shall in any manner be construed to limit or affect the rights of any persons who may have a claim against defendant Maxwell B. Smith, III. The amount of any such claim may be reduced by any amounts paid to such persons from other sources, including any restitution paid pursuant to this Administrative Consent Order.

14. Maxwell B. Smith, III, by his signature below, in consideration of his desire to resolve the issues herein and having full opportunity to consult with counsel, hereby consents to the jurisdiction of the Bureau and voluntarily waives any right to assert any defenses, or to raise any challenge that he otherwise may have had to this Administrative Consent Order.



Marc B. Minor
Chief, New Jersey Bureau of Securities

The undersigned has read this Consent Order, has been advised of his right to review it with counsel before signing it, understands it, and agrees to be bound by its terms.

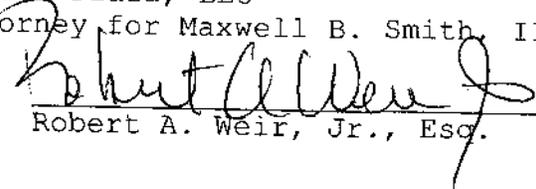


Maxwell B. Smith, III

Dated: 11/13/09

Consent to the Form
and Entry of this Order:

Weir & Plaza, LLC
Attorney for Maxwell B. Smith, III

By: 

Robert A. Weir, Jr., Esq.

Dated: 11/13/09