

**ADMINISTRATIVE PROCEEDING**

**BEFORE THE**

**SECURITIES COMMISSIONER OF SOUTH CAROLINA**

**IN THE MATTER OF:**

**Samuel N. Smith,**

**Respondent.**

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**ORDER TO CEASE AND DESIST**

**File No. 08063**

WHEREAS, the Attorney General of the State of South Carolina, acting as the Securities

Commissioner ("Commissioner"), administers the South Carolina Uniform Securities Act of

2005 (the "Act"), S.C. Code Ann. § 35-1-101 to 35-1-703 (Supp. 2008);

WHEREAS, the Securities Division of the Office of the Attorney General of the State of  
South Carolina (the "Division") on or about November 8, 2008, received a letter from Samuel N.

**FACTUAL HISTORY**

1. Smith is a South Carolina resident.

2. Smith's home and work addresses at all times relevant hereto are located within Lexington

3. Upon information and belief Smith at all times relevant hereto did business as a broker-

9. Smith has and is responsible for a web site for TIIC in which he stated that he is a “registered

Investment Advisor”

10. In his TIIC web site, Smith states, “We do it all in one shot. Tax preparation, Insurance, Payroll/Bookkeeping, Investments.” Smith also lists tax preparation, bookkeeping and payroll, insurance, investments, and annuities as the five different services that he provides.

11. The Division at various times from January 8, 2009, through the present has accessed TIIC’s web site and seen the statements noted in paragraphs 9 and 10 above.

12. In his TIIC web site, Smith states, “Investments” Smith states “Standard

18. On January 14, 2009, the Division sent a letter to Smith asking for a complete response to its December 19, 2008, request.

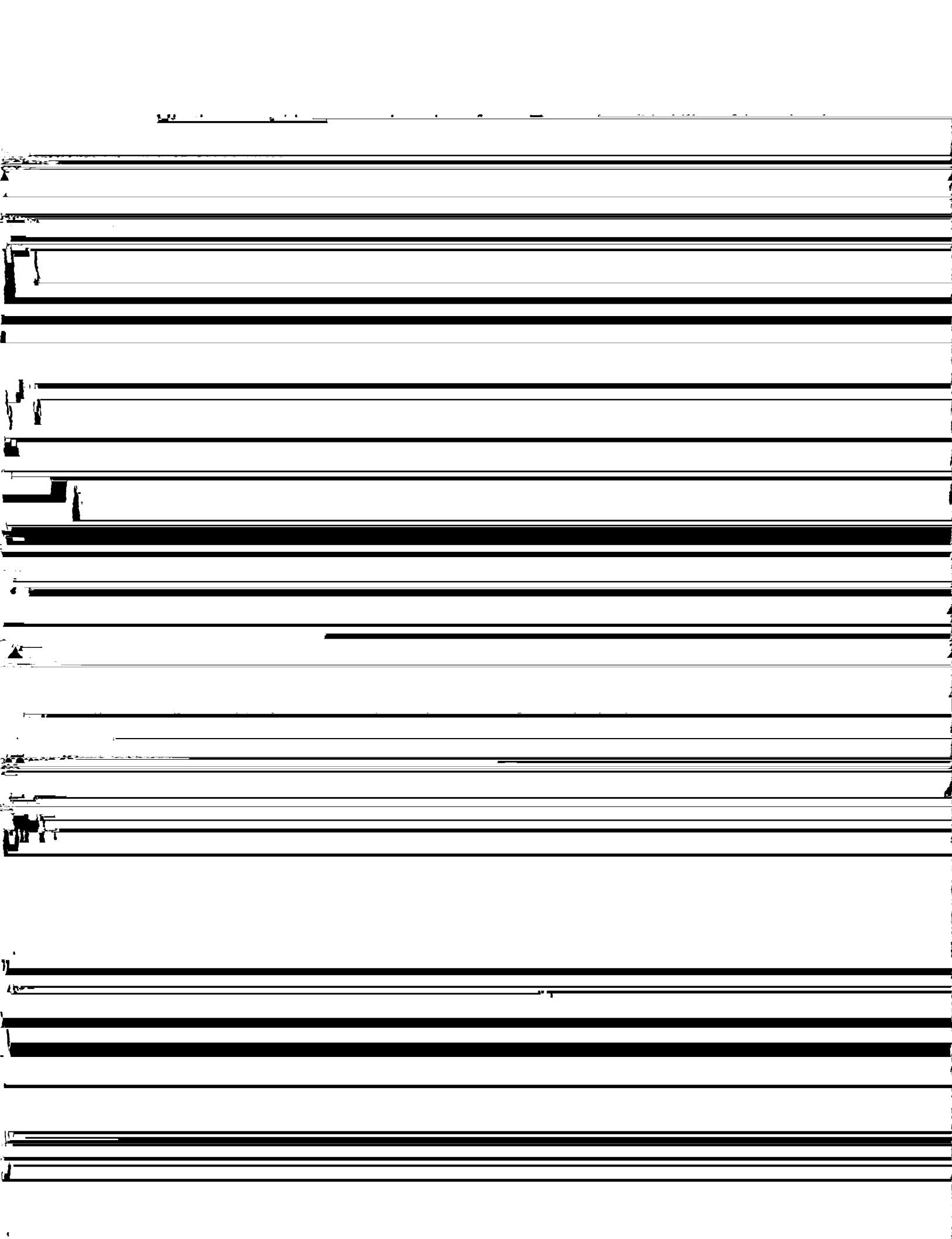
19. In a letter dated January 16, 2009, Smith submitted a second response to the Division's ~~December 19, 2008 request. Although Smith's second response did provide some of the~~

requested information, Smith's response still was not complete.

20. In Smith's January 16, 2009, response, he stated the following about his business activities and advertising from May 2007 to the date of his response:

- a. "I have sold ZERO SECURITIES . . . ."
- b. "I assisted a 20 year old with an IRA – he selected the investment – a mutual fund."
- c. "I HAVE DONE ZERO ADVERTISING FOR SECURITIES."

~~21. In 2007 and 2008, Smith did not advertise in the State of Connecticut for securities.~~



28. Pursuant to 52 Fed. Reg. 38,400 (1987), a person is in the business of giving advice

provides investment advice or provides specific investment advice.

29. Pursuant to 52 Fed. Reg. 38,400 (1987), a person providing a variety of services to a client,

~~including investment advisory services for which the person receives an economic benefit~~

securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

35. Pursuant to S.C. Reg. § 13-501(B)(6), each broker-dealer agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their

- a. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives, or any employee, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make

~~the statements made regarding qualifications, services, or fees in light of the~~

circumstances under which they are made, not misleading;

- b. Publishing, circulating, or distributing any advertisement that does not comply with 17 C.F.R. § 275.206(4)-1, which states that it is a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser registered or required to be registered, directly or indirectly, to publish, circulate, or distribute any advertisement that, among other things, contains any untrue statement of a material fact, or that is otherwise false or misleading;
- c. Engaging in any act, practice, or course of business that is fraudulent, deceptive,



that, at the time and in the light of the circumstances under which it was made, is false or misleading in a material respect.

40. Pursuant to S.C. Code Ann. § 35-1-602(a)(1), the Securities Commissioner may conduct public or private investigations within or outside South Carolina which the Securities Commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate the Act or a rule adopted or order issued under the Act, or to aid in the enforcement of the Act or in the adoption of rules and forms under the Act.

41. Regarding administrative remedies under the Act:

~~Pursuant to S.C. Code Ann. § 35-1-604(a)(1), if the Securities Commissioner~~

determines that a person has engaged, is engaging, or is about to engage in an act.

may be issued after the hearing that may make final orders or modify the order

issued under S.C. Code Ann. § 35-1-604(b).

- d. Pursuant to S.C. Code Ann. § 35-1-604(d), in a final order, the Securities Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation.
- e. Pursuant to S.C. Code Ann. § 35-1-604(e), in a final order, the Securities Commissioner may charge the actual cost of an investigation or proceeding for a violation of the Act or a rule adopted or order issued under the Act.

#### DETERMINATION

42, WHEREAS, based on the foregoing, the Division has determined that Smith has engaged, is

engaging, or is about to engage in an act, practice, or course of business constituting a

violation of the Act or a rule adopted or order issued under the Act as follows:

e. Through his representations on TIIC's web site, Smith offered investment advice to clients and prospective clients.

f. Smith has violated S.C. Code Ann. § 35-1-403(a) by transacting business in South

- ii. Publishing, circulating, or distributing an advertisement that contains an untrue statement of a material fact;
- iii. Engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative; and
- iv. Employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business that operates or would operate as a fraud or deceit.

1. Smith violated S.C. Code Ann. § 35-1-505 by making the following false or

~~misleading statements in a record used or filed under the Act:~~

registered investment adviser, assisted people in finding the right place to put their money, and assisted people with investments and IRAs.

43. If this Order becomes effective by operation of law, the Division seeks a civil penalty of \$500 from Smith. If Smith seeks a hearing and a hearing officer or some other legal authority resolves this matter, the Securities Commissioner seeks an amount not to exceed \$10,000 for each violation of the Act by Smith and the actual costs of the investigation.

**CEASE AND DESIST ORDER**

44. NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, IT IS **HEREBY ORDERED** that Smith:

a. Cease and desist from transacting business, in violation of S.C. Code Ann. §§ 35-

1-604(a) in South Carolina in connection with his investment advisory services.

including, but not limited to, holding himself out as providing investment advice when not registered or exempt from registration;

b. Cease and desist from using any advertisement, including but not limited to web sites, in a fraudulent or deceptive fashion, in violation of S.C. Reg. §§ 13-

- e. Pay a civil penalty of \$500, if this Order becomes effective by operation of law, or, if Smith seeks a hearing and a hearing officer or any other legal authority

~~resolves this matter, pay a civil penalty in an amount not to exceed \$10,000 for~~

each violation of the Act by Smith and the actual costs of the investigation.

**REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING**

48. CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR  
SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL  
ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE

THESE ACTIONS ARE NOT INTENDED TO PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES UNDER

PENALTIES UNDER S.C. CODE ANN. § 35-1-508. REGARDING MATTERS  
DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE FILING OF  
PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES UNDER