

BEFORE THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY

In the Matter of
MCGINN SMITH & COMPANY
20090179845

INVESTIGATIVE TESTIMONY OF
TIMOTHY MCGINN
WOODBRIIDGE, NEW JERSEY
FEBRUARY 3, 2010

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In the Matter of
MCGINN SMITH & COMPANY
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Investigative testimony of TIMOTHY MCGINN, taken
at FINRA, 581 Main Street, 7th Floor, Woodbridge, New Jersey,
on February 3, 2010, commencing at 1:45 p.m.

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APPEARANCES:

BY - CHRISTOPHER RATTINER
BY - STEVEN ROWEN
BY - MICHAEL NEWMAN
BY - GARY JAGGS
BY - MICHAEL PAULSEN
BY - REBECCA SMITH
BY - ROBERT MCCARTHY

FINRA
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095
Representing FINRA.

BY - DAVID FRANCESKI, JR., ESQ.
STRADLEY, RONON, STEVENS & YOUNG LLP
2600 One Commerce Square
Philadelphia, Pennsylvania 19103
Tel: 215-564-8000
Representing Witness.

ALSO PRESENT:
JOSEPH CARR

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| Exhibit 1, total of seven pages, Excel spreadsheet of data imported from the Quicken registry report of all transactions in TDM Cable's Mercantile Bank account ending in 9507 | 97 |
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TIMOTHY MCGINN
EXAMINATION

BY MR. RATTINER:

Q Good afternoon. We are on the record
February 3, 2010.

MR. RATTINER: Will the court
reporter please swear in the
witness.

TIMOTHY MCGINN, Having been duly sworn, Testifies as
follows:

MR. RATTINER: Let the record
reflect the witness has been sworn in by
the court reporter.

BY MR. RATTINER:

Q Will the witness please spell and
state his full name for the record.

A Timothy McGinn, M-c capital G-i-n-n.

Q My name is Chris Rattiner. I am a
principal examiner here at FINRA, District 9, New
Jersey. With me today is Michael Newman, Senior
Regional Counsel; Michael Paulsen at the end of the
table, Exam Manager; Steve Rowen, Associate Principal
Examiner -- Senior Examiner. I apologize. And

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1 TIMOTHY MCGINN
 2 Robert McCarthy, Examination Manager.
 3 We are here today to interview
 4 Timothy McGinn in connection with FINRA's
 5 investigation of case number 20090179845. This is an
 6 inquiry to determine whether there have been any
 7 violations of securities rules and or security laws.
 8 Your testimony has been requested in this matter
 9 pursuant to FINRA Rule 8210. FINRA Rule 8210
 10 requires you to answer the Staff's questions and
 11 answer them truthfully. Failure to do so could lead
 12 to an imposition of disciplinary proceedings.
 13 Mr. McGinn, are you represented by
 14 counsel today?
 15 A Yes.
 16 MR. RATTINER: Can counsel
 17 please identify themselves for the record.
 18 MR. FRANCESKI: David
 19 Franceski; Stradley Ronon Stevens &
 20 Young, Philadelphia PA.
 21 MR. CARR: Joseph Carr; McGinn
 22 Smith & Company.
 23 BY MR. RATTINER:
 24 Q The staff controls the record. As
 25 such, the court reporter will only go off the record

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1 TIMOTHY MCGINN
 2 at our instruction. Should anyone here wish to go
 3 off the record for any reason, please address your
 4 request to me, and if appropriate I will instruct the
 5 reporter to go off the record.
 6 I normally take breaks at reasonable
 7 intervals. But if anyone here needs a break for any
 8 reason, please let me know. If you do not understand
 9 a question, Mr. McGinn, please say so and I will
 10 rephrase it if necessary. Please remember to give
 11 verbal responses to all of our questions, as the
 12 court reporter cannot record a nod of the head.
 13 Unless otherwise specified, our questions today will
 14 encompass the review period from January 2003 to
 15 present.
 16 Mr. McGinn, did you discuss your
 17 appearance here today with anyone other than counsel?
 18 A Yes.
 19 Q And who did you discuss?
 20 A Mr. Smith.
 21 Q And when were those discussions?
 22 A Last night.
 23 Q And what was the relevance of those
 24 discussions?
 25 A Just that I was here; I am ready to

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1 TIMOTHY MCGINN
 2 testify.
 3 Q Any other discussions with anyone
 4 else?
 5 A No.
 6 Q Any other substance to those
 7 conversations with Mr. Smith?
 8 A No.
 9 MR. FRANCESKI: Excluding
 10 counsel, obviously.
 11 MR. RATTINER: Obviously.
 12 BY MR. RATTINER:
 13 Q Did you review any documents or notes
 14 in preparation for today's meeting?
 15 A No.
 16 Q The following questions I am going to
 17 ask you regarding your last OTR, which is April 2009
 18 through today, since we already have on the record
 19 from the previous OTR.
 20 A Fine.
 21 Q Have you testified under oath during
 22 that time frame?
 23 A Yes.
 24 Q And what was that?
 25 A It was the Federal trial of Senator

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1 TIMOTHY MCGINN
 2 Joseph L. Bruno in the Northern District Court of New
 3 York.
 4 MR. FRANCESKI: Arbitration?
 5 THE WITNESS: Oh, yes, and the
 6 [REDACTED] arbitration in Philadelphia,
 7 Pennsylvania.
 8 BY MR. RATTINER:
 9 Q And other than those two?
 10 A No.
 11 Q Have you ever been charged with fraud
 12 or perjury?
 13 A No.
 14 Q Have you ever been named as a party
 15 to a lawsuit?
 16 A Yes.
 17 Q Within the -- since April 2009?
 18 A I don't believe so.
 19 Q Have you ever been a witness in a
 20 lawsuit?
 21 A Yes.
 22 Q Since April 2009?
 23 A As I mentioned earlier, the two
 24 instances. But other than that, no.
 25 Q One was an arbitration? Mr. Bruno's

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1 TIMOTHY MCGINN
 2 was a federal trial?
 3 A Correct.
 4 Q Have you been named as a party to an
 5 arbitration?
 6 MR. FRANCESKI: Ever?
 7 BY MR. RATTINER:
 8 Q Since April 2009. Personally named.
 9 A I don't believe so. I don't believe
 10 so.
 11 Q And have you been named in any
 12 customer complaints, verbal or written by a customer
 13 since April 2009?
 14 A No.
 15 Q What is your current title at McGinn
 16 Smith?
 17 A Chairman of the board.
 18 Q And what are your responsibilities as
 19 chairman of the board?
 20 A I run the investment banking practice
 21 of the firm.
 22 Q And where are you located?
 23 A Our headquarters are in Albany, New
 24 York. I also work out of our Boca Raton office on
 25 occasion.

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1 TIMOTHY MCGINN
 2 Q And who else is located in Boca
 3 Raton?
 4 A Mr. Matthew Rogers.
 5 Q Are there other entities within the
 6 same facility as the McGinn Smith?
 7 A Yes.
 8 Q And what would that be?
 9 A Verifier Capital LLC.
 10 Q Which employees are still currently
 11 employed by McGinn Smith?
 12 A You want a list of our employees?
 13 Q Correct.
 14 A There's myself, Mr. Smith, Mr. Carr,
 15 Mr. Shea; Mr. McGinn, my son; Mr. Smith, David's son,
 16 Mr. Jeffrey Smith. My son's name is Matthew. Patty
 17 Sicluna, Caroline Gracey, G-r-a-c-e-y, Brian Cooper,
 18 and Patricia Trombley, and Matthew Rogers.
 19 Q Caroline Gracey is not a name I am
 20 familiar with.
 21 Who is she?
 22 A She is a woman who's worked for us
 23 for, God, I don't know, 15 years. She had gone to an
 24 affiliate company called McGinn Smith Alarm Traders;
 25 but when we downsized recently, we brought her back

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1 TIMOTHY MCGINN
 2 into McGinn Smith & Company. She is basically
 3 receptionist, secretary, chief cook and bottle
 4 washer.
 5 Q Okay. What is the current status of
 6 McGinn Smith & Company?
 7 A McGinn Smith & Company is, as you
 8 know, effectively out of business as of
 9 December 18th. And we are dealing with matters such
 10 as this and wrapping things up.
 11 Q What are the future plans for the
 12 firm?
 13 A Well, they are not quite concrete as
 14 yet. We are looking at a number of different
 15 financing vehicles that might make sense, but we
 16 haven't -- we haven't made any concrete decisions.
 17 Q What do you mean by "financing
 18 vehicles," in terms of financing the broker-dealer?
 19 A No, no. We are out of the
 20 broker-dealer business. We are just -- we are not
 21 interested in being in a regulated business any
 22 longer. So we are looking for different types of
 23 opportunity.
 24 Q Has the firm filed a BDW?
 25 A No.

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1 TIMOTHY MCGINN
 2 Q Does the firm plan on filing a BDW?
 3 A I would say the answer to that is
 4 probably yes.
 5 MR. NEWMAN: Let me ask a
 6 question. You said you are looking
 7 at -- your firm is looking at financing
 8 opportunities outside the broker-dealer
 9 setting. What are those opportunities
 10 you are looking at?
 11 THE WITNESS: Well, I will
 12 give you one of them and that is the
 13 barter business.
 14 MR. NEWMAN: What business?
 15 THE WITNESS: Barter.
 16 MR. NEWMAN: Barter?
 17 THE WITNESS: Barter,
 18 B-a-r-t-e-r.
 19 MR. NEWMAN: Okay.
 20 THE WITNESS: Let's say you
 21 have a hotel and you're equipping the
 22 hotel with furniture, fixtures,
 23 equipment. Hotels in this day have
 24 substantial excess capacity. So what we
 25 effectively do is provide capital to the

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TIMOTHY MCGINN
 hotel; they in return provide room
 nights to us, which we monetize. And
 the cost of having a hotel room that is
 otherwise unoccupied to becoming
 occupied is maybe 30 bucks. And so it's
 an arbitrage; it's a financial
 arbitrage.

MR. NEWMAN: What steps have
 been taken to facilitate that?

THE WITNESS: We are in
 discussions with a couple of hotel
 owners. But we haven't done anything as
 of yet.

MR. NEWMAN: When you say
 "we," are you speaking about yourself
 and Mr. Smith?

THE WITNESS: I am.

MR. NEWMAN: Is there a name
 for that business venture?

THE WITNESS: No. It's, as I
 said, quite preliminary.

MR. NEWMAN: Besides that,
 anything else?

THE WITNESS: No.

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TIMOTHY MCGINN
 MR. NEWMAN: How do your
 duties as chairman of the board differ
 from Mr. Smith's as president of McGinn
 Smith?

MR. FRANCESKI: Objection.
 Asked and answered.

THE WITNESS: Mr. Smith is the
 CEO and President of the the firm; has
 been since 1980. His responsibilities
 go to the day-to-day operations of the
 firm, as well as the primary
 responsibility for the broker-dealer
 operations.

MR. NEWMAN: Dave, today when
 you were objecting based on asked and
 answered, are you referring to an
 earlier OTR?

MR. FRANCESKI: Yes.

MR. RATTINER: Is that a
 reasonable objection?

MR. NEWMAN: That's fine.

MR. FRANCESKI: Reasonable or
 not, I am making it.

MR. NEWMAN: It depends. With

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 purposes of where we are. We can
 proceed. That's fine.

BY MR. RATTINER:

Q Matt Rogers, what is his current
 role?

A Matthew is an investment banker.

Q How is he compensated?

A He's compensated by way of salary.

Q Is he duly employed or more than duly
 employed?

Is he employed by more than one
 entity?

A He is the chairman of the board of
 Verifier Capital LLC. I am not certain whether he is
 a non-executive chairman, which would mean he's not
 an employee. I don't know that answer.

Q And does he receive a salary from
 Verifier?

A I don't know.

MR. NEWMAN: How long has he
 been chairman of the board of Verifier
 Capital LLC?

THE WITNESS: Since its
 inception, which was, I believe, March

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 of 2006.

MR. NEWMAN: How old is he?

THE WITNESS: How old is
 Matthew?

MR. NEWMAN: Yeah.

THE WITNESS: 43, 44.

MR. NEWMAN: Does he have any
 experience running a business?

THE WITNESS: Substantial
 experience. He ran a very large alarm
 company in Great Britain. He
 subsequently came to work for Tyco. At
 Tyco, ran their worldwide mergers and
 acquisition practice. Left Tyco in
 2004, went to work for West Coast
 Investment Bank for about a year. Then
 came to work for us. I believe it was
 January of 2007.

MR. NEWMAN: Is he an
 attorney?

THE WITNESS: He's not an
 attorney.

MR. NEWMAN: Do you have
 another son who is an attorney?

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THE WITNESS: I'm sorry?

MR. NEWMAN: Do you have another son who is an attorney?

THE WITNESS: I have a son who is an attorney whose name happens to be Matthew as well.

MR. NEWMAN: I'm sorry. Who is the chairman of the board of Verifier?

THE WITNESS: Matthew Rogers.

MR. NEWMAN: Okay. I'm sorry. I was confusing the Matthews.

BY MR. RATTINER:

Q What deals have McGinn Smith raised money for since June 2009?

A Since June 2009?

Q Let's include all of 2009.

MR. FRANCESKI: Objection to part of that as being asked and answered already.

MR. RATTINER: Can we go off the record for a second?

(Whereupon a discussion is held off the record.)

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three-and-a-half million dollars. And the Verifier role would have been maybe a million eight to a million dollars.

Q What is the current status of those raises?

MR. FRANCESKI: Objection; status.

BY MR. RATTINER:

Q Are they current with the investors?

A Yes.

Q Can you list for us your personal bank accounts that you maintain, either signatory authority or control over?

A I have a checking account at M&T Bank in Albany, New York.

Q And other than that?

A That's it.

Q How about brokerage accounts?

A I have a brokerage account at what was McGinn Smith & Company and now is DLG through Dinosaur.

Q And that's just one account?

A Yes.

Q How about any trusts?

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MR. RATTINER: Back on the record. What deals has the firm raised money for since April 2009?

THE WITNESS: We did two transactions in the Triple Play space. And we may have done a role, if you will, in the Verifier Instruments.

BY MR. RATTINER:

Q Can you be specific on the deals, names?

A One was called TDMM Cable Senior and Cable Junior. And the other one was called TDMM Benchmark.

Q Were their Verifier deals also TDM Verifier?

A There may have been a role in TDM Verifier during that period of time.

Q And TDMM Benchmark, how much was raised for that?

A \$2.6 million.

Q And what about the other deals that you just mentioned?

A TDMM Junior and Senior probably totaled something in the order of three to

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A No.

Q Any offshore accounts?

A No.

MR. NEWMAN: Yes. The checking account at M&T Bank, how long have you maintained that?

THE WITNESS: 30 years.

MR. NEWMAN: The last seven years, have there been any other accounts that you have had signatory account over?

THE WITNESS: No.

MR. NEWMAN: That's individual or corporate entity accounts?

THE WITNESS: Well, certainly not on an individual basis. In terms of signatory authority, I probably had authority over a dozen accounts. I can't tell you exactly what they are. That information can be gleaned from Mr. Shea, who I am told is coming down here next week to chat with you folks.

MR. NEWMAN: Why don't you tell us what you can right now.

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THE WITNESS: I would guess that the TDM Cable, TDMM Cable accounts I had signatory authority over. There's an entity called Cruise Charter Ventures that I have signatory authority over. McGinn Smith Transaction Funding. McGinn Smith Funding LLC. And that's it.

MR. FRANCESKI: Let me caution the witness. He used the word "guess" in the first part of the answer. Guess won't help me. If you don't know, you should answer you don't know.

THE WITNESS: I believe that is the extent of the signatory authorities that I have or have had.

MR. NEWMAN: Okay.

BY MR. RATTINER:

Q In addition to M&T, are any of those accounts maintained in another bank?

A No.

Q How about Mercantile Bank?

A No.

Q Did you file your taxes, personal

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Q Let me back up a little bit.

What is your role with regard to the four funds?

A Very little.

Q What would that little be?

A Let me set the stage historically. I left McGinn Smith & Company in January of 2003 and returned in October-November of 2006. During that time, these funds were created. During that time the assets that were accumulated, the cash that was accumulated in these funds was invested. I was not part of that process.

When I came back in 2006 I began to learn the history of what happened in those funds. And subsequently I have taken over, as I have just said, the work-out position on that particular loan to F4W.

Q What role did you have, if any, from 2003 through 2006 with regards to the four funds?

MR. FRANCESKI: Objection; asked and answered.

THE WITNESS: I had no -- I had no specific role. As I said, I was running a public company and I had sold

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taxes for 2008?

A Yes.

Q And who would have prepared those?

A Ron Simons, CPA at Piaker & Lyons, Binghamton, New York.

Q What is the current status of First Independent Income Notes?

A What is the current status?

Q Correct.

A Well, the current status is that it has not -- it has had its notes mature, it has not been able to redeem those notes, and it is in a work-out position.

Q What role did you have with the work-out position?

A Very limited role. I have taken over one particular asset out of the portfolio of Mezzanine Funds. I don't know that it happens to be First Independent. It could be one of the other three. The name of that credit is F4W.

Q What do you mean by you took it out?

A I took the responsibility of working with the debtor to try to collect the assets, the dollars that are owed to the funds.

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40 percent of my interest in McGinn

Smith & Company to a fellow by the name of Tom Livingston, and I basically was running the public company.

BY MR. RATTINER:

Q What did you get for the sale of that interest in Mr. Livingston; what was the value?

A \$400,000.

Q What is the current status of First Excelsior Income Notes?

A I think the status of FEIN, TAIN, FAIN are all essentially the same as FIIN.

Q Okay. From 2003 and 2006 what was your involvement with MSA, McGinn Smith Advisors?

A Well, my involvement was one of ownership. I own -- I think MS Advisors is owned by McGinn Smith Holdings. And I own 30 percent of MS Holdings. I was not involved in the operation of that entity on a day-to-day basis.

Q Has that changed since 2006?

A To some extent, yes. Since I returned to the firm, as I said, I have picked up some of the -- some of the challenge here.

MR. NEWMAN: Can you be more

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1 TIMOTHY MCGINN
2 specific when you say "picked up some of
3 the challenge"; what do you mean?

4 THE WITNESS: As I said, I
5 have being the responsible party for the
6 collection of the F4W notes. I have
7 worked with Mr. Smith on the Coventry
8 CareLink CMS matter; fellow by the name
9 of Bob Haldeman, who is the CEO of that
10 company; but very little beyond that.

11 MR. NEWMAN: Who's
12 operating -- or who was the person who
13 was responsible for the operations of
14 McGinn Smith Advisors?

15 THE WITNESS: Mr. Smith.

16 MR. NEWMAN: And when was the
17 first time -- let me rephrase that. Are
18 you aware there were private placement
19 members that were prepared for each of
20 the four LLC offerings?

21 THE WITNESS: Yes.

22 MR. NEWMAN: When is the first
23 time you actually saw one of those
24 private placement memorandums, if at
25 all?

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1 TIMOTHY MCGINN
2 THE WITNESS: Certainly I have
3 seen them, so it's not if at all. The
4 first time I saw them was more than
5 likely when they were created. I saw
6 the memorandums, which would have gone
7 back to the 2003/2004 time frame.

8 MR. NEWMAN: Now, you have
9 testified that you had no involvement in
10 the entities between 2003 and October
11 November 2006; correct?

12 THE WITNESS: Correct.

13 MR. NEWMAN: Why -- why -- why
14 was -- weren't you given a copy of the
15 private placement memorandum at the
16 inception?

17 THE WITNESS: Well, first of
18 all, my offices of Integrated Alarm
19 Services Group were in the same building
20 as McGinn Smith & Company. We are on
21 the third floor, McGinn Smith is on the
22 fifth floor.

23 Mr. Smith and I have been
24 partners in the business since 1977. We
25 would speak frequently. And when there

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1 TIMOTHY MCGINN
2 was a transaction that was being
3 proposed I would normally receive a copy
4 of the document, and I did receive a
5 copy of the document.

6 MR. NEWMAN: Did Mr. Smith ask
7 you for your advice or opinion regarding
8 one or more of the LLC offerings?

9 THE WITNESS: No.

10 MR. NEWMAN: Did you offer him
11 any advice or provide any opinion to him
12 regarding those investments?

13 THE WITNESS: No.

14 MR. NEWMAN: What did he
15 explain to you the LLC's would be doing?

16 THE WITNESS: The LLC's would
17 effectively be operating as a specialty
18 finance company, that in as much they
19 would be making loans to
20 small-to-medium-size businesses and with
21 some equity instrument carried as well.

22 BY MR. RATTINER:

23 Q With regards to the sale to Mr.
24 Livingston, you said the amount was \$400,000?

25 A Correct.

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1 TIMOTHY MCGINN
2 Q That was for a 20 percent stake in
3 the broker-dealer?

4 A Yes.

5 Q What was the value of the
6 broker-dealer at that point?

7 A Well --

8 Q Based on the math, is it 2 million?

9 A \$2 million.

10 Q How is that valuation determined?

11 A Arbitrarily.

12 Q What is the current value of the
13 broker-dealer?

14 A Zero.

15 Q Okay. And your stake is now
16 30 percent?

17 A My stake is now 30 percent.

18 Q Were you involved with the
19 restructuring of the notes?

20 A I was involved in the restructuring
21 of the notes to the extent that I was a sounding
22 board for Mr. Smith.

23 Q What sort of advice did you provide
24 Mr. Smith?

25 A My advice was simply to, you know,

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disclose the good, the bad and the ugly and to put together a plan that was likely to be achieved in terms of a going-forward basis, that it made no sense to, you know, kind of sweeten the apple and then not deliver.

Q Were you provided with a virtually completed document or did you have input on the document?

MR. FRANCESKI: The document?

BY MR. RATTINER:

Q The restructuring document or restructuring plan.

I think the restructuring plan was a clean piece of paper. There was no document, per se, that was handed to me to say, yes, no, or maybe on. So it was -- it was a work in progress. It was something that was evolving. And I gave my input along the way.

MR. NEWMAN: Are you aware of letters being sent by Mr. Smith to investors in the LLCs --

THE WITNESS: Yes.

MR. NEWMAN: -- discussing a possible restructuring?

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THE WITNESS: Yes.

MR. NEWMAN: Have you seen copies of those letters?

THE WITNESS: Yes.

MR. NEWMAN: What context?

THE WITNESS: In what context did -- I don't understand the question.

MR. NEWMAN: When you saw those letters, were they given to you by Mr. Smith prior to them being sent to investors or after?

THE WITNESS: Generally speaking, before.

MR. NEWMAN: Did Mr. Smith ask you for your opinion or input regarding the content of those letters?

THE WITNESS: He did.

MR. NEWMAN: And did you provide him with input on those letters?

THE WITNESS: I did.

MR. NEWMAN: Did he accept your recommendations?

THE WITNESS: He probably accepted some of it and didn't accept

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some of it. That is the nature of our relationship.

MR. NEWMAN: Was that input through e-mails, face-to-face meetings, telephone calls?

THE WITNESS: It was more than likely as a result of face-to-face meetings. Our offices are 25 yards apart.

MR. NEWMAN: What was the first letter that you saw, approximately?

THE WITNESS: I don't know.

MR. NEWMAN: Approximately.

THE WITNESS: I don't know.

MR. NEWMAN: Started -- you came back in October November 2006?

THE WITNESS: Yes.

MR. NEWMAN: When with respect to that did you first see one of those letters?

THE WITNESS: I can't specifically tell you. It was certainly after that. And I would say probably

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late '07 or early '08.

MR. NEWMAN: Are you familiar with the different holdings portfolios of the four LLCs?

MR. FRANCESKI: Is he today?

MR. NEWMAN: Are you familiar as you sit here today?

THE WITNESS: With the various investments in those LLCs?

MR. NEWMAN: Yes.

THE WITNESS: I know some of the assets in those LLCs, but I wouldn't want to take an exam to list what LLC held what investment.

MR. NEWMAN: Have you ever seen a list for one or more of the LLCs -- let me rephrase that, a document or a list which showed the various holdings of each of the LLCs?

THE WITNESS: No.

MR. NEWMAN: You have never seen such a list?

THE WITNESS: Correct.

MR. NEWMAN: How do you know

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1 TIMOTHY MCGINN
 2 what investments are being --
 3 THE WITNESS: By discussion.
 4 MR. NEWMAN: With who?
 5 THE WITNESS: Mr. Smith.
 6 MR. NEWMAN: Do you have an
 7 understanding as to who made the
 8 investment decisions for the LLCs?
 9 THE WITNESS: Yes.
 10 MR. NEWMAN: Who was that?
 11 THE WITNESS: Mr. Smith.
 12 MR. NEWMAN: So what
 13 investments are you aware of?
 14 THE WITNESS: Well, I am aware
 15 of a thing called CMS. I am aware of a
 16 thing called elseT. I am aware of a
 17 thing called Palisades Pictures. I am
 18 aware, obviously, of F4W. As I said
 19 earlier, I am now the responsible party
 20 for collecting that money. I am aware
 21 of the thing called Exchange Boulevard.
 22 Those are the major, major investments
 23 that I am aware of.
 24 MR. NEWMAN: Do you know any
 25 of the individuals who invested in the

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1 TIMOTHY MCGINN
 2 LLCs?
 3 THE WITNESS: Yes.
 4 MR. NEWMAN: How many of those
 5 individuals do you know?
 6 THE WITNESS: Five, six.
 7 MR. NEWMAN: What are their
 8 names?
 9 THE WITNESS: What are the
 10 names?
 11 MR. NEWMAN: Yes.
 12 THE WITNESS: [REDACTED]
 13 [REDACTED], [REDACTED], [REDACTED].
 14 [REDACTED], [REDACTED], [REDACTED], [REDACTED].
 15 [REDACTED], [REDACTED], [REDACTED], [REDACTED].
 16 [REDACTED]. And that's about as many as
 17 I can give you.
 18 MR. NEWMAN: Okay. How do you
 19 know [REDACTED]? What is [REDACTED]'s first name?
 20 THE WITNESS: [REDACTED].
 21 MR. NEWMAN: How do you know
 22 [REDACTED]?
 23 THE WITNESS: I have known
 24 [REDACTED] for 25 years.
 25 MR. NEWMAN: Do you have a

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1 TIMOTHY MCGINN
 2 business relationship with him or
 3 personal?
 4 THE WITNESS: Personal.
 5 MR. NEWMAN: And did you have
 6 any involvement in him investing in the
 7 LLC?
 8 THE WITNESS: No.
 9 MR. NEWMAN: [REDACTED], what is
 10 [REDACTED]'s first name.
 11 THE WITNESS: [REDACTED].
 12 MR. NEWMAN: How do you know
 13 [REDACTED]?
 14 THE WITNESS: [REDACTED]
 15 is a brother-in-law.
 16 MR. NEWMAN: And [REDACTED].
 17 THE WITNESS: [REDACTED] also has
 18 been a client of mine for 30 years.
 19 MR. NEWMAN: Client in what
 20 sense?
 21 THE WITNESS: We were partners
 22 together. He was an investor in various
 23 transactions over the years. He had a
 24 brokerage account with the firm. He has
 25 -- he died, by the way, in May 2009. He

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1 TIMOTHY MCGINN
 2 was -- we financed projects on his
 3 behalf, one in Portland, Maine. He was
 4 a contractor who built buildings for us.
 5 It was a long and mutually rewarding
 6 relationship.
 7 BY MR. RATTINER:
 8 Q Is that [REDACTED]?
 9 A It is.
 10 MR. NEWMAN: [REDACTED].
 11 THE WITNESS: [REDACTED], first
 12 name [REDACTED], and basically a friend of
 13 Brian Shea's. [REDACTED] was a division
 14 one hockey referee, as was Mr. Shea.
 15 And Mr. Shea brought him into the firm.
 16 MR. NEWMAN: [REDACTED].
 17 THE WITNESS: I'm sorry?
 18 MR. NEWMAN: [REDACTED].
 19 THE WITNESS: [REDACTED] was a
 20 woman who has also since passed away.
 21 She had been a client for a dozen years.
 22 Had a personal relationship with her.
 23 She at one point ran a lift truck
 24 business in Albany, New York.
 25 MR. NEWMAN: Okay.

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1 TIMOTHY MCGINN
 2 BY MR. RATTINER:
 3 Q How many of those investors that were
 4 just discussed currently hold the LLCs?
 5 A Well, they all do.
 6 Q Did any redeem?
 7 A I don't believe so.
 8 Q Did you sell any notes?
 9 A No.
 10 Q Did you --
 11 MR. FRANCESKI: Did he sell
 12 any notes?
 13 MR. RATTINER: To any of the
 14 LLCs.
 15 MR. FRANCESKI: LLCs?
 16 MR. RATTINER: Correct.
 17 BY MR. RATTINER:
 18 Q Did you take a salary from any of the
 19 McGinn Smith companies or entities or affiliates from
 20 '03 to '06?
 21 A No.
 22 Q Were there any profits derived by the
 23 broker-dealer while you were not associated or not
 24 physically present?
 25 A Yes. But they were pretty modest.

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1 TIMOTHY MCGINN
 2 Q Did you forgive those profits?
 3 A Did I forgive those profits?
 4 Q Did you take a profit?
 5 A No. We've never taken any dividends
 6 out of the company.
 7 Q What was your initial investment in
 8 the BD back in 1981, equity investment?
 9 A I don't know, \$75,000.
 10 Q Over the years have you infused
 11 additional capital?
 12 A I think early on in the early '80s we
 13 probably did, but not to a large extent. And since,
 14 I would say, '89, no. The answer is no.
 15 Q So for 1989 on, there's been no
 16 additional capital inputted from yourself?
 17 A Not by me.
 18 MR. ROWEN: I'm sorry. Is
 19 your stake in common stock or preferred
 20 stock?
 21 THE WITNESS: Common.
 22 MR. ROWEN: All common stock?
 23 THE WITNESS: Yes.
 24 BY MR. RATTINER:
 25 Q How much cash do the notes have

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1 TIMOTHY MCGINN
 2 today?
 3 A I have no idea.
 4 Q Do you have access to the bank
 5 accounts of the notes?
 6 A I could have access to those bank
 7 accounts, certainly.
 8 Q Do you review them?
 9 A Not frequently.
 10 Q And do you know what the value of the
 11 notes were at the time of the restructuring?
 12 A No.
 13 Q Have you ever seen the valuation of
 14 the notes?
 15 A No.
 16 Q Have you ever asked for a valuation
 17 of the notes?
 18 A No.
 19 Q Do you know whether or not Mr. Rees
 20 or Mr. Shea were involved in the restructuring of the
 21 notes?
 22 A I don't know.
 23 Q How about with regards to the
 24 valuation of the notes?
 25 A I don't know that either.

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1 TIMOTHY MCGINN
 2 MR. RATTINER: We are going to
 3 take a five-minute break if you don't
 4 mind.
 5 (Whereupon a recess is taken.)
 6 MR. RATTINER: Back on the
 7 record.
 8 BY MR. RATTINER:
 9 Q Mr. McGinn, you said you wanted to
 10 make a clarifying statement?
 11 A You asked me earlier if I knew how
 12 much money was in the fund accounts and if I had any
 13 information to that extent. I get a daily report for
 14 all of the bank accounts, I very rarely look at it.
 15 I do get it. It's e-mailed to me every day.
 16 Q Who sends that to you?
 17 A Brian Cooper.
 18 Q What is the purpose of it being sent
 19 to you?
 20 A He sends it to Dave, he sends it to
 21 me.
 22 Q Okay. I wanted to ask you, are you
 23 married?
 24 A Yes.
 25 Q And with regard to the questions I

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1 TIMOTHY MCGINN
 2 asked you before with your financial accounts, you
 3 mentioned an M&T account and a broker's account.
 4 Does your wife maintain any accounts?
 5 A Yes.
 6 Q What sort of accounts does she
 7 maintain?
 8 A She has a checking account.
 9 Q How about a brokerage account?
 10 A No.
 11 Q Any trusts?
 12 A No.
 13 MR. NEWMAN: What account is
 14 used to pay your personal expenses, your
 15 family expenses?
 16 THE WITNESS: Unfortunately,
 17 it's mine.
 18 BY MR. RATTINER:
 19 Q And we had requested yesterday from
 20 Mr. Smith, and he had indicated that he was going to
 21 try to get it through you, a security agreement? I
 22 think that was back from '04, '05?
 23 A Oh, yeah, he asked --
 24 MR. FRANCESKI: The credit
 25 agreement, you mean?

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1 TIMOTHY MCGINN
 2 MR. RATTINER: I don't
 3 remember the technical term. I am
 4 calling it a security agreement. If
 5 it's called a credit agreement, I
 6 apologize.
 7 MR. NEWMAN: It's called
 8 different things. I mean, at one point
 9 it was a security agreement.
 10 The one with the
 11 collateralization of the loans?
 12 MR. RATTINER: Right.
 13 Collateral.
 14 THE WITNESS: He asked me to
 15 look for that, which I did yesterday,
 16 and I was unable to find it.
 17 BY MR. RATTINER:
 18 Q Does it exist?
 19 A I assume it exists. He asked me to
 20 look for it.
 21 Q Where were you looking?
 22 A I looked in his office. I looked
 23 outside of his office in the file cabinets. I looked
 24 in an area we refer to as the bullpen, which is full
 25 of filing cabinets. I looked outside of my office in

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1 TIMOTHY MCGINN
 2 the filing cabinets. I looked in all the places that
 3 I thought made sense.
 4 Q Is someone else still looking for
 5 that agreement?
 6 A No.
 7 MR. FRANCESKI: That doesn't
 8 mean we are ignoring the request.
 9 MR. RATTINER: I understand.
 10 MR. FRANCESKI: Physically no
 11 one is currently looking.
 12 MR. ROWEN: Are you familiar
 13 with what the agreement is?
 14 THE WITNESS: Yes. I recall
 15 discussing this with David sometime in
 16 2004, 2005. We'd come to an agreement.
 17 I think he drew up something by hand,
 18 and I haven't seen it or thought about
 19 it since.
 20 MR. ROWEN: What sparked the
 21 discussion about a credit agreement? I
 22 will start with this. Who are the
 23 parties to the credit agreement?
 24 THE WITNESS: The parties were
 25 MS Advisors, McGinn Smith & Company and

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1 TIMOTHY MCGINN
 2 the various funds. What sparked it was
 3 the conversation that we had had prior
 4 to this week where we were basically
 5 describing the collateral that supports
 6 a number of the affiliate transfers of
 7 capital between the funds and these
 8 various entities.
 9 MR. NEWMAN: That's a little
 10 vague. Can you be more specific as to
 11 the context, how this first came up?
 12 You said you were not -- you were
 13 running your own company in 2004, 2005.
 14 THE WITNESS: Right.
 15 MR. NEWMAN: Mr. Smith was
 16 handling the LLCs and the advisory
 17 business.
 18 Explain to us how this first
 19 came up where you were discussing this
 20 type of agreement; when and where and
 21 how it came up.
 22 THE WITNESS: Well, as I said,
 23 it first came up in sometime in 2004,
 24 2005; so sometime ago.
 25 The entities that were

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1 TIMOTHY MCGINN
2 involved in the relationship were
3 entities that included the funds,
4 included MSA Advisors, included McGinn
5 Smith & Company. And it related to fees
6 that were due to these various entities
7 by the funds.

8 David, at that time --
9 Mr. Smith, at that time, did not want to
10 be a signatory on both sides of the
11 equation. So he asked me if I would be
12 available to execute it on behalf of the
13 -- not the funds, but MSA Advisors and
14 McGinn Smith & Company.

15 As I testified earlier, MSA
16 Advisors is owned by McGinn Smith
17 Holdings. And I am and was at that time
18 either a 50 percent or 30 percent owner
19 in those entities. So I did that.

20 MR. NEWMAN: But you had a
21 passive role in the entity -- in MS
22 Advisors, you weren't --

23 THE WITNESS: I had a passive
24 role in all of the MS activities: MS
25 Advisors, MS Holdings, McGinn Smith &

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1 TIMOTHY MCGINN
2 Company. I was the chairman and CEO of
3 a publicly traded company at the time.

4 MR. NEWMAN: You were
5 basically asking him to sign the
6 agreement?

7 THE WITNESS: That is correct.

8 MR. NEWMAN: Were you asked to
9 provide input into the terms of the
10 agreement?

11 THE WITNESS: No.

12 MR. NEWMAN: Who negotiated
13 the agreement? Was it negotiated?

14 THE WITNESS: I guess
15 "negotiation" is probably not a good
16 term when you have, you know, one party
17 who is basically doing it. So I would
18 say that there probably wasn't a lot of
19 negotiation.

20 MR. NEWMAN: And the agreement
21 was prepared by Mr. Smith?

22 THE WITNESS: Correct.

23 MR. ROWEN: What did you
24 understand the terms of the agreement to
25 be?

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1 TIMOTHY MCGINN
2 THE WITNESS: The terms of the
3 agreement were that to the extent that
4 any monies flowed from the funds to any
5 affiliated entity, that they would be
6 collateralized by monies that were owed
7 by the funds to any of the McGinn Smith
8 related entities.

9 MR. ROWEN: At that time you
10 were -- still had ownership in McGinn
11 Smith Advisors, and McGinn Smith &
12 Company; so based on that, what opinion
13 did you form about the --

14 THE WITNESS: I thought it was
15 fine.

16 MR. FRANCESKI: Hold on.

17 MR. ROWEN: -- about the
18 agreement?

19 If I don't finish, she is
20 going to have a hard time tracking.

21 MR. FRANCESKI: And I am not
22 going to get a chance to object.
23 So go ahead.

24 THE WITNESS: I thought it was
25 fine.

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1 TIMOTHY MCGINN
2 MR. FRANCESKI: But I wanted
3 to object.

4 THE WITNESS: He bills me by
5 objection.

6 MR. RATTINER: We figured that
7 out by now.

8 BY MR. RATTINER:

9 Q Whose interest was in play within the
10 -- are we calling it credit agreement? I don't know
11 the title of it.

12 A Call it whatever you'd like.

13 Q Whose interests were being protected
14 in this agreement?

15 A Well, I think the interests that were
16 being protected were those of the funds, certainly of
17 the recipients of those dollars. I think it was a
18 valid arrangement whereby it merely memorialized what
19 the intent was.

20 Q Okay.

21 MR. ROWEN: So based on that,
22 I take it you were aware that the four
23 funds were loaning money to affiliate
24 entities of either the broker-dealer or
25 MS Advisors?

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THE WITNESS: Yes.

MR. ROWEN: Let me correct that. I am aware that that could have happened. And to the extent that it did happen, this agreement would cover the collateral and would specify the collaterals to make sure that those -- those appropriate dollars were covered.

Were you aware of specific affiliated investments at the time?

THE WITNESS: No.

MR. ROWEN: Did you later become aware of specific affiliated investments?

THE WITNESS: Yes.

MR. ROWEN: And how long after the execution of the credit agreement was that?

THE WITNESS: Oh, I have no idea. I would say four years.

BY MR. RATTINER:

Q Four years after?

A Three to four years.

Q So that would be last year?

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TIMOTHY MCGINN

was that formed?

THE WITNESS: 2007, maybe.

MR. ROWEN: What role did you have in McGinn Smith Funding LLC?

THE WITNESS: What role did I have?

MR. ROWEN: Yes.

THE WITNESS: I was the managing member.

MR. ROWEN: Who were the owners of McGinn Smith Funding LLC.

THE WITNESS: More than likely McGinn Smith Holdings Corp.

MR. ROWEN: What was the purpose of McGinn Smith Funding LLC?

THE WITNESS: To provide short-term capital to transactions that we were contemplating doing.

MR. NEWMAN: Who is we?

THE WITNESS: McGinn Smith & Company.

MR. ROWEN: How was the entity funded?

THE WITNESS: The entity was

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TIMOTHY MCGINN

A Yeah.

Q Okay. If money was being loaned to the affiliated entity that you maintained an ownership in through your holdings at McGinn Smith and McGinn Smith Co., would you be alerted to that?

A Most likely, yes.

Q And how would that be alerted to you?

A Either by Mr. Smith, Mr. Shea or Mr. Cooper.

MR. ROWEN: You mentioned an entity earlier, I wanted to get information. I am not sure if you called it MS Funding or McGinn Smith Funding?

THE WITNESS: Yes.

MR. ROWEN: Explain to me what that entity is.

THE WITNESS: There are two entities that have similar names. One is called McGinn Smith Transaction Funding Corp., and one is called McGinn Smith Funding LLC.

MR. ROWEN: Okay. Let's talk about McGinn Smith Funding LLC. When

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TIMOTHY MCGINN

funded by the issuance of several notes to various investors. There were probably no more than three or four note holders.

BY MR. RATTINER:

Q What was the total raised?

A Less than a million dollars.

MR. NEWMAN: When was that money raised?

THE WITNESS: 2007, 2008.

MR. NEWMAN: Is that when the entity was created?

THE WITNESS: It was created in 2007, I believe.

MR. ROWEN: Three to four investors; who specifically?

THE WITNESS: [REDACTED]

[REDACTED], and a fellow by the name of [REDACTED]

MR. ROWEN: [REDACTED]

[REDACTED] Are they any relation to [REDACTED]

[REDACTED]?

THE WITNESS: Wife and son.

MR. ROWEN: What is the

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1 TIMOTHY MCGINN
2 current status of McGinn Smith Funding?
3 THE WITNESS: It's basically
4 dormant.

5 MR. ROWEN: Did it loan out
6 all money raised?

7 THE WITNESS: Yes.

8 MR. ROWEN: Did it receive
9 returns on those investments?

10 THE WITNESS: Yes.

11 MR. ROWEN: In full?

12 THE WITNESS: Yes.

13 MR. ROWEN: Have the notes to
14 the investors matured?

15 THE WITNESS: The notes --
16 some of the notes have been matured and
17 paid off; some of the notes are still
18 outstanding.

19 MR. FRANCESKI: So I am on the
20 same page, are you talking about the
21 notes from MSF to the investors in MSF?

22 THE WITNESS: Yes.

23 MR. FRANCESKI: Is that what
24 you were asking?

25 MR. ROWEN: Yes. Whose notes

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1 TIMOTHY MCGINN
2 are still outstanding?

3 THE WITNESS: Mr. [REDACTED]'s.

4 MR. NEWMAN: How much did he
5 invest?

6 THE WITNESS: 250,000.

7 MR. NEWMAN: How come the
8 other two individuals have been paid and
9 he hasn't?

10 THE WITNESS: Their notes
11 matured and then they wanted to capture
12 the dollars.

13 MR. NEWMAN: So Mr. [REDACTED]
14 has not sought to redeem his notes?

15 THE WITNESS: His notes
16 haven't matured yet.

17 MR. NEWMAN: When are they due
18 to mature?

19 THE WITNESS: Late April.

20 MR. ROWEN: Specifically what
21 were the investments of McGinn Smith
22 Funding LLC?

23 THE WITNESS: McGinn Smith
24 Funding LLC would provide capital to
25 various transactions that we were under

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1 TIMOTHY MCGINN

2 -- McGinn Smith & Company were
3 underwriting prior to a closing.

4 MR. ROWEN: Specific entities?

5 THE WITNESS: Cruise Charter
6 Ventures. First Line Security. Perhaps
7 Verifier.

8 MR. NEWMAN: How much was lent
9 to Cruise Charter Ventures?

10 THE WITNESS: 200,000.

11 MR. NEWMAN: What was that
12 money used for?

13 THE WITNESS: For operations
14 of that business.

15 MR. NEWMAN: Can you be a
16 little more specific?

17 THE WITNESS: That business is
18 a business that charters ships and
19 re-sells the space on those ships to
20 affinity groups. And so there's always
21 a payment, either for the ship charter
22 itself or for marketing or for salary of
23 the person who runs that business.

24 MR. NEWMAN: When was Cruise
25 Charter Ventures established?

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1 TIMOTHY MCGINN

2 THE WITNESS: 2008.

3 MR. NEWMAN: What is your
4 position with Cruise Charter Ventures?

5 THE WITNESS: I am the
6 managing member of the LLC.

7 MR. NEWMAN: Do you have any
8 other position?

9 THE WITNESS: No.

10 MR. NEWMAN: Do you have an
11 ownership interest?

12 THE WITNESS: The ownership
13 interest of Cruise Charter Ventures, it
14 may be directly to McGinn Smith, it may
15 be to McGinn Smith Holdings. I don't
16 know off the top of my head.

17 MR. NEWMAN: You don't know
18 who owns Cruise Charter Ventures?

19 THE WITNESS: I just said that
20 it may be myself and Mr. Smith or it may
21 be McGinn Smith Holdings, of which
22 Mr. Smith and I own 80 percent of McGinn
23 Smith Holdings.

24 MR. NEWMAN: So it's one or
25 the other?

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1 TIMOTHY MCGINN
2 THE WITNESS: Yes.
3 MR. NEWMAN: But you don't
4 know?
5 THE WITNESS: Correct.
6 MR. NEWMAN: How much of that
7 \$200,000 did you receive personally?
8 THE WITNESS: Very little. I
9 don't know the exact amount, but very
10 little.
11 MR. NEWMAN: Do you pay
12 yourself a salary?
13 THE WITNESS: No.
14 MR. NEWMAN: So what would be
15 -- under what means would you receive --
16 THE WITNESS: Reimbursement
17 for expenses.
18 MR. ROWEN: How about personal
19 loans?
20 THE WITNESS: Small personal
21 loans that have generally had a duration
22 of less than 60 days.
23 MR. NEWMAN: Who maintains the
24 books and records for Cruise Charter
25 Ventures?

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1 TIMOTHY MCGINN
2 THE WITNESS: Mr. Shea.
3 MR. NEWMAN: Where are those
4 records maintained?
5 THE WITNESS: Albany, New
6 York.
7 MR. NEWMAN: Where is the bank
8 account?
9 THE WITNESS: The bank
10 account -- I think there may be two bank
11 accounts, one as M&T Bank and one at
12 Mercantile Bank.
13 MR. NEWMAN: Is there a
14 Quicken file for that a or general
15 ledger?
16 THE WITNESS: I don't know.
17 You would have to ask Mr. Shea.
18 MR. NEWMAN: Did -- I'm sorry.
19 The two entities that may own Cruise
20 Charter Ventures, McGinn Smith Holdings
21 is one of those?
22 THE WITNESS: Yes.
23 MR. NEWMAN: What was the
24 other one?
25 THE WITNESS: McGinn & Smith

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1 TIMOTHY MCGINN
2 individually.
3 MR. NEWMAN: Did McGinn Smith
4 Holdings receive any of the \$200,000
5 that was lent?
6 THE WITNESS: I don't believe
7 so.
8 MR. NEWMAN: How about
9 Mr. Smith, did he receive any of the
10 \$200,000?
11 THE WITNESS: I don't believe
12 so.
13 MR. NEWMAN: Does Cruise
14 Charter Ventures operate on a profit?
15 THE WITNESS: Not yet.
16 MR. NEWMAN: How much money
17 did it lose in the years it's been
18 operating?
19 THE WITNESS: In its first
20 year of operations it lost approximately
21 \$1.5 million.
22 MR. NEWMAN: How did it lose
23 so much money?
24 THE WITNESS: It chartered a
25 ship for an affinity group at precisely

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1 TIMOTHY MCGINN
2 the wrong time in the consumer market.
3 Chartered a ship in June of 2008, just
4 as the economy was going into the
5 toilet.
6 MR. NEWMAN: Was there a line
7 of credit or a loan that was used to
8 fund the initial capital for the
9 investment?
10 THE WITNESS: There was a
11 loan. The loan came from both McGinn
12 Smith Funding LLC as well as McGinn
13 Smith Transaction Funding Corp.
14 MR. NEWMAN: Did the \$200,000
15 that Cruise Charter Ventures received,
16 was that applied to the loan?
17 THE WITNESS: Yes.
18 MR. NEWMAN: How much of that
19 loan is still outstanding?
20 THE WITNESS: I don't know.
21 MR. NEWMAN: Who are the
22 guarantors on the loan?
23 THE WITNESS: There are no
24 guarantors on the loan.
25 MR. NEWMAN: Who is obligated

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1 TIMOTHY MCGINN
2 on the loan again? I'm sorry. Who is
3 obligated on the loan?

4 THE WITNESS: To whom? Which
5 loan?

6 MR. NEWMAN: The loan Cruise
7 Charter Ventures took out to fund the
8 1.5.

9 THE WITNESS: It was a
10 non-recourse loan.

11 MR. NEWMAN: Who are the
12 signatories on the loan?

13 THE WITNESS: The signatories
14 on the loan would be myself and
15 Mr. Smith.

16 MR. NEWMAN: Who is the
17 lender?

18 THE WITNESS: The lender would
19 be McGinn Smith Funding LLC.

20 MR. NEWMAN: I need a diagram.

21 MR. ROWEN: Did any of the
22 four notes that we discussed earlier
23 loan money to Cruise Charter Ventures?

24 THE WITNESS: I don't believe
25 so.

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1 TIMOTHY MCGINN
2 take those assets out of bankruptcy at
3 the moment.

4 MR. NEWMAN: "We" being who?

5 THE WITNESS: McGinn Smith &
6 Company.

7 MR. NEWMAN: What is McGinn
8 Smith & Company's affiliation with First
9 Line Securities?

10 THE WITNESS: First Line
11 Securities was a company that did a
12 financing, and that financing was
13 underwritten by McGinn Smith & Company.

14 MR. NEWMAN: When was the
15 financing?

16 THE WITNESS: 2007.

17 MR. NEWMAN: How much?

18 THE WITNESS: Roughly \$7
19 million.

20 MR. NEWMAN: What kind of
21 offering was it?

22 THE WITNESS: It was a private
23 placement, Reg D.

24 MR. NEWMAN: Debt or equity?

25 THE WITNESS: Debt.

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1 TIMOTHY MCGINN
2 BY MR. RATTINER:
3 Q Did CCV do their own private raise?
4 Did McGinn Smith do a private raise
5 for CCV?

6 A No.

7 MR. NEWMAN: Let me go back to
8 the monies that were received by McGinn
9 Smith Funding LLC. You said 200,000
10 went to Cruise Charter Ventures --

11 THE WITNESS: Yes.

12 MR. NEWMAN: -- is that
13 correct?

14 THE WITNESS: Yes.

15 MR. NEWMAN: First Line
16 Securities, is that what you mentioned
17 before?

18 THE WITNESS: I did.

19 MR. NEWMAN: What is First
20 Line Securities?

21 THE WITNESS: First Line
22 Securities were -- First Line Security

23 is a security alarm business out of
24 Utah. It is an entity that subsequently

25 filed bankruptcy and, we are working to

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1 TIMOTHY MCGINN
2 MR. NEWMAN: How many
3 investors?

4 THE WITNESS: I don't know.

5 MR. NEWMAN: What was your
6 involvement in the offering?

7 THE WITNESS: I sourced the
8 transaction, negotiated the transaction,
9 structured the transaction, supervised
10 the documentation of the transaction.
11 And subsequent to the bankruptcy filing
12 of the debtor, I've been intimately
13 involved in negotiations with bankruptcy
14 court, the debtor.

15 We have -- "We" meaning McGinn
16 Smith -- an affiliate of McGinn Smith,
17 McGinn Smith Alarm Traders, are
18 currently providing servicing to the
19 portfolio of accounts. And I supervise
20 that function.

21 MR. NEWMAN: So there's \$7
22 million raised in 2007?

23 THE WITNESS: Correct.

24 MR. NEWMAN: And two thousand
25 -- when was the bankruptcy filing?

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TIMOTHY MCGINN

THE WITNESS: January of two thousand -- January/February of 2008.

MR. NEWMAN: What happened to the \$7 million?

THE WITNESS: The \$7 million has been paid down to approximately \$5.9 million. And that's still outstanding.

MR. NEWMAN: How is that money used?

THE WITNESS: By First Line.

MR. NEWMAN: Yes.

THE WITNESS: First Line was in the business of selling alarm systems through the summer months by basically Mormon college students who would knock on doors, and they had a number of payables to personnel, to suppliers, to other industry vendors. And that's what the money was used for.

MR. NEWMAN: Did you receive any of that money either individually or through another entity, \$7 million?

THE WITNESS: Did we receive

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of a loan. And once the loans are paid off, the notes are paid off, we then own the equity, and we determine what we are going to do with the value of that loan thereafter.

MR. NEWMAN: So how much was the loan for?

THE WITNESS: I don't know what the amount was.

MR. NEWMAN: Approximately?

THE WITNESS: \$400,000.

MR. NEWMAN: And the loan was payable to who?

THE WITNESS: Myself and Mr. Smith.

MR. FRANCESKI: 400 each, Tim, or 400 total?

THE WITNESS: No. It was 400 total.

MR. NEWMAN: Has it be repaid?

THE WITNESS: No.

MR. NEWMAN: And who is First Line Securities? I mean, is it a corporation? An LLC?

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any of that money?

MR. FRANCESKI: You --

MR. NEWMAN: You individually or through some other entity; did you receive any of that \$7 million?

THE WITNESS: The \$7 million that was funded for the transaction was sent to First Line. We may have received fees in the form of loans out of that \$7 million as well.

MR. NEWMAN: So you may have; you don't know?

THE WITNESS: I don't know the exact answer to that. In addition to which... in addition to which the firm, McGinn Smith & Company, received underwriting fees as well.

MR. NEWMAN: Okay. But I want to talk about the loans. Tell us about the loans.

THE WITNESS: It is typical when we do a transaction of this sort -- we've done this for 25 years -- that we will take compensation out in the form

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THE WITNESS: It is a corporation. It is a Utah corporation.

MR. NEWMAN: Do you have any ownership in First Line?

THE WITNESS: I do not.

MR. NEWMAN: Did any of the McGinn affiliates have an ownership interest in First Line Securities?

THE WITNESS: No.

MR. NEWMAN: Are you an officer-director of First Line Securities?

THE WITNESS: No.

MR. NEWMAN: Is Mr. Smith an officer-director of First Line Securities?

THE WITNESS: No.

MR. NEWMAN: Do you know if Mr. Smith has an equity interest in First Line Securities individually or through another company?

THE WITNESS: I don't believe so.

MR. NEWMAN: Do any McGinn

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1 TIMOTHY MCGINN
2 Smith employees have an equity interest
3 in First Line Securities?

4 THE WITNESS: No.

5 MR. NEWMAN: So how much has
6 First Line Securities received from the
7 McGinn Smith Funding LLC, the million
8 dollars that was raised?

9 THE WITNESS: 6.2.

10 MR. NEWMAN: No. I'm asking
11 you about -- you talked about the money
12 that was raised by McGinn Smith Funding
13 LLC. There's a million dollars that was
14 raised. I'm asking you, out of that
15 amount how much went to First Line
16 Securities, approximately?

17 THE WITNESS: I don't know off
18 the top of my head.

19 MR. NEWMAN: Was it more than
20 a hundred thousand dollars.

21 THE WITNESS: May have been.
22 I don't know.

23 MR. NEWMAN: You have no idea
24 at all sitting here?

25 THE WITNESS: Right.

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1 TIMOTHY MCGINN

2 MR. NEWMAN: How was that
3 money applied?

4 THE WITNESS: It was applied
5 -- there were a number of payments made
6 to First Line Securities while we were
7 -- while we were doing the capital
8 raise, there was a schedule of payments.
9 And it may have been part of that
10 schedule of payments.

11 BY MR. RATTINER:

12 Q Is that a bridge loan?

13 A It would effectively have been a
14 bridge loan, yes.

15 Q Is that disclosed within the PPM for
16 the raise that was done for First Line?

17 A I doubt it.

18 Q Why do you doubt it?

19 A Because it could have been converted
20 to a, you know, a subscription.

21 Q What is the viability of First Line
22 without the bridge loan?

23 A Well, the viability of First Line
24 was at the time, and not to our knowledge, but at the
25 time obviously tenuous, because they filed bankruptcy

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1 TIMOTHY MCGINN
2 in February 2008.

3 The fact that the schedule ran over
4 some number of weeks and maybe months, obviously
5 First Line was in a tenuous position. They needed to
6 get this money to pay creditors. We actually
7 completed the transaction. We funded it
8 appropriately. And McGinn Smith funding was repaid.

9 Q Who did --

10 MR. FRANCESKI: Chris, can I
11 ask so I am clear?

12 When you said was the bridge
13 loan disclosed in the PPM, which PPM?

14 MR. RATTINER: The \$7 million
15 raise.

16 Subsequent to the million
17 dollar raise from MSF.

18 MR. FRANCESKI: Which PPM were
19 you asking?

20 MR. RATTINER: It would be the
21 First Line PPM.

22 MR. FRANCESKI: Okay. Is that
23 what you answered to?

24 THE WITNESS: Yes.

25 BY MR. RATTINER:

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1 TIMOTHY MCGINN

2 Q With regards to due diligence, who
3 did due diligence on First Line?

4 A The due diligence on First Line was
5 conducted by myself, Mr. Shea, Mr. Keenholts.

6 Q Who is Keenholts?

7 A Keenholts is a gentleman who works
8 for us and has for 12 years.

9 MR. FRANCESKI: Us?

10 THE WITNESS: I'm sorry.
11 McGinn Smith & Company; Integrated Alarm
12 Services Group; McGinn Smith Alarm
13 Traders.

14 Keenholts was -- had worked
15 for these various firms, specifically in
16 the security alarm industry. He was
17 very skilled in the due diligence
18 process.

19 First Line is a company that
20 had been borrowers of McGinn Smith &
21 Company or Integrated Alarm Services
22 Group on three different occasions in
23 the past. They'd always performed very,
24 very well, ahead of schedule. And we --
25 we were not concerned that they were

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1 TIMOTHY MCGINN
 2 going to take the route that they did.
 3 BY MR. RATTINER:
 4 Q And the due diligence, what did it
 5 turn up?
 6 Did it turn up the fact that the firm
 7 was having financial difficulty?
 8 A No. If it did, we wouldn't have done
 9 the loan.
 10 Q Where would those documents reside
 11 now, the due diligence file? Is there a due
 12 diligence file for First Line?
 13 A There may well be. And to the extent
 14 that it exists, it exists at the offices of McGinn
 15 Smith Alarm Traders.
 16 Q And that's also at 99 Pine?
 17 A That is correct.
 18 Q Is that also on the fifth floor?
 19 A No. That's on the third floor.
 20 Q Going back for a second to the CCV,
 21 you said you had a small loan to yourself from CCV.
 22 Percentage-wise do you know what it
 23 was out of the 200,000?
 24 A 2 percent.
 25 Q Okay. And how much of that 200,000

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1 TIMOTHY MCGINN
 2 would have been salaried to Marlene Brussels?
 3 A Marlene takes a salary of roughly
 4 \$60,000 a year.
 5 Q So would that -- would the whole 60
 6 come out of that 200?
 7 A Well, I mean, capital is fungible.
 8 Q Okay. So I guess what was the 200
 9 applied to at that moment?
 10 A I can't tell you exactly what it was
 11 applied to. Could have been applied to Marlene's
 12 salary. It could have been applied to Google
 13 marketing. It could have been applied to any number
 14 of website design, what have you.
 15 Q And the remaining of the money from
 16 MSF went to -- we have CCV, we have First Line.
 17 Was there another entity that the --
 18 I guess about a million dollars was raised by MSF?
 19 A I don't have that balance sheet
 20 committed to memory. There may have been another
 21 entity. That entity may have been a company called
 22 Zetek, Z-e-t-e-k, but I am not going to state that
 23 emphatically and without doubt.
 24 Q Now, you raised -- in First Line's
 25 case, you raised 7 million.

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1 TIMOTHY MCGINN
 2 First Line received 6.2 million,
 3 approximately?
 4 A Yes.
 5 Q So the 800,000 part of that would be
 6 loans to yourself and Mr. Smith?
 7 A Correct.
 8 Q The other part would be underwriting
 9 fee?
 10 A Correct.
 11 Q What would be the break-out of that
 12 800,000?
 13 A Roughly half, going each way.
 14 Q What sort of documentation would
 15 support the loans?
 16 A Typical notes.
 17 Q What sort of terms do those notes
 18 have?
 19 A They typically have a term of six or
 20 seven years, at an interest rate of somewhere between
 21 3 and 6 percent.
 22 Q And how close to the time that the
 23 loan was made would the documents have been prepared?
 24 A I don't know.
 25 Q Who would normally prepare those

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1 TIMOTHY MCGINN
 2 documents?
 3 A They would be prepared by Mr. Carr.
 4 Q And where do those documents reside
 5 today?
 6 A 99 Pine Street.
 7 Q What interest rate do they bear?
 8 A I don't know.
 9 Q Have you made any payments on them?
 10 A No.
 11 Q Do you know when they are due?
 12 A 2013.
 13 MR. NEWMAN: I have a
 14 question. Going back to this Cruise
 15 Charter Ventures, the loan from McGinn
 16 Smith transaction funding --
 17 THE WITNESS: Hm-hm.
 18 MR. NEWMAN: -- how much was
 19 that loan?
 20 THE WITNESS: Approximately a
 21 million six.
 22 MR. NEWMAN: What was the
 23 source of the money that was used to
 24 lend -- to make that loan.
 25 THE WITNESS: McGinn Smith

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1 TIMOTHY MCGINN
2 transaction funding did an offering in
3 2008 and raised roughly \$6.9 million.
4 MR. NEWMAN: I'm sorry, 2008?
5 THE WITNESS: Yes.
6 MR. NEWMAN: And what was
7 sold?
8 THE WITNESS: Notes.
9 MR. NEWMAN: What is the
10 current status of McGinn Smith
11 Transaction Funding?
12 THE WITNESS: McGinn Smith
13 Transaction Funding has total assets of
14 roughly \$7.4 million, total liabilities
15 of \$7.5 million.
16 MR. NEWMAN: What are the
17 assets?
18 THE WITNESS: Various. Notes
19 receivable, accrued interest, preferred
20 stock of McGinn Smith and Co., Inc.
21 That's it.
22 BY MR. RATTINER:
23 Q Is that a current valuation?
24 A It's a 12-31-09 balance sheet.
25 Q Is that based on the fact that the BD

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1 TIMOTHY MCGINN
2 is not in operation?
3 A No. It's merely a 12-31-09 balance
4 sheet with any write-downs of any of those assets.
5 Q So what is the actual value of the
6 7.4?
7 A I haven't done that analysis.
8 Q It's less than 7.4?
9 A I think that is a fair statement.
10 Q How much less, any idea?
11 A As I just said, I haven't done the
12 analysis.
13 MR. NEWMAN: What is your
14 position again in McGinn Smith
15 Transaction Funding?
16 THE WITNESS: McGinn Smith
17 Transaction Funding Corp., I am the
18 chairman of the board.
19 MR. NEWMAN: And what is your
20 equity stake?
21 THE WITNESS: McGinn Smith
22 Transaction Funding, again, is owned by
23 McGinn Smith Holdings.
24 MR. NEWMAN: Right.
25 THE WITNESS: And my equity

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1 TIMOTHY MCGINN
2 stake there is 30 percent.
3 MR. NEWMAN: Okay. Did you --
4 how many investors were there in McGinn
5 Smith Transaction Funding offerings,
6 approximately?
7 THE WITNESS: 25.
8 MR. NEWMAN: Was it sold to
9 only accredited investors?
10 THE WITNESS: Buy and large.
11 There may have been a handful of
12 unaccredited investors. But by and
13 large there were. I mean, 4 1/2 of the
14 7 million was from three investors.
15 MR. NEWMAN: What exemption
16 provision was it sold under?
17 THE WITNESS: Reg D.
18 MR. NEWMAN: Do you know what
19 section of Reg D?
20 THE WITNESS: No, I don't
21 know.
22 MR. NEWMAN: What -- did you
23 receive any fees or payments or loans
24 from the money that was raised?
25 THE WITNESS: No.

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1 TIMOTHY MCGINN
2 BY MR. RATTINER:
3 Q Did any McGinn Smith entity receive
4 any fees?
5 A Well, McGinn Smith & Co., Inc.
6 received an underwriting fee of 2 percent. But other
7 than that, no.
8 MR. NEWMAN: Were any of those
9 offering funds used to pay down any
10 debts owed by you individually or any of
11 McGinn Smith entities or affiliates?
12 MR. FRANCESKI: Hold on. Can
13 I hear that one again, please?
14 MR. NEWMAN: Were any of the
15 offering proceeds used by you personally
16 to pay down any debts that you owed or
17 any debts that were owed by any of the
18 McGinn Smith companies?
19 THE WITNESS: I don't believe
20 so.
21 MR. NEWMAN: Generally, how
22 was the money applied? What was it used
23 for?
24 THE WITNESS: Well, it was
25 used to make investments in various

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1 TIMOTHY MCGINN
2 transactions. We made investments in
3 Cruise Charter Ventures. We made
4 investments in Zetek. We made
5 investments in First Line, buying
6 interest payment receivables.

7 We made investments in other
8 smaller transactions. That's it.
9 That's -- I don't have that balance
10 sheet off the top of my tongue.

11 BY MR. RATTINER:

12 Q Did any of the four LLCs invest in
13 MSTF?

14 A No.

15 MR. ROWEN: Did any of the
16 four known entities loan money to MSTF?

17 THE WITNESS: No.

18 MR. ROWEN: What is TDM Cable?

19 THE WITNESS: TDM Cable is an
20 entity that was created in fall of 2006.
21 And it was created to take advantage --
22 to take advantage of opportunities that
23 we saw in what is known as the private
24 cable operator industry.

25 MR. ROWEN: Who are the owners

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1 TIMOTHY MCGINN
2 Cable?

3 THE WITNESS: One of the note
4 entities loaned roughly \$2 1/2 million
5 to TDM prior to the completion of its
6 offering. That loan was repaid with
7 interest, which I believe was at
8 14 percent, over a period of perhaps
9 three to four months.

10 MR. ROWEN: How was that loan
11 paid back?

12 THE WITNESS: It was paid back
13 through the proceeds of the offering.

14 MR. ROWEN: Is there a wire
15 from TDM Cable to -- I'm sorry. Did you
16 say which note entity?

17 THE WITNESS: I didn't say
18 which note entity.

19 MR. ROWEN: To that note
20 entity, was there a wire from TDM Cable
21 to that?

22 THE WITNESS: It may have been
23 a wire, it may have been just a journal
24 entry; I am not sure.

25 MR. ROWEN: If it was a

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1 TIMOTHY MCGINN
2 of the entity?

3 THE WITNESS: Tim McGinn,
4 David Smith and Matthew Rogers; hence,
5 TDM.

6 MR. ROWEN: What revenues does
7 the entity earn?

8 THE WITNESS: The entity has
9 revenues that arise from two gated
10 communities in South Florida, where TDM
11 provides cable TV, internet, telephone
12 and security alarm services. Those
13 revenues are approximately \$1.6 million
14 a year.

15 MR. ROWEN: Any other
16 revenues, any other source of revenues?

17 THE WITNESS: No.

18 MR. ROWEN: TDM Cable loan
19 money to entities or individuals?

20 THE WITNESS: TDM Cable, upon
21 its -- the completion of its offering
22 did loan money to myself, Mr. Smith and
23 Mr. Rogers.

24 MR. ROWEN: Did any of the
25 four note entities loan money to TDM

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1 TIMOTHY MCGINN
2 journal entry, how would the money have
3 been paid back to the loan?

4 THE WITNESS: Well, the
5 journal entry goes from an account at
6 bank A -- account X at bank A to account
7 Y at bank A. There's just a journal;
8 there's no wire.

9 MR. ROWEN: Was it through any
10 other entity?

11 THE WITNESS: No.

12 MR. ROWEN: What was the
13 immediate use of the proceeds of that
14 loan?

15 THE WITNESS: Well, there were
16 two immediate uses. The first immediate
17 use was to acquire the assets from a
18 company called Primevision
19 Communications. And the second use of
20 proceeds was to make the loans to the
21 three parties that I described earlier.

22 MR. ROWEN: What was the price
23 of the assets purchased?

24 THE WITNESS: Roughly
25 \$1.7 million, \$1.8 million.

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MR. ROWEN: If we take a step back, what other TDM Cable entities are there?

THE WITNESS: Well, there are two -- there are two entities in the cable business. One is called TDM Cable, which we have just been discussing. The other is called TDMM Cable Funding.

The second M in TDMM is in recognition of an equity ownership by a fellow by the name of Mario Bustamante.

MR. ROWEN: Are there other trusts that have TDM Cable in their names?

THE WITNESS: Yes.

MR. ROWEN: What are those entities?

THE WITNESS: There are TDMM Cable Senior Trust; TDMM Junior Cable Trust; and TDMM Benchmark Trust.

MR. ROWEN: Are there any TDM Cable trusts without the additional M?

THE WITNESS: No.

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service the accounts, bill the accounts, collect from the accounts; have a guy go to your house and fix the cable TV if it wasn't working.

Bustamante was recommended to us by a private equity fund that we knew. He ran a similar business in South Florida. We interviewed him. We were very impressed with his capabilities. And we basically hired him to provide those functions for the first two communities that we acquired in the TDM transaction.

Subsequently Mr. Bustamante introduced us to other acquisition opportunities which we followed through on. And he became then the second M in the TDM network.

MR. ROWEN: Was the purpose of the TDMM Cable Senior and Junior Trusts?

THE WITNESS: To acquire some cable, telephone, internet contracts in 22 different communities in South Florida.

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MR. ROWEN: Are there separate books for each TDM Cable entity or TDMM Cable entity?

THE WITNESS: Yes.

MR. ROWEN: Separate bank accounts?

THE WITNESS: Yes.

MR. ROWEN: Financial statements?

THE WITNESS: Yes.

MR. ROWEN: What's the purpose of multiple entities -- of having multiple and separate entities?

THE WITNESS: Well, the purpose is that when we first did the -- when we did the first cable transaction in 2006, Mr. Bustamante was not part of the business at that time. The business was to have been serviced by Primevision Communications LLC. As it turns out, Primevision Communications, LLC became insolvent. They went out of the business. We required someone who had the necessary skills and capabilities to

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MR. ROWEN: So each of the -- Junior Trust, Senior Trust and TDMM -- TDMM Cable Funding, they were all conducting separate cable funding businesses?

THE WITNESS: No.

MR. ROWEN: Explain the integration.

THE WITNESS: I'm sorry.

MR. ROWEN: Explain the integration then.

THE WITNESS: The integration is simply that Bustamante's company, a company called H Control, provided the service function for all of the communities where we acquired the business and the contracts.

There was a differential in the equity ownership between the first two transactions, the first two communities that we acquired, and all the subsequent transactions. Because Bustamante was not a partner at that point.

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Subsequent to Prime Vision going out of business, when Mario's company came in, he became an equity partner in subsequent transactions.

MR. ROWEN: The TDMM Cable Funding verses the TDM Senior and Junior Trusts, how did they work together?

THE WITNESS: TDMM Cable Funding LLC borrowed money from the trust to make these acquisitions.

MR. ROWEN: How did the trust raise money?

THE WITNESS: The trust raised money by a capital raise, Senior tranche and a Junior tranche.

MR. ROWEN: Was that through McGinn Smith & Company?

THE WITNESS: Yes.

MR. ROWEN: Private placement?

THE WITNESS: Yes.

MR. ROWEN: Why not do the funding directly through TDMM Cable Funding LLC?

THE WITNESS: We always did

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raises in 2008?

THE WITNESS: Not for TDMM, no -- let me rephrase that. Not for the cable business.

BY MR. RATTINER:

Q Is TDM, single M, no longer being utilized for additional funding?

Has that sort of been retired for this new TDMM?

A It is our intent to merge TDM and TDMM. We haven't quite gotten that done yet. Yeah, it will be a lot less complicated. We are also in discussions with Mr. Bustamante to merge all three entities: The TDM, the TDMM and H Control in one grouping.

MR. FRANCESKI: What is that name?

THE WITNESS: H Control.

MR. PAULSEN: The letter H?

THE WITNESS: Yes.

BY MR. RATTINER:

Q We see different classifications, like TDM Cable 08.

Does that just represent a raise that

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this through various trusts, and it worked well. And that was the way we chose to do it.

There's a thousand ways you can do it. None of them are particularly unique in terms of solving the equation for X.

MR. ROWEN: What were the materials of the Senior and Junior -- of the investments sold in the Senior and Junior Trusts.

THE WITNESS: I think the senior tranche was probably 9 percent coupon, and the Junior was perhaps 11.

MR. ROWEN: For what time period?

THE WITNESS: The Junior tranche is always longer. That was probably five years. The Senior was probably three.

BY MR. RATTINER:

Q When was the raise?

A June -- May-June of '09.

MR. ROWEN: Were there any

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was done in '08?

A No. What it represents is when we did the first transaction in TDM, we did it in '06, and we did a two-year maturity and a four-year maturity. And so the two-year maturity obviously did mature in 2008. And so the TDM Cable 08 was a roll of those dollars.

Q What other TDM Cable with numbers would we have?

A I think that's it.

Q Okay. Is there a TDM Cable 09?

A No.

Q Is TDM Cable set up the same way with the Senior and Junior Trusts?

A No. There's no distinction in terms of seniority. There is just distinction in terms of maturity.

Q Okay. And how much did TDM Cable 06 raise?

You said \$1.8 million?

A No, I didn't say \$1.8 million. That was an answer to the question of what did the assets cost.

I think the raise was something in

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1 TIMOTHY MCGINN
 2 the order of \$3 million -- 2 million 8, \$3 million.
 3 Q That was raised by how many
 4 investors?
 5 A I don't know.
 6 Q That was done in the fall of '06?
 7 A Correct.
 8 Q And TDM Cable Funding, how much was
 9 raised for that -- TDMM. Sorry.
 10 A TDMM Cable Funding did not do a
 11 specific raise. The raise that was done in the
 12 trust -- there was a Senior Trust and a Junior Trust.
 13 Those proceeds were lent to TDMM Cable Funding. And
 14 that raise was roughly \$2 1/2 million.
 15 Q Would TDM Cable 06, I will call it, I
 16 guess the investment was 1.8 million?
 17 A Yes.
 18 Q And the revenues were how much; did
 19 you say 1.6?
 20 A 1.6, yes.
 21 Q What were the expenses, based on
 22 those revenues?
 23 A Roughly 70 percent of that. So let's
 24 call it 1.1.
 25 Q So TDM Cable is operating on a

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1 TIMOTHY MCGINN
 2 profit?
 3 A Correct.
 4 Q And what is the status of the notes
 5 payable to the investors?
 6 A The status of the notes payable to
 7 the investors, we have paid stated interest to the
 8 extent of about 97 percent through now.
 9 Q You stated that, I guess as part of
 10 the raise, there were two intentions: One to raise
 11 money for Primevision, \$1.8 million; and the other
 12 was for loans to three parties?
 13 A Correct.
 14 Q How was that disclosed to the
 15 investors?
 16 A I am not sure it was.
 17 Q Why would that be?
 18 A We disclosed to the investors that
 19 the acquisition price -- the acquisition costs would
 20 be approximately \$2.5 million, which included the
 21 loans.
 22 Q How much would the loans total out to
 23 be?
 24 A Roughly \$800,000.
 25 Q And that would be total loans

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1 TIMOTHY MCGINN
 2 throughout TDM Cable's life?
 3 A Correct.
 4 Q 800,000?
 5 A Right.
 6 Q How does that break out?
 7 A Roughly equivalent between myself,
 8 Mr. Smith and Mr. Rogers. And these loans were meant
 9 to be compensation for not only the early stages of
 10 the transaction, but continuing management of the
 11 business. We take out no management fees, no
 12 compensation, no salaries. And it is a -- you know,
 13 it is a very time-sensitive, time-intense business.
 14 Q How soon after the raise did the
 15 loans -- were the loans payable?
 16 A The loans were payable, I believe, in
 17 six years, which would be 2012.
 18 Q I'm sorry. How soon after the
 19 proceeds were raised were the loans payable to the
 20 individuals?
 21 A Roughly coincident.
 22 Q Okay. And after that initial
 23 800,000, had there been additional loans made through
 24 TDM Cable?
 25 A No.

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1 TIMOTHY MCGINN
 2 Q And if additional loans were made,
 3 who would authorize those?
 4 A I would.
 5 MR. NEWMAN: Let's take a
 6 break.
 7 (Whereupon a recess is taken.)
 8 MR. ROWEN: We are back on the
 9 record.
 10 At this time, can I have this
 11 marked as Exhibit 1.
 12 (Whereupon Exhibit 1 is
 13 Marked.)
 14
 15 EXAMINATION
 16 BY MR. ROWEN:
 17 Q Mr. McGinn, you have been handed
 18 Exhibit 1 in this matter. Exhibit 1 is a total of
 19 seven pages. This is an Excel spreadsheet of data
 20 imported from the Quicken registry report of all
 21 transactions in TDM Cable's Mercantile Bank account
 22 ending in 9507. The Staff has deleted totals and
 23 any blank columns. Staff has also added the TDM
 24 Cable title at the top, a balance at the bottom,
 25 numbered the rows for clarity, and highlighted select

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1 TIMOTHY MCGINN
2 lines.
3 Please take a minute to review the
4 document.
5 A (Reviewing). Okay.
6 Q Mr. McGinn, are you a signatory on
7 the Mercantile Bank account listed on the registry
8 report?
9 A Yes.
10 Q Who else is a signatory on the
11 account?
12 A I don't know.
13 Q Take a look at the highlighted
14 transactions on page 1.
15 Are these the transactions that we
16 spoke of earlier, \$2.6-plus million infusion from
17 FIIN and three what is classified as loans to DLS,
18 TMM and Matt Rogers?
19 A Yes.
20 Q Were you involved with the loan --
21 I'm sorry.
22 Are you aware of what kind of -- the
23 transaction that's noted as being FIIN on line four,
24 between FIIN and TDM Cable, was that a loan or an
25 equity investment?

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1 TIMOTHY MCGINN
2 A It was a loan.
3 Q Okay. What was your involvement in
4 this specific transaction?
5 A The loan from FIIN?
6 Q Yes.
7 A I represented TDM Cable Funding LLC
8 and procured the loan from FIIN, who was represented
9 by Mr. Smith.
10 MR. NEWMAN: I'm sorry. When
11 you say "procure," can you be more
12 specific?
13 THE WITNESS: Arranged for the
14 loan. There are two parties in the
15 loan. I represented TDM Cable Funding
16 LLC and Mr. Smith represented FIIN.
17 MR. NEWMAN: Your business
18 partner has numerous entities, including
19 McGinn Smith, right?
20 THE WITNESS: That is correct.
21 MR. NEWMAN: Did Mr. Smith
22 express any concern regarding any
23 conflict of interest in this
24 arrangement?
25 THE WITNESS: No. He was of

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1 TIMOTHY MCGINN
2 the opinion there was a confluence of
3 interest.
4 MR. NEWMAN: What do you mean
5 by that?
6 THE WITNESS: Confluence means
7 come together as opposed to diverge.
8 MR. NEWMAN: Can you be more
9 specific as to this transaction.
10 THE WITNESS: This was a
11 transaction that allowed FIIN to earn an
12 interest rate of, I believe, 14 percent
13 over a short term period of time. And
14 in fact, it did so.
15 MR. NEWMAN: So in your
16 discussions with Mr. Smith about this
17 transaction, he never expressed to you
18 any concerns there may be a conflict of
19 interest in him engaging in this
20 transaction with you; is that correct?
21 THE WITNESS: Correct.
22 MR. NEWMAN: At the time the
23 loan was made, how much money was in the
24 TDM Cable account?
25 THE WITNESS: I have no idea.

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2 MR. NEWMAN: TDM was in the
3 process of raising money as of
4 October 2006?
5 THE WITNESS: Yes.
6 MR. NEWMAN: How much money
7 had been raised at that point?
8 THE WITNESS: I don't know.
9 MR. NEWMAN: Approximately.
10 THE WITNESS: I don't know.
11 MR. NEWMAN: When did the
12 offering commence?
13 THE WITNESS: I don't know.
14 MR. NEWMAN: How much money
15 was raised.
16 THE WITNESS: Ultimately
17 probably something in the area of \$3
18 million.
19 MR. NEWMAN: If you don't know
20 how much was raised and you don't know
21 how much was in the account, how do you
22 know that these loan funds came from the
23 offering proceeds?
24 MR. FRANCESKI: Wait a minute.
25 Let me think about that for a moment.

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I have to object to that question. If you understand it and you think you can answer, you are free to do that.

THE WITNESS: Well, if I had another exhibit here that showed me what the balances of the escrow account were, then I'd be able to answer those questions with great clarity. Unfortunately, I don't have that data in front of me, nor do I have it committed to memory. So I don't know. On 9 -- or 10-2-06 how much of that money had been raised.

MR. NEWMAN: You don't know, sitting here today, whether or not these loan proceeds came from the offering that was ongoing or the \$2.6 million that FIIN lent to TDM Cable?

THE WITNESS: That is correct.

BY MR. ROWEN:

Q Are you aware whether FIIN, First Independence Private Placement Memorandum, disclosed that its funds would be used to facilitate loans to

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A (Reviewing). Are you referring to line items 47 through 49?

Q Along with line 45.

A (Reviewing). Okay.

Q And also line 6 on, 62, 63.

A Okay.

Q Are you familiar with these transactions?

A Yes.

Q Can you describe the transactions for the record?

A Line 45 would suggest that there was a loan made by FAIN in the amount of \$635,000 into TDM Cable LLC.

Lines 47 through 49 indicate that there were loans made to McGinn Smith and Rogers in the aggregate amount of \$264,000.

And 60 looks like another loan from FAIN in the amount of \$300,000.

Q Line 62 and 63?

A 62 and 63 were loans to McGinn & Smith in the amount of 192,000 total.

Q For the record, the transactions in lines 45, 47, 48, 49 all occurred on the same day?

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Dave Smith, Tim McGinn or Matt Rogers?

A I doubt very much that the private placement memorandums suggested that level of detail.

I do, however, know that the private placement memorandums gave the advisor, the manager of the funds great latitude in terms of what type of investments it could make, including -- including, but not limited to, loans to related parties.

MR. NEWMAN: Are you familiar with the term "fiduciary duty"?

THE WITNESS: Yes.

MR. NEWMAN: Are you aware whether or not investment advisors have a fiduciary duty to their clients?

MR. FRANCESKI: Objection.

MR. NEWMAN: Are you aware whether or not investment advisors have a fiduciary duty to their client?

THE WITNESS: Yes.

MR. FRANCESKI: Objection.

BY MR. ROWEN:

Q Can you turn to page 2 of Exhibit 1 and review the two highlighted series of transactions?

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A Let me see something (Reviewing).

MR. FRANCESKI: Don't write on the exhibit.

THE WITNESS: 45, 47. There's no date on 48, 49. I will assume it's 1-30. In that case, yes, they're all the same day.

BY MR. ROWEN:

Q And for 60, 62, 63?

A (Reviewing). Again, 63 doesn't have a date indicated, but I will assume it is the same date.

Q So based on this, would you say the proceeds of the loan from FAIN were used to pay loans to yourself, David Smith and Matt Rogers?

MR. FRANCESKI: Objection.

You may answer.

THE WITNESS: Well, not necessarily. If you look on page 3, line item 65, there was an infusion of capital into the account of \$330,000 from Mr. Cranberry LLC, which is a private partnership.

So the argument may be that

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the loans came out of the funding from FAIN or it could have come out of the funding for Mr. Cranberry. Since capital is fungible, we will never know.

BY MR. ROWEN:

Q Do you remember the specific transactions?

A No.

MR. FRANCESKI: Mind if I ask a clarifying question, Steve?

MR. ROWEN: Go ahead.

MR. FRANCESKI: Tim, would you look at lines 43 and 46. Do you see those?

THE WITNESS: Yes.

MR. FRANCESKI: What are the dates on those?

THE WITNESS: Dates on 43 are January 30, '07. And 46 would also be January 30, '07.

MR. FRANCESKI: In terms of monetary effect of those lines, what does it suggest to you?

THE WITNESS: It suggests that

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Q Is that different from what you previously testified as the purpose of TDM Cable and the revenue for TDM Cable?

A It was a conduit, nothing more than a conduit.

Q How about for the Verifier LLC loan on line 44?

A Similarly, it was a conduit.

Q What is the details behind that transaction where \$1.225 million was loaned to Verifier LLC?

A Verifier LLC was a company created by Mr. Rogers with some partners in March of 2006.

At that time he raised equity, he borrowed money from the public company that I was running at the time, Integrated Alarm Services Group, and he also borrowed money from one of the FAIN, FIIN, TAIN blah-blah-blah funds.

In early 2007, Mr. Rogers decided to refinance that loan. And McGinn Smith & Company, Inc, underwrote a -- what is known in the industry as a GPU offering, or a guaranteed payment offering. It has the effect on the capital structure of being a preferred stock.

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Mr. Cranberry lent to this entity \$1,217,000.

MR. FRANCESKI: That's all.

BY MR. ROWEN:

Q Based on this, could loans -- the loans noted on this page be paid to McGinn, Dave Smith and Matt Rogers without the loans from First Advisory?

A Yes.

Q What is the purpose of the loans from First Advisory?

A At this time, we were doing -- "we," meaning McGinn Smith & Company. I apologize for using the personal pronoun "we."

We -- McGinn Smith & Company was doing a transaction, a debt transaction -- actually a preferred stock transaction for Verifier of Capital LLC. And the loans from FAIN more than likely were used to -- well, it could have been a Luxury Cruise transaction. We did a Luxury Cruise transaction where we sent them some money. My guess is that it was the loans from FAIN that we used to fund the Luxury Cruise transaction. We used TDM Cable Funding LLC as a conduit for that loan.

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So we did this preferred stock, which allowed Verifier Capital to pay back McGinn -- excuse me. To pay back Integrated Alarm Services Group as well as pay back the funds, the FIIN, FAIN, TAIN, wherever that money came from.

And this item on line item 44 is the funding of that. And it may be the partial funding. I haven't gone through all of this. But it is part of the funding of that GPU underwriting.

Q What did TDM Cable derive from its loan?

A Very little, if anything. As I said, it was merely a conduit. It was an entity that we had that had bank accounts. Was established. We used it to basically flow funds through.

MR. FRANCESKI: Did it loan out more than a million dollars, didn't receive anything?

THE WITNESS: Sure, it did. It received GPU units from Verifier Capital LLC.

BY MR. ROWEN:

Q There were additional revenues than the cable television?

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2 A Yes and no. Those revenues were
3 applied to an offering that we did for Verifier
4 Capital in early '07. So none of those revenues
5 stuck to TDM Cable LLC. It was merely a pipe
6 conduit.

7 MR. RATTINER: What's the benefit to
8 TDM?

9 THE WITNESS: There was no
10 particular benefit to TDM. But we used
11 it. "We," collectively, used it. We
12 owned it. We had it there. It was a
13 matter of convenience.

14 MR. RATTINER: Was the value
15 of the GPUs \$2 million?

16 THE WITNESS: The value of the
17 GPUs on a present value basis was
18 worth -- at the rate of interest, the
19 trust or the investment was sold, it was
20 equal to whatever we pay.

21 MR. RATTINER: Where does that
22 asset reside today?

23 THE WITNESS: That asset
24 resides as a collateral for one of the
25 TDM Verifier offerings, one which was

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2 Mercantile Bank account?

3 THE WITNESS: Mr. Shea or Mr.
4 Cooper.

5 MR. RATTINER: How about
6 yourself?

7 THE WITNESS: On occasion.

8 MR. RATTINER: And who would
9 have authorized the three wires that we
10 first discussed on page 1?

11 THE WITNESS: Line item 7, 8
12 and 9?

13 MR. RATTINER: Correct.

14 THE WITNESS: I would have.

15 MR. RATTINER: And you
16 previously testified that you thought
17 the amount was about 800,000?

18 THE WITNESS: Yes.

19 MR. RATTINER: And this comes
20 out to about a million fifty-two?

21 THE WITNESS: Correct.

22 MR. RATTINER: How does that
23 differ from your previous testimony?

24 THE WITNESS: I didn't have
25 this in front of me when I was

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2 done in the first quarter of 2007.

3 MR. RATTINER: I still don't
4 know why TDM was used other than to
5 write a check or wire a fund.

6 THE WITNESS: It was used as a
7 conduit.

8 MR. RATTINER: But has nothing
9 to do with Verifier's business?

10 THE WITNESS: That is correct.

11 MR. RATTINER: Who made the
12 decision to use TDM Cable?

13 THE WITNESS: I did.

14 MR. RATTINER: Other than
15 yourself, who else has signatory
16 authority on the Mercantile Bank
17 account?

18 THE WITNESS: As I said
19 earlier, I don't know.

20 MR. RATTINER: Do you know if
21 Dave Smith does?

22 THE WITNESS: He may have. I
23 don't know.

24 MR. RATTINER: Who typically
25 writes checks or wires money out of the

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2 testifying earlier.

3 MR. RATTINER: You previously
4 testified it was one loan one time, as
5 Mr. Rowen's gone over a few other loans?

6 THE WITNESS: Right.

7 MR. RATTINER: How do those
8 differ from your previous testimony?

9 THE WITNESS: As I said, I
10 didn't have the document in front of me
11 when I testified previously.

12 MR. RATTINER: What sort of
13 documentation was created for these
14 loans?

15 THE WITNESS: Typical notes.

16 MR. RATTINER: When were those
17 notes created?

18 THE WITNESS: I am not sure.

19 MR. RATTINER: Did you sign
20 the notes?

21 THE WITNESS: Yes.

22 MR. RATTINER: When did you
23 sign them?

24 THE WITNESS: I don't know.

25 MR. RATTINER: Was it in 2006?

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 2 THE WITNESS: It may have
 3 been.
 4 MR. RATTINER: Who prepared
 5 the notes?
 6 THE WITNESS: I don't know.
 7 Joe Carr wasn't with us at the time, so
 8 I don't know who prepared those notes.
 9 BY MR. ROWEN:
 10 Q What is the typical process for the
 11 creation and execution of notes of this type?
 12 A We will tell our counsel to prepare
 13 notes. We will describe who the lender is, who the
 14 borrower is, what the rate of interest is and what
 15 the maturity is.
 16 Q Do you make sure that the
 17 documentation is in place before executing the loan?
 18 A Not always.
 19 Q Why not?
 20 A Because we know it is a loan. It
 21 sits on the books as a loan. It's entered into the
 22 accounting system as a loan. There is a record of it
 23 as a loan. We make no attempt to disguise it as
 24 anything else. And so sometimes it gets done
 25 promptly, sometimes it doesn't.

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 2 Q If you look at the description column
 3 for lines 47, 48 and 49 -- or specifically line 47.
 4 Listed as "Fees."
 5 A Correct.
 6 Q So is it possible that some could
 7 disguise -- could be confused on whether funds moving
 8 in and out were loans or some other type?
 9 MR. FRANCESKI: Objection.
 10 "Is it possible" who could be confused?
 11 MR. ROWEN: Let's start with
 12 someone who is entering the data into
 13 the Quicken system.
 14 MR. FRANCESKI: Is it
 15 possible? I -- I am going to object.
 16 MR. ROWEN: He said that -- he
 17 said -- she can read it back if we need
 18 to. But he said it was clear that these
 19 were loans. So I see them at one point
 20 referred to as fees. I am trying to --
 21 THE WITNESS: Well, a fee can
 22 be paid in any form of currency.
 23 MR. FRANCESKI: I'm sorry.
 24 Complete your answer. You answered
 25 before I could object. But go ahead. I

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 2 will deal with it after.
 3 THE WITNESS: In one form of
 4 currency can be a loan. And that's what
 5 this is.
 6 I mean, instead of taking fees
 7 as ordinary income, we took fees in the
 8 form of loans, longer-term loans that
 9 had attractive interest rates as part of
 10 our internal tax planning.
 11 MR. NEWMAN: Explain that
 12 comment.
 13 MR. FRANCESKI: Before we get
 14 there, Mike, the objection I would have
 15 made was, fees appear to be somewhere on
 16 here, but the word "loan" is also
 17 attached to the entry.
 18 That would have been my
 19 objection. He answered it.
 20 MR. ROWEN: I think the
 21 document speaks for itself.
 22 MR. FRANCESKI: It does. It
 23 doesn't make the question any less --
 24 MR. NEWMAN: It's on the
 25 record. Let's go back.

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 2 MR. FRANCESKI: Let's go on.
 3 I'm sorry, Mike, your question?
 4 MR. NEWMAN: I think it was
 5 the tax planning. You said tax
 6 planning. That's what I was asking you
 7 about.
 8 THE WITNESS: Right.
 9 MR. NEWMAN: What do you mean?
 10 (Whereupon a discussion is
 11 held off the record.)
 12 MR. NEWMAN: I think the
 13 comment you were making, you were asked
 14 about the loans, you said it was being
 15 done for internal tax purposes or tax
 16 purposes.
 17 THE WITNESS: If we take fees
 18 in the form of a loan, that is not
 19 taxable income. Until such time as that
 20 loan is forgiven, if it's forgiven, so
 21 this is a very effective mechanism for
 22 compensation. In fact, it's being used
 23 quite -- on a -- quite a prevalent basis
 24 right now for banks to get arranged the
 25 TARP restrictions. And it's

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2 certainly -- we didn't invent the
3 mechanism. It's a mechanism that has
4 been around since Christ was a boy.

5 MR. NEWMAN: Have there been
6 any loans that you have been involved
7 with in the last five years that have
8 been forgiven?

9 THE WITNESS: No.

10 EXAMINATION

11 BY MR. RATTINER:

12 Q Have any loans matured in the last
13 five years?

14 A No.

15 MR. NEWMAN: I have a couple
16 of questions. TDM Cable as we have
17 discussed is a separate entity, correct?

18 THE WITNESS: Yes.

19 MR. NEWMAN: It is a
20 corporation?

21 THE WITNESS: It's an LLC.

22 MR. NEWMAN: LLC. It has a
23 separate business purpose, separate
24 managing partner or directors, correct?
25

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2 THE WITNESS: Separate from
3 whom?

4 MR. NEWMAN: It has its own --
5 its own -- separate entity with a
6 separate business purpose, separate
7 owners, et cetera?

8 THE WITNESS: Yes.

9 MR. NEWMAN: And TDM Cable has
10 its own bank account?

11 THE WITNESS: Clearly.

12 MR. NEWMAN: And this is the
13 bank account we are talking about?

14 THE WITNESS: Correct.

15 MR. NEWMAN: Now, when
16 offering -- the offering was ongoing,
17 proceeds are being raised from
18 customers, where were those funds being
19 deposited, what account?

20 THE WITNESS: The proceeds of
21 the offering that were deposited into an
22 escrow account, which was domiciled at
23 Mercantile Bank in Boca Raton, Florida.

24 MR. NEWMAN: And the escrow
25 account was established to deposit the

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2 offering proceeds?

3 THE WITNESS: Correct.

4 MR. NEWMAN: And when a
5 certain amount of monies were raised,
6 the escrow was broken?

7 THE WITNESS: Correct.

8 MR. NEWMAN: There was a
9 minimum amount that had to be achieved
10 before escrow could be broken?

11 THE WITNESS: Most likely.

12 MR. NEWMAN: Do you know when
13 the escrow was broken in this case?

14 THE WITNESS: I do not.

15 MR. NEWMAN: So what we are
16 talking about is TDM Cable's operating
17 account?

18 MR. FRANCESKI: Is that a
19 question, Mike?

20 MR. NEWMAN: Yes.

21 THE WITNESS: Yeah. This is
22 not -- this is not the escrow account.

23 This is the operating account.

24 MR. FRANCESKI: Let me object
25 to that. We are not looking at an

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2 account at all. We are looking at a
3 spreadsheet created by FINRA Staff from
4 entries from somewhere, bank accounts.

5 MR. NEWMAN: It's for the
6 Mercantile TDM Fund LLC account; is that
7 correct?

8 MR. ROWEN: Within the Quicken
9 files supplied by the firm.

10 MR. NEWMAN: So it's our
11 understanding this account, based on the
12 information the firm has provided, is
13 the operating account.

14 Does that appear to be
15 consistent?

16 THE WITNESS: I think that is
17 a reasonable conclusion.

18 MR. FRANCESKI: Just note my
19 objection. The entries are from the
20 account, I think is what he said. We
21 are not looking at an account.

22 MR. NEWMAN: The entries
23 relate to a bank account for TDM Cable,
24 which is the operating account?

25 THE WITNESS: Yes.

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MR. NEWMAN: It's not an actual bank statement, but it reflects -- the entries reflect information contained in bank statements?

THE WITNESS: Most likely.

MR. NEWMAN: And this is -- this account at Mercantile would be the operating account for TDM Cable?

MR. FRANCESKI: Mike, when you say "this," for clarity, is that account number 29507? Is that what this is?

MR. NEWMAN: Yes. Ending in 29507.

THE WITNESS: (Reviewing). To an extent the answer is yes. I am not trying to be obtuse here.

There came a time in the operation of this business when Primevision Communications LLC took a powder. Left. They were done. They were insolvent.

And we brought in a company called H Control, which was run by

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have identified a number of different entities in which -- had monies flowing in and out of this account, going through the list. I think this is probably a partial list. Verifier, TDM Trust, Mr. Cranberry, Luxury Cruise, 107th Associates, TDM Cable Senior 09, First Line Senior 07, MSTF, MS Funding, TDM Cable Fund LLC Trust 06, and First Line Senior Trust. So approximately 11 entities had deposits or payments from this account. And I think you have already testified concerning most of those entities in terms of McGinn Smith affiliation.

Can you explain why a TDM Cable operating account would have that many entities deposit or receiving funds from this time period?

THE WITNESS: Well, as I said earlier, this was used as a conduit, a clearing house, if you will. And there are others that you missed that are significant. Zetek, for instance, was

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Bustamante. When that happened, the operating dynamics of the accounts in our portfolio ran all of their collection items and all of the expense items to Dish TV, to employees, to cable, you know, providers and so forth, through that account. So this is not an exhaustive, complete analysis of the operating account of TDM Cable Funding, LLC. I just want to make that distinction.

MR. NEWMAN: That's fine. And this account, once the escrow had been -- the escrow amount has been satisfied, investor funds were deposited into the operating account.

THE WITNESS: Correct.

MR. NEWMAN: Which, again, reflect the -- again, the account statement is not in front of you, but the transactions -- scheduled transactions from that operating account are contained in this exhibit.

In looking at this exhibit, I

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an entity that was funded to a large extent through this account; \$1.6 million on September 4, '07. It was an account that was convenient to use. It was established. The ownership of the entities was consistent with the ownership of TDM Cable Funding. And we use it that way.

MR. NEWMAN: Are there any other accounts that you are aware of, McGinn Smith related accounts, that had this omnibus purpose with so many different businesses, depositing, taking money out of it?

THE WITNESS: Well, I think you can look at a number of accounts. Probably none as active as this. Mr. Cranberry is an account that comes to mind that may have served that purpose.

MR. NEWMAN: Given the commingling of all these funds in one account, how was TDM cable to keep track of the offering -- use of the offering proceeds that it received from the

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 2 investors?
 3 MR. FRANCESKI: Objection.
 4 You may answer.
 5 THE WITNESS: Well, TDM Cable
 6 Funding had various payments which it
 7 made to the two-year maturity and the
 8 four-year maturity of those issues --
 9 those securities issued in 2006. And I
 10 am sure if we went through this we will
 11 find that those payments did flow
 12 through this account.

13 How do we know that it was
 14 done properly? We have an accounting
 15 staff, which at that time consisted of
 16 Mr. Rees and Mr. Cooper, now consists of
 17 Mr. Shea and Mr. Cooper. And we are
 18 confident that their activities properly
 19 reflected what had to happen to service
 20 those obligations.

21 MR. NEWMAN: How did TDM Cable
 22 keep track of the use of offering
 23 proceeds?

24 THE WITNESS: TDM Cable kept
 25 track of the offering proceeds through

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 2 bank statement?
 3 THE WITNESS: I don't know.
 4 MR. NEWMAN: How about for
 5 107th Associates?
 6 THE WITNESS: 107th
 7 Associates?
 8 MR. FRANCESKI: I'm sorry,
 9 Mike, what were you asking?
 10 MR. NEWMAN: I'm asking what
 11 records were maintained to track how
 12 monies were utilized.

13 MR. FRANCESKI: Hold on. Hold
 14 on. Let me make a statement for the
 15 record here. Over the course of the
 16 last two and a half days, including up
 17 until now, we have permitted questions
 18 about a number of entities and a number
 19 of subjects, and we will continue to
 20 permit that in the interest of getting
 21 information to the Staff here.

22 I just want to make clear on
 23 the record that by permitting the
 24 witness to respond to those questions,
 25 and having them respond to those

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 2 its books and records.

3 MR. NEWMAN: Which would be
 4 what?

5 THE WITNESS: Well, we have --
 6 first of all, we have the escrow account
 7 statements. We have the operating
 8 account statements. We have flow of
 9 funds between the parties identified
 10 here in great detail.

11 MR. NEWMAN: Through a bank
 12 statement?

13 THE WITNESS: Through the bank
 14 statement or through the Quicken books,
 15 which is a result of the bank
 16 statements. The statements are created.
 17 We don't create them. We receive them.

18 All the flow of funds is
 19 properly noted and recorded in the books
 20 and records.

21 MR. NEWMAN: Was there a
 22 separate -- a separate accounting slash
 23 journal record maintained regarding TDM
 24 Cable that show again how offering
 25 proceeds were utilized, other than a

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 2 questions, we are not in any way
 3 conceding the jurisdiction of FINRA over
 4 any or all of the entities or
 5 information that's being collected here.
 6 But I am not going to stop the
 7 questioning. We are interested in you
 8 getting the information.

9 Go ahead.

10 THE WITNESS: Let's re-read
 11 the question.

12 MR. NEWMAN: Let me use a
 13 different -- 107 never actually raised
 14 funds; is that correct?

15 THE WITNESS: That's right.

16 MR. NEWMAN: Let me pick
 17 another one.

18 BY MR. RATTINER:

19 Q While they are conversing, I want to
 20 ask you a question, keep the pace moving.

21 In addition to Mr. Cranberry acting
 22 as a conduit similar to TDM's bank account, were
 23 there other entities that acted similarly?

24 A I don't think so.

25 Q Who has signatory authority on Mr.

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2 Cranberry?
3 A Myself and Mr. Smith.
4 Q How about Mr. Fisher?
5 A No.
6 Q And where is that account maintained?
7 A The bank account was maintained at
8 Mercantile Bank.
9 Q It's no longer?
10 A No, it's still there.
11 MR. NEWMAN: Rather than focus
12 on one particular offering, I am going
13 to ask a more general question.
14 Pertaining to any offerings
15 that you have been involved with at
16 McGinn Smith over the last couple of
17 years, how have the offering proceeds
18 been tracked from an internal standpoint
19 other than through bank accounts
20 statements and Quicken records, if there
21 is any other mechanism at the firm
22 utilized for that purpose?
23 THE WITNESS: I don't know if
24 there are other mechanisms that were
25 utilized. I mean, the accounting

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2 function is run and has been run by
3 competent people. And whatever they
4 use, they used. I was not, am not, have
5 never been involved in the accounting
6 transactions for any of our offerings
7 dating back to 1981.
8 BY MR. RATTINER:
9 Q How much have you received in loans,
10 if you can break it down I guess year by year, in
11 2010, for instance?
12 A 2010, zero.
13 Q How about 2009?
14 A I don't know those answers off the
15 top of my head.
16 Q Any approximates?
17 A I'd rather not give approximate
18 numbers.
19 Q Where would that information be
20 maintained?
21 A Well, it would be maintained at the
22 offices of McGinn Smith & Company by Mr. Shea and Mr.
23 Cooper.
24 Q Okay.
25 MR. NEWMAN: You testified

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2 earlier that -- your testimony regarding
3 loans was that they don't have to be
4 classified as income if -- until they
5 have been forgiven?
6 THE WITNESS: Right.
7 MR. FRANCESKI: I think what
8 he said was tax purposes.
9 MR. NEWMAN: For tax purposes.
10 THE WITNESS: Correct.
11 MR. NEWMAN: So you understand
12 loans have potential income tax
13 implications?
14 THE WITNESS: Well, the loans
15 may not have potential income tax
16 ramifications if they are indeed paid
17 down. The only time they have income
18 tax ramifications is if they are
19 forgiven. But if they are amortized
20 with other resources, then there are no
21 ramifications.
22 MR. NEWMAN: You have been the
23 recipient of several loans over the
24 years through McGinn Smith affiliates
25 and companies; is that correct?

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2 THE WITNESS: That is correct.
3 MR. NEWMAN: How have you kept
4 track, if at all, of the various loans
5 you received from a tax perspective?
6 THE WITNESS: All of the loans
7 that I received have been duly noted,
8 duly recorded in the books of the
9 various entities.
10 MR. NEWMAN: What is the
11 oldest loan you have presently?
12 THE WITNESS: It dates back to
13 October 2, 2006.
14 MR. NEWMAN: That's the oldest
15 outstanding loan?
16 THE WITNESS: That is correct.
17 MR. NEWMAN: Would that be the
18 TDM Cable loan?
19 THE WITNESS: Yes, it is.
20 MR. PAULSEN: Has there ever
21 been any repayment of any loan?
22 THE WITNESS: None of the
23 loans have had repayment requirements to
24 date.
25 MR. FRANCESKI: That was asked

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1 TIMOTHY MCGINN
2 and answered. But I missed my
3 objection.

4 MR. MCCARTHY: Do you have any
5 intention of paying back these loans
6 currently?

7 THE WITNESS: Yes.

8 MR. MCCARTHY: It's your
9 intention that you are going to be paid?

10 THE WITNESS: Correct.

11 MR. MCCARTHY: May not know
12 this, you may know this: Is it your
13 understanding that Mr. Smith and
14 Mr. Rogers have intention of paying back
15 these loans?

16 THE WITNESS: I don't know
17 what their intentions are.

18 MR. MCCARTHY: Have you ever
19 spoken to Mr. Smith regarding the
20 repayment of loans?

21 THE WITNESS: No.

22 BY MR. RATTINER:

23 Q What is the current value of the
24 outstanding loans?

25 A I don't know the total of that

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1 TIMOTHY MCGINN
2 number.

3 Q Looking at Exhibit Number 1, I don't
4 have the same numbers on my sheet as you do, so I
5 apologize.

6 The investment here, an ADT note, a
7 few lines down.

8 That \$100,000, is that part of -- one
9 of the investments that were made by TDM Cable?

10 A Yes.

11 Q And the 629 below PVF-Cutler?

12 A Yes.

13 Q And what is PVF-Cutler?

14 A PVF stands for Primevision Funding
15 LLC. Cutler is -- it references one of the two
16 communities in South Florida, Cutler K, which is
17 outside of Miami. So that was the capital
18 contribution that was made into that investment.

19 Q So that also would be below where you
20 see PVF-Key or K?

21 A Key.

22 Q Is that the K you were just
23 referencing or is that a separate name?

24 A Separate.

25 Q So what is the 364,800?

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1 TIMOTHY MCGINN

2 A Similarly it is the capital that we
3 paid for an investment in a project known as Keys
4 Cove to Primevision Funding.

5 Q That's approximately \$1.1 million.

6 What other investments did TDM Cable
7 make?

8 A Well, the note to ADT was not
9 \$100,000. It was, I believe, \$500,000. So somewhere
10 in here there should be some note referencing that.

11 In addition to which, for some period
12 of time, probably a year and a half, we continued to
13 make payments to Primevision, not only in cash but in
14 -- in credits. They were supposed to pass and they
15 did pass a revenue stream that was tied to the number
16 of houses that were occupied in these communities.

17 And every time they -- they brought
18 new homes on board, "lit," to use an expression in
19 the industry, we would pay them roughly 20 times the
20 recurring monthly revenue. And at the end of the day
21 if they brought more property on than they owed us,
22 then we would credit that, and we would also pay them
23 cash.

24 As an example, if you look at line
25 54, in that instance it shows us paying \$11,433. In

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1 TIMOTHY MCGINN

2 addition to that \$11,433 there was a credit that we
3 applied to that purchase. So our investment was, in
4 fact, 28, 30,000 dollars in that particular month.
5 And this went on for a period of roughly 18 months.

6 So when you look at the total cost of
7 the business, it was the 629, the 364, the 500 to
8 ADT, and probably something in the order of another
9 half a million dollars that we paid to Primevision
10 over a period of 18 months.

11 Q So approximately 2 million,
12 thereabouts?

13 A Yeah.

14 Q Okay. If we walk through the loans
15 that were identified on the bottom of the first
16 page -- well, actually they were not identified. I
17 apologize.

18 Towards the bottom of the first page
19 we will see other loans. They say "Loans, other." I
20 apologize, I don't have the line number. Lines
21 starting with 27.

22 A Yeah.

23 Q What is that there? We will see a
24 55,000 and a 57,000?

25 A Yes.

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1 TIMOTHY MCGINN
 2 Q And we'll see the initials DLS on one
 3 line and no initials on the other line?
 4 A Hm-hm.
 5 Q Are that loans received by yourself
 6 and Mr. Smith?
 7 A I don't know for sure. But the
 8 conclusion would be probably. The line 28 happens to
 9 be Mr. Smith's initials, so I would think that's
 10 pretty conclusive. 27 and 29 may well have been
 11 myself and Mr. Rogers, although I can't definitively
 12 say that looking at this schedule.
 13 Q Would a new loan document be created
 14 for each one of these loans?
 15 A I don't know if that was the case or
 16 if it was a grid -- or if it was a grid note.
 17 Q Okay. And who is Shutts & Bowen?
 18 A Shutts & Bowen is a law firm in Miami
 19 that handled this particular transaction; and in
 20 fact, handles all of our business -- sorry, David --
 21 in the cable industry.
 22 Q And those legal fees are for what?
 23 A Well, they are for documenting the
 24 purchase agreements, the asset purchase agreements,
 25 filing the various UCC 1s to the extent that there

Page 140

1 TIMOTHY MCGINN
 2 Q Who would authorize those loans?
 3 A I would.
 4 Q How would it come to play? How would
 5 a loan be made? Based on what?
 6 A Well, it would be a function of the
 7 transaction that was completed. It would be a
 8 function of the spreads in the underlying assets, the
 9 earning spread versus the cost of capital. It would
 10 be a function of the amount of ongoing activities
 11 that were contemplated in that particular
 12 transaction. And that's how it was determined.
 13 Q Was each loan always made to all
 14 three individuals?
 15 A Yes. When all three individuals were
 16 involved in that particular transaction, and there
 17 may have been to a lesser or greater extent. They
 18 were not all made equally. But obviously all three
 19 parties would participate.
 20 Q If we turn to page 4, look at the
 21 bottom of the page, we will see a loan to TMM of
 22 \$50,000.
 23 A Hm-hm.
 24 Q Was there a similar loan to the other
 25 two individuals?

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1 TIMOTHY MCGINN
 2 need to be UCC 1s doing certain communications, FCC
 3 legal work on our behalf, I mean a potpourri. We
 4 have instituted litigation in some instances, and
 5 they have been the litigation firm. So they handle
 6 all of the legal activities relative to this sector.
 7 Q And do you recall if the PPMs for TDM
 8 Cable Trust Senior and Junior -- was there a limit to
 9 the legal fees that could be expensed?
 10 A No.
 11 Q There's no limit?
 12 A No. I have never seen that in an
 13 offering document. Have you?
 14 Q Yes, I have. But I am not here
 15 testifying.
 16 Gersten Savage?
 17 A It's another law firm. And they
 18 apparently did some work for us in this regard. It's
 19 a New York City law firm.
 20 Q Again, if we look at the bottom of
 21 page 3, we will see additional loans of \$30,000 each.
 22 MR. FRANCESKI: Lines 93
 23 through 95?
 24 THE WITNESS: Yes.
 25 BY MR. RATTINER:

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1 TIMOTHY MCGINN
 2 A I don't know. Doesn't look that way
 3 and --
 4 Q And why would that be?
 5 A Could be the other individuals were
 6 not involved in that particular transaction.
 7 Q Did you require any approval from the
 8 other two individuals prior to taking a loan out to
 9 yourself?
 10 A No.
 11 Q And the same would apply for the
 12 transaction on 8-6-07 up above? Line number 108.
 13 A Correct.
 14 Q And in this case, I guess two lines
 15 above that, 106, you will see a loan to DLS.
 16 So we don't see a loan to Matt Rogers
 17 here. Is there a reason for that?
 18 A It could very well be the entry that
 19 created that spread was not worked on by Mr. Rogers.
 20 Q What sort of work would Mr. Smith
 21 have done in this regard?
 22 A Mr. Smith and I are partners. We --
 23 and have been partners since 1977. So by and large
 24 when there is a fee to be made in the form of a loan
 25 or cash payment, that fee is split. I will use, as a

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1 TIMOTHY MCGINN
 2 metaphor, law firms. I am sure that Mr. Franceski
 3 today as a partner of his law firm is probably
 4 accruing earnings that some young associate is
 5 creating or some other partner. That's the way these
 6 things work.
 7 Q If we go on to page 7, two lines
 8 down. We will see Shutts & Bowen again, line 196.
 9 A Yes.
 10 Q What is that amount for, the 260,000?
 11 Why was the law firm paid \$260,000?
 12 A It was paid \$260,000 because we had
 13 acquired a property called Little Harbor, which is in
 14 Tampa, Florida. And the acquisition price of that
 15 property was \$260,000. This is in the cable
 16 industry. Shutts & Bowen does all our work in the
 17 cable industry. And that wire, I am sure it was EFT,
 18 was sent to their escrow account, not their operating
 19 account.
 20 Q In addition to the loans that we have
 21 identified here and the ones we have not identified,
 22 the entity was still being charged an underwriting
 23 fee for each of the transactions?
 24 A For any transaction in which capital
 25 was raised, McGinn Smith & Company, Inc. earned an

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1 TIMOTHY MCGINN
 2 underwriting fee, which was properly and materially
 3 disclosed in the offering documents.
 4 Q Okay.
 5 MR. NEWMAN: Who authorized
 6 all the transactions in the TDM Cable
 7 operating account? Who authorized all
 8 these transactions reflected on the
 9 schedule?
 10 THE WITNESS: As described in
 11 Exhibit 1?
 12 MR. NEWMAN: Yeah.
 13 THE WITNESS: I would say
 14 90 percent of these transactions or more
 15 were authorized by me, maybe a hundred
 16 percent.
 17 MR. NEWMAN: Who else was a
 18 signatory on this account besides
 19 yourself?
 20 MR. FRANCESKI: Objection.
 21 Asked and answered twice.
 22 MR. NEWMAN: Then I don't
 23 remember that.
 24 THE WITNESS: For clarity, I
 25 will tell you it was myself, Mr. Cooper,

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1 TIMOTHY MCGINN
 2 Mr. Shea.
 3 MR. NEWMAN: Okay.
 4 THE WITNESS: Perhaps
 5 Mr. Smith.
 6 MR. NEWMAN: The Luxury Cruise
 7 Venture, did they have their own bank
 8 account?
 9 THE WITNESS: Luxury Cruise
 10 did have their own bank account, yes.
 11 MR. NEWMAN: Do you know --
 12 looking at page 3 of the exhibit -- I
 13 don't have items listed on my left
 14 column, so -- items number 7 on --
 15 excuse me, 69 and 70.
 16 THE WITNESS: 70 and 71?
 17 MR. NEWMAN: My eyes are
 18 failing me. Approximately a million --
 19 \$813,000; 387,000 dollars and cents --
 20 THE WITNESS: Right.
 21 MR. NEWMAN: -- which was
 22 transferred from this account to Luxury
 23 Cruise; is that correct?
 24 THE WITNESS: Correct.
 25 MR. NEWMAN: Why was that

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1 TIMOTHY MCGINN
 2 done?
 3 THE WITNESS: McGinn Smith &
 4 Company, Inc. underwrote a debt offering
 5 for Luxury Cruise. Luxury Cruise ended
 6 up borrowing something in the order of
 7 \$3 million from us, from McGinn Smith &
 8 Company, Inc., through a capital raise.
 9 Luxury Cruise is, was, continues to be a
 10 major player in the cruise business.
 11 Luxury Cruise had previously been a
 12 borrower of a bank called Point Bank of
 13 which I was chairman of the board. I
 14 knew these guys. They had -- this might
 15 be a little bit boastful. I might sound
 16 like Mr. Smith, but nevertheless I will
 17 tell you anyway.
 18 They came to us and said,
 19 "Look, we want to grow our business; we
 20 want to expand our operations, hire more
 21 people, do more business" and so on and
 22 so forth. And we said, "What do you
 23 have as collateral?" They said, "Well,
 24 what we have as collateral is
 25 receivables from cruise lines."

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And in particular, the way that works is if you book a cruise, chances are you are not booking a cruise for Saturday, you're booking a cruise for eight, ten, twelve months from now. You don't get paid as the travel agent until such time as that ship leaves the port and the passengers are on the boat. So they had a need for working capital. And what we did is we lent them this money. We took as collateral the receivables from the cruise lines.

MR. NEWMAN: Who is we?

THE WITNESS: McGinn Smith & Company, Inc. was the underwriter. We did this through TDM Cable Funding LLC, again, as a conduit. We did an equity -- rather, a debt offering called TDM Luxury Cruise. I am sure you have that offering document somewhere in the files. And that's how it -- that's how it was affected.

MR. NEWMAN: Why aren't these funds being directly sent from the

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MR. FRANCESKI: Objection.
You may answer.

THE WITNESS: First of all, I am not sure there was an account specified in the offering as to the deposit account or the conduit account.

Secondly, to answer your first question: No, I was not concerned about that. We kept books and records. We knew where the monies were. The monies got to the entity that was the obligor. And it got so in every instance without question. So, no, I was not concerned about that.

MR. NEWMAN: You're the managing partner for TDM Cable?

THE WITNESS: That's correct.

MR. NEWMAN: You weren't concerned about the fact that investor proceeds were being commingled in this TDM Cable account?

MR. FRANCESKI: Objection.

THE WITNESS: Investor proceeds were duly paid to those

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source where they are raised to the Luxury Cruise account? Why are they going through -- why are you utilizing TDM Cable, which presumably has no business connection or relationship with Luxury Cruise, using that bank account as an operating account to pay monies to Luxury Cruise?

THE WITNESS: As I said earlier, we used it as a conduit.

MR. NEWMAN: Going through some of the entities that had monies deposited into this account and who were paid for this account, some of those entities were involved in offerings involving investors. Did it concern you that offering funds, proceeds that were raised from investors were deposited, commingled in this account --

MR. FRANCESKI: Objection.

MR. NEWMAN: -- as opposed to the account designated for the offering that was being utilized to obtain investor proceeds?

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entities who were the obligors.

EXAMINATION

BY MR. ROWEN:

Q Earlier we spoke of -- on page 2, two highlighted loans from First Advisory Income Notes, one of \$635,000 and one of \$300,000.

How was First Advisory Income Notes repaid on that loan?

A You are talking about 635 which appears on line 45?

Q Yes.

A Where is the other?

Q Line 60.

A Line 60, 300,000.

First Advisory Income Notes was repaid as a result of a capital raise that we did for TDM Verifier Trust 07.

Q When was that?

A It was in the first quarter of 2007.

MR. RATTNER: Was that the intention of the raise?

THE WITNESS: Yes.

MR. RATTNER: How was that

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1 TIMOTHY MCGINN

2 disclosed?

3 THE WITNESS: The intention of
4 the raise was to provide capital to
5 Verifier, Verifier Capital LLC.

6 What happened here is that
7 FAIN basically bridged that funding and
8 then was repaid out of the proceeds of
9 the offering. And I think that can be
10 established by looking at the books and
11 records of FAIN.

12 MR. ROWEN: I am going to
13 introduce this as Exhibit 2.

14 (Whereupon Exhibit 2 is
15 marked.)

16 THE WITNESS: (Reviewing).

17 BY MR. ROWEN:

18 Q Mr. McGinn, you have been handed
19 Exhibit 2 in this matter. This is an Excel
20 spreadsheet of data imported from the Quicken
21 registry report of all transactions in TDM Cable's DT
22 FAIN register account.

23 The Staff has deleted totals and any
24 blank columns. The Staff has also added the "TDM
25 Cable" title at the top and a balance at the bottom.

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1 TIMOTHY MCGINN

2 A It could have been.

3 MR. NEWMAN: Were Mr. Shea and
4 Mr. Cooper authorized to make
5 transactions without the approval of
6 either you or Mr. Smith?

7 THE WITNESS: No. But they
8 are the accounting officers for the
9 firm, and they would be able to give
10 more color in terms of these items than
11 myself.

12 MR. NEWMAN: Right. But in
13 terms of actually authorizing the
14 transaction --

15 THE WITNESS: Let's --

16 MR. NEWMAN: -- who would do
17 that?

18 THE WITNESS: The authorizing
19 party would more than likely be me.

20 MR. PAULSEN: Was the managing
21 member or managing partner, as you
22 referred to yourself as, authorizing, as
23 you said, if not 100 percent, 90 percent
24 of the transaction activity that goes on
25 in this account, how don't you have the

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1 TIMOTHY MCGINN

2 Please take a moment to review the
3 document.

4 A (Reviewing). Okay.

5 Q For clarity, DT FAIN would be due to
6 First Advisory Income Notes?

7 A I would assume so.

8 Q Is this register consistent with what
9 you just described about how First Advisory was paid
10 back for these two loans?

11 A (Reviewing). Well, are these amounts
12 cash amounts?

13 Q This is the Quicken account.

14 A It balances.

15 Q Quicken account does two things.

16 A Right. It foots at zero.

17 Q The category when in brackets is the
18 contra to the accounting transaction.

19 A Yeah. It foots.

20 Q Okay. So why are "due to First Line
21 Trust" involved in this?

22 A I don't know. I mean, you would have
23 to ask Mr. Shea or Mr. Cooper.

24 Q Was First Line Trust involved in the
25 repayments of TDM Cable loans from First Advisory?

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1 TIMOTHY MCGINN

2 familiarity around these transactions?
3 If not you, who does?

4 THE WITNESS: How many -- you
5 know, there are probably thousands of
6 transactions that are run through these
7 various accounts in the last two years
8 plus. And I apologize if I am not
9 conversant on every one of those
10 transactions, but I am not. And -- you
11 know, if these are the numbers that came
12 off the ledger and came out of the
13 QuickBooks, I am sure they are correct.

14 But if you ask me specifically
15 if I know the background of every single
16 one of these transactions, the answer is
17 no.

18 MR. FRANCESKI: Just note for
19 the record that these transactions
20 appear to be from times in 2007, the
21 latest being December 31, 2007. And we
22 are in February 3, 2010, as we sit here
23 today, correct?

24 MR. RATTNER: Noted.

25 MR. NEWMAN: We also note the

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1 TIMOTHY MCGINN
2 transactions involve substantial amount
3 of money.

4 MR. FRANCESKI: I doubt that
5 is a factor that influences memory. But
6 that is the way it goes.

7 But you and I shouldn't be
8 arguing. I am stating for the record
9 what the facts are.

10 MR. RATTINER: Can we go back
11 to your previous explanation prior to
12 the exhibit being introduced? You said
13 there was a raise for -- and I
14 apologize, I don't remember which
15 entity. I believe it was Verifier?

16 THE WITNESS: Yes.

17 MR. RATTINER: So -- and
18 what's the entity's actual title? Just
19 Verifier loan?

20 THE WITNESS: No. It was TDM
21 Verifier Trust 07.

22 MR. RATTINER: TDM Verifier
23 Trust 07 raised how much money?

24 THE WITNESS: I don't know.

25 MR. RATTINER: Approximately.

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1 TIMOTHY MCGINN
2 THE WITNESS: \$3 million.

3 MR. RATTINER: And that was
4 done in 2007. Any idea what season?

5 THE WITNESS: First quarter.

6 MR. RATTINER: And how many
7 investors?

8 THE WITNESS: I don't know,
9 50.

10 MR. RATTINER: And that
11 document would have stated the use of
12 the proceeds are for what?

13 THE WITNESS: The use of
14 proceeds were to buy GPUs from Verifier
15 LLC, which -- the use of proceeds were
16 to loan capital to TDM. TDM in turn
17 would purchase the GPUs of Verifier
18 Capital LLC and pledge those GPUs as
19 collateral to cover the loan.

20 MR. RATTINER: Based on this
21 and based on the document in front of
22 you, Exhibit Number 2, is there a
23 difference in your view now of what
24 actually occurred versus what you
25 thought occurred, based on what was

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1 TIMOTHY MCGINN
2 provided by the firm and downloaded by
3 the Staff?

4 And if we can even walk
5 through it. This is a document saying
6 that TDM Cable owes FAIN the 635 plus
7 the 300,000; and that it's been paid
8 back, but not by TDM Cable but rather
9 First Line Trust Junior 07 and Verifier
10 Trust.

11 THE WITNESS: Correct.

12 MR. RATTINER: Were you
13 unaware of those transactions?

14 THE WITNESS: Was I unaware of
15 those transactions in 2007? Or am I
16 familiar with those transactions as I
17 sit here today?

18 MR. RATTINER: Let's take each
19 one separately.

20 THE WITNESS: I am sure I was
21 aware of them in 2007. And I am not
22 conversant with them as I sit here
23 today.

24 MR. NEWMAN: Your memory has
25 not been refreshed by what the Staff has

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1 TIMOTHY MCGINN
2 shown you?

3 THE WITNESS: That is correct.

4 MR. RATTINER: What would be
5 the reasoning for such a transaction to
6 switch the liability from one entity to
7 another?

8 THE WITNESS: I can't tell you
9 that. I don't know.

10 MR. RATTINER: Is there a
11 typical conversation that would go
12 around saying, "Okay, FAIN needs money
13 and these entities have money"?

14 THE WITNESS: No. That
15 doesn't seem logical. I am going to
16 have to discuss this with Shea and
17 Cooper to see what the answer is. I
18 don't know off the top of my head.

19 MR. RATTINER: If we were to
20 ask Mr. Shea and Mr. Cooper during their
21 testimonies, would they refer back to
22 you and say you authorized this?

23 MR. FRANCESKI: Objection.

24 THE WITNESS: I am sure they
25 would. I am not disputing that.

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1 TIMOTHY MCGINN
2 MR. RATTINER: What is the
3 current status of First Line Trust
4 Junior 07?

5 THE WITNESS: First Line is a
6 company that I testified to earlier
7 today that's in bankruptcy. We are --

8 MR. RATTINER: That's fine.
9 You don't need to restate that part. In
10 terms of the trust itself, what is the
11 current status of the trust?

12 THE WITNESS: The current
13 status of the trust is that it is -- it
14 has -- it stopped making interest
15 payments in August '09, and those
16 interest payments are accruing. And we
17 are attempting to do a rescue financing
18 by buying out the corpus of the bankrupt
19 estate at a value that we think will
20 give substantial value over the rescue
21 capital. And that that substantial
22 value will be conveyed to the First
23 Line, Senior and Junior participants in
24 the trusts.

25 MR. RATTINER: And same

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1 I, S. Arielle Santos, C.S.R., a Registered Professional
2 Reporter, Certified Shorthand Reporter, Certified LiveNote
3 Reporter do hereby certify:

4 That prior to being examined, the witness named in the
5 forgoing deposition, was by me duly sworn to testify the
6 truth, the whole truth, and nothing but the truth.

7 That said deposition was taken before me at the time and
8 place set forth and was taken down by me in shorthand and
9 thereafter reduced to computerized transcription under my
10 direction and supervision, and I hereby certify the foregoing
11 deposition is a full, true and correct transcript of my
12 shorthand notes so taken.

13 I further certify that I am neither counsel for nor
14 related to any party to said action nor in anywise interested
15 in the outcome thereof.

16
17
18 S. Arielle Santos
19 Registered Professional Reporter
20 Certified Shorthand Reporter - #2116
21 Certified LiveNote Reporter
22 Notary Exp. 4/2011
23
24
25

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1 TIMOTHY MCGINN
2 question for Verifier Trust.

3 THE WITNESS: Verifier Trust
4 is current, has always been current.

5 Can I further describe current
6 is 60 days. You know, 60 days is
7 typical in the industry.

8 MR. NEWMAN: I think what we
9 are going to do, we are going to go off
10 the record, take a few minute break,
11 and -- for the purpose of figuring out
12 the schedule for tomorrow. We have more
13 stuff to go through, but we want to
14 conclude today around 5:00. So I think
15 at this point we are going to go off the
16 record and figure out what the schedule
17 is going to be, and we will let you
18 know. But we don't anticipate any more
19 questioning tonight. We will let you
20 know in a few minutes.

21 (Whereupon a recess is taken.)

22 (Whereupon OTR Adjourned for
23 the day at 4:45 p.m.)
24
25

CRD® or IARD(SM) System Current As Of: 04/15/2010

Snapshot - Individual

CRD® or IARD(SM) System Report provided to: SEC

Request Submitted: 4/16/2010 10:38:49 AM

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Individual 427284 - SMITH, DAVID LEE

Administrative Information

Composite Information

Full Legal Name SMITH, DAVID LEE

Year of Birth 1945

State of Residence NY

Active Employments

Current Employer MCGINN, SMITH & CO., INC.(8453)

Firm Main Address
 CAPITAL CENTER
 99 PINE STREET
 ALBANY
 NY, UNITED STATES
 12207-3167

Firm Mailing Address
 CAPITAL CENTER
 99 PINE STREET
 ALBANY
 NY, UNITED STATES
 12207-3167

Business Telephone# 518 449-5131

Independent Contractor No

Office of Employment Address

| CRD Branch# | NYSE Branch Code# | Firm Billing Code | Registered Location? | Private Residence? | Address Start Date | Address End Date | Type of Office |
|----------------|---|----------------------|-------------------------|-----------------------|-----------------------|---------------------|-------------------|
| 292317 | | | Yes | No | 07/03/2006 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207 UNITED STATES | | No | No | 01/15/1981 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207 | | | | | | |
| BD Main | | | Yes | No | 01/15/1981 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207-3167 UNITED STATES | | | | | | |

Reportable Disclosures? Yes

Statutory Disqualification? BLNK

Registered With Multiple Firms? No

Material Difference in Disclosure? No

Personal Information

Individual CRD# 427284

Other Names Known By <<No Other Names found for this Individual.>>

CRD® or IARD(SM) System Report -- See notice regarding CRD Data on cover page.

CRD® or IARD(SM) System Current As Of: 04/15/2010

Snapshot - Individual

CRD® or IARD(SM) System Report provided to: SEC

Request Submitted: 4/16/2010 10:38:49 AM

Page 32 of 82

Individual 427284 - SMITH, DAVID LEE

Administrative Information

Year of Birth 1945

Registrations with Current Employer(s)

| Regulator | Registration Category | Status Date | Registration Status | Approval Date |
|-----------|-----------------------|-------------|---------------------|---------------|
| AR | AG | 10/30/2009 | TERMED | 12/14/2001 |
| CA | AG | 12/31/2009 | TERMED | 04/21/2005 |
| CT | AG | 08/26/1987 | APPROVED | 08/26/1987 |
| FINRA | SR | 06/23/1999 | TERMED | 01/09/1981 |
| FINRA | CP | 06/17/1999 | TERMED | 01/09/1981 |
| FINRA | MP | 05/11/1981 | APPROVED | 05/11/1981 |
| FINRA | MR | 05/11/1981 | APPROVED | 05/11/1981 |
| FINRA | GP | 01/09/1981 | APPROVED | 01/09/1981 |
| FINRA | GS | 01/09/1981 | APPROVED | 01/09/1981 |
| FINRA | OP | 01/09/1981 | APPROVED | 01/09/1981 |
| FL | AG | 12/31/2009 | TERMED | 01/03/1984 |
| GA | AG | 12/31/2009 | TERMED | 07/18/1997 |
| IN | AG | 12/31/2009 | TERMED | 06/08/1999 |
| KS | AG | 12/31/2009 | TERMED | 02/06/2002 |
| KY | AG | 03/21/1995 | T_NOREG | |
| MA | AG | 12/31/2009 | TERMED | 12/24/1981 |
| MD | AG | 12/31/2009 | TERMED | 09/30/1985 |
| ME | AG | 01/11/2010 | TERMED | 12/04/1985 |
| NH | AG | 12/31/2009 | TERMED | 03/05/1983 |
| NJ | AG | 07/15/1987 | APPROVED | 07/15/1987 |
| NM | AG | 12/31/2009 | TERMED | 11/21/2001 |
| NY | AG | 12/24/1981 | APPROVED | 12/24/1981 |
| OH | AG | 04/07/1997 | T_NOREG | |
| OR | AG | 12/31/2009 | TERMED | 11/12/2003 |
| SC | AG | 03/21/1995 | T_NOREG | |
| TX | AG | 12/31/2009 | TERMED | 10/01/1987 |
| VA | AG | 12/31/2009 | TERMED | 07/15/1987 |
| WI | AG | 12/31/2009 | REQUEST_TERM | 08/01/2001 |

Registrations with Previous Employer(s)

From 06/12/2000 To 11/12/2004 POINTE CAPITAL, L.L.C.(112097)

Reason for Termination Voluntary

Termination Comment

| Regulator | Registration Category | Status Date | Registration Status | Approval Date |
|-----------|-----------------------|-------------|---------------------|---------------|
| FINRA | GP | 11/15/2004 | TERMED | 10/26/2001 |
| FINRA | GS | 11/15/2004 | TERMED | 10/26/2001 |
| FINRA | MP | 10/03/2001 | T_NOREG | |
| FINRA | MR | 10/03/2001 | T_NOREG | |
| FINRA | OP | 10/03/2001 | T_NOREG | |
| NY | AG | 03/07/2002 | T_NOREG | |

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Individual 427284 - SMITH, DAVID LEE

Administrative Information**Registrations with Previous Employer(s)**

From 05/01/2000 To 07/02/2004 ONLINE CAPITAL SECURITIES, INC.(104334)

Reason for Termination**Termination Comment**

| Regulator | Registration Category | Status Date | Registration Status | Approval Date |
|-----------|-----------------------|-------------|---------------------|---------------|
| FINRA | GP | 07/02/2004 | T_NOU5 | 02/09/2001 |
| FINRA | GS | 07/02/2004 | T_NOU5 | 02/09/2001 |
| FINRA | MP | 02/07/2001 | T_NOREG | |
| FINRA | MR | 02/07/2001 | T_NOREG | |
| FINRA | OP | 02/07/2001 | T_NOREG | |
| NY | AG | 07/14/2004 | T_NOU5 | 07/14/2001 |

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Snapshot - Individual

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Individual 427284 - SMITH, DAVID LEE

Administrative Information

Professional Designations

<<No Professional Designations found for this Individual.>>

Employment History

From 05/2000 To Present
Name ONLINE CAPITAL SECURITIES
Location NEW YORK, NY
Position EXECUTIVE VICE PRESIDENT
Investment Related Yes

From 09/1980 To Present
Name MCGINN, SMITH & CO., INC.
Location ALBANY, NY
Position PRESIDENT
Investment Related Yes

Office of Employment History

From 01/1981 To Present

Name MCGINN, SMITH & CO., INC.(8453)**Independent Contractor** No

Office of Employment Address

| CRD Branch# | NYSE Branch Code# | Firm Billing Code | Registered Location? | Private Residence? | Address Start Date | Address End Date | Type of Office |
|----------------|---|-------------------|----------------------|--------------------|--------------------|------------------|----------------|
| 292317 | | | Yes | No | 07/03/2006 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207 UNITED STATES | | No | No | 01/15/1981 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207 | | | | | | |
| BD Main | | | Yes | No | 01/15/1981 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207-3167 UNITED STATES | | | | | | |

From 06/2000 To 11/2004

Name POINTE CAPITAL, L.L.C.(112097)**Independent Contractor** No

Office of Employment Address

| CRD Branch# | NYSE Branch Code# | Firm Billing Code | Registered Location? | Private Residence? | Address Start Date | Address End Date | Type of Office |
|----------------|--|-------------------|----------------------|--------------------|--------------------|------------------|----------------|
| | | | No | No | 06/12/2000 | 11/12/2004 | Located At |
| Address | 21845 POWERLINE RD BOCA RATON, FL 33433 | | | | | | |

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Individual 427284 - SMITH, DAVID LEE

Administrative Information**Office of Employment History**

From 05/2000 To 07/2004

Name ONLINE CAPITAL SECURITIES, INC.(104334)

Independent Contractor No

Office of Employment Address

| CRD Branch# | NYSE Branch Code# | Firm Billing Code | Registered Location? | Private Residence? | Address Start Date | Address End Date | Type of Office |
|---|----------------------|----------------------|-------------------------|-----------------------|-----------------------|---------------------|-------------------|
| | | | No | No | 05/01/2000 | 07/02/2004 | Located At |
| Address 2251 LAFAYETTE ST. NEW YORK, NY 10012 | | | | | | | |

Other Business

ALL BUSINESSES LISTED BELOW ARE INVESTMENT RELATED AND THE ADDRESS FOR ALL OF THEM IS 99 PINE STREET, ALBANY, NY 12207

PINE STREET CAPITAL PARTNERS, MANAGING DIRECTOR. 2004 20 HOURS PER MONTH DEVOTED TO BUSINESS, 1 HOUR PER WEEK DURING TRADING HOURS.

FIRST INDEPENDENT INCOME NOTES, LLC. - MANAGING PARTNER. 2003

FIRST EXCELSIOR INCOME NOTES, LLC. - MANAGING PARTNER. 2004

THIRD ALBANY INCOME NOTES, LLC - MANAGING PARTNER. 2004

FIRST ADVISORY INCOME NOTES, LLC - MANAGING PARTNER. 2005

CMS FINANCIAL SERVICES - CHAIRMAN OF THE BOARD 2006 4 HOURS PER MONTH, NONE DURING TRADING HOURS.

M&S PARNERS - PARTNER 1980 2 HOURS PER MONTH, NONE DURING TRADING HOURS.

MCGINN, SMITH CAPITAL HOLDINGS - PRESIDENT 1989 4 HOURS PER MONTH, NONE DURING TRADING HOURS.

MCGINN, SMITH ADVISORS - MANAGING MEMBER 2003 60 HOURS A MONTH , 1 HOUR DURING TRADING HOURS. FOR FIIN, FEIN, TAIN AND FAIN, ABOVE.

MCGINN SMITH HOLDINGS 2003 MANAGING MEMBER

Examination Information

| Exam | Status | Status Date | Exam Date | Grade | Score | Window Dates |
|------|-----------------|-------------|------------|--------|-------|--------------|
| S1 | OFFICIAL_RESULT | 04/09/1973 | 04/09/1973 | PASSED | 119 | - |
| S4 | OFFICIAL_RESULT | 11/03/1980 | 11/03/1980 | PASSED | 89 | - |
| S24 | OFFICIAL_RESULT | 11/25/1980 | 11/25/1980 | PASSED | 83 | - |
| S53 | OFFICIAL_RESULT | 05/07/1981 | 05/07/1981 | PASSED | 79 | - |
| S63 | OFFICIAL_RESULT | 05/13/1982 | 05/13/1982 | PASSED | 82 | - |

CE Regulatory Element Status

Current CE Status SATISFIED

CE Base Date 01/23/1997

Current CE

<<No Current CE found for this Individual.>>

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Individual 427284 - SMITH, DAVID LEE

Administrative Information**Next CE**

| Requirement Window | Requirement Type | Session |
|-----------------------|------------------|---------|
| 01/23/2011-05/22/2011 | Anniversary | 201 |

CE Directed Sequence History

| Source | Type of Penalty | Date of Action | Effective Date | Appeal Status | Decision Date |
|--------|-----------------|----------------|----------------|---------------|---------------|
| FINRA | SEQUENCE | 12/09/1996 | 01/23/1997 | - | |

Inactive CE History Dates

<<No Inactive CE History Dates found for this Individual.>>

Previous CE Requirement Status

| Requirement Type | Status | Previous Window | Session | Status Date | Result |
|-------------------|-----------|-----------------------|---------|-------------|--------------------|
| Directed Sequence | | 01/23/1997-05/22/1997 | 101 | 05/13/1997 | 05/13/1997 - CMPLT |
| Anniversary | SATISFIED | 01/23/1999-05/22/1999 | 201 | 03/24/1999 | 03/24/1999 - |
| Anniversary | | 01/23/1999-05/22/1999 | 201 | 03/24/1999 | 03/24/1999 - CMPLT |
| Anniversary | REQUIRED | 01/23/2002-05/22/2002 | 201 | 01/23/2002 | 01/23/2002 - |
| Anniversary | GRADUATED | 01/23/2002-05/22/2002 | 201 | 05/07/2002 | 05/07/2002 - CMPLT |
| Anniversary | SATISFIED | 01/23/2005-05/22/2005 | 201 | 05/05/2005 | 05/05/2005 - CMPLT |
| Anniversary | REQUIRED | 01/23/2005-05/22/2005 | 201 | 01/24/2005 | 01/24/2005 - |
| Anniversary | REQUIRED | 01/23/2008-05/21/2008 | 201 | 01/23/2008 | 01/23/2008 - |
| Anniversary | SATISFIED | 01/23/2008-05/21/2008 | 201 | 04/28/2008 | 04/28/2008 - CMPLT |

Filing History

| Filing Date | Form Type | Filing type | Source |
|-------------|-----------|--------------------------------|----------------------------------|
| 01/19/2010 | U6 | Individual registered with CRD | FINRA |
| 12/24/2009 | U5 | Partial termination | MCGINN, SMITH & CO., INC. (8453) |
| 10/30/2009 | U5 | Partial termination | MCGINN, SMITH & CO., INC. (8453) |
| 09/28/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 09/24/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 08/27/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 08/27/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 08/05/2009 | U4 | Amendment filing | FINRA |
| 06/17/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 01/16/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 01/15/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 11/20/2008 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 11/03/2008 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 01/07/2008 | U4 | Amendment filing | FINRA |
| 01/07/2008 | U4 | Amendment filing | FINRA |
| 01/04/2008 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 01/03/2008 | U6 | Individual registered with CRD | FINRA |
| 03/05/2007 | U4 | Amendment filing | FINRA |
| 03/02/2007 | U6 | Individual registered with | FINRA |

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Individual 427284 - SMITH, DAVID LEE

Administrative Information

Filing History

| Filing Date | Form Type | Filing type | Source |
|-------------|-----------|---------------------|--|
| | | CRD | |
| 03/01/2007 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 02/23/2007 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 02/20/2007 | U4 | Amendment filing | FINRA |
| 07/03/2006 | BR | Initial filing | MCGINN, SMITH & CO., INC. (8453) |
| 06/06/2006 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 03/23/2006 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 08/22/2005 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 04/21/2005 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 11/15/2004 | U5 | Full termination | JHS CAPITAL ADVISORS, INC. (112097) |
| 08/02/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 07/29/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 03/16/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 02/25/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 02/18/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 12/09/2003 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 11/11/2003 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 12/16/2002 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 12/12/2002 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 07/26/2002 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 12/12/2001 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 10/30/2001 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 10/03/2001 | U5 | Partial termination | JHS CAPITAL ADVISORS, INC. (112097) |
| 10/03/2001 | U5 | Partial termination | JHS CAPITAL ADVISORS, INC. (112097) |
| 09/14/2001 | U4 | Amendment filing | JHS CAPITAL ADVISORS, INC. (112097) |
| 07/27/2001 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 03/26/2001 | U4 | Dual | JHS CAPITAL ADVISORS, INC. (112097) |
| 02/07/2001 | U5 | Partial termination | ONLINE CAPITAL SECURITIES, INC. (104334) |
| 08/04/2000 | U4 | Dual | ONLINE CAPITAL SECURITIES, INC. (104334) |
| 07/07/1999 | U6 | Conversion Filing | FINRA |
| 07/07/1999 | U5 | Conversion Filing | MCGINN, SMITH & CO., INC. (8453) |
| 07/06/1999 | U4 | Conversion Filing | |
| 07/05/1999 | U5 | Conversion Filing | MCGINN, SMITH & CO., INC. (8453) |
| 07/05/1999 | U4 | Conversion Filing | MCGINN, SMITH & CO., INC. (8453) |

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Individual 427284 - SMITH, DAVID LEE

Reportable Events**Number of Reportable Events**

| | |
|--------------------|---|
| Bankruptcy | 0 |
| Bond | 0 |
| Civil Judicial | 0 |
| Criminal | 0 |
| Customer Complaint | 9 |
| Internal Review | 0 |
| Investigation | 0 |
| Judgement/Lien | 0 |
| Regulatory Action | 2 |
| Termination | 0 |

| | | | |
|-----------------------------------|--------|-----------------|-------------------|
| Occurrence# | 111565 | Disclosure Type | Regulatory Action |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |

| | | | |
|-------------------------------|--|---------------------|--------------|
| Filing ID | 6719888 | Form (Form Version) | U4 (08/1999) |
| Filing Date | 08/04/2000 | | |
| Source | 104334 - ONLINE CAPITAL SECURITIES, INC. | | |
| Disclosure Questions Answered | 23E(2) | | |

Regulatory Action DRP**DRP Version** 10/2005

1. Regulatory action initiated by: NASD REGULATION, INC.
2. Principal sanction: Censure
Other sanction(s): MONETARY PENALTY/FINE
3. Date Initiated/Explanation: 05/20/1994
4. Docket/Case#: C11940056
5. Employing firm: MCGINN SMITH & CO, INC.
6. Principal product type: Direct Investment(s) - DPP & LP Interest(s)
Other product type(s): EQUITY
7. Allegation(s): FAILURE TO COMPLY WITH SEC RULE 15C3-3 WHILE PURPORTING TO OPERATE WITHIN AN EXEMPTION PROVISION AND NOT COMPLYING WITHIN THE PROVISIONS, RECEIVED AND HELD CUSTOMER FUNDS AND SECURITIES. SOLD SHARES OF NEW ISSUE WHICH TRADED AT A PREMIUM IN THE AFTERMARKET TO A RESTRICTED PERSON ARTICLE III SECTION 1 RULES OF FAIR PRACTICE.
8. Current status: Final
9. Appealed to:
10. Resolution: Acceptance, Waiver & Consent(AWC)

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Regulatory Action DRP

DRP Version 10/2005

11. Resolution date/Explanation: 12/05/1994
12. A. Resolution detail: Monetary/Fine Sanction (Amount: \$3,000.00), Censure Sanction
- B. Other sanction(s) ordered:
- C. Sanction detail: \$3000.00 FINE JOINTLY & SEVERALLY. PAID 01/09/1995 BY SINGLE PAYMENT. NOTHING WAIVED.
13. Comment: AWC ACCEPTED BY NASD, \$3000 FINE PAID 01/09/1995

Filing ID 111488

Form (Form Version) U5 (08/1999)

Filing Date 07/07/1999

Source 8453 - MCGINN, SMITH & CO., INC.

Disclosure Questions Answered

Regulatory Action DRP

DRP Version 10/2005

1. Regulatory action initiated by: NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
2. Principal sanction:
- Other sanction(s):
3. Date Initiated/Explanation: 12/05/1994
4. Docket/Case#: C11940056
5. Employing firm: MCGINN SMITH & CO, INC
6. Principal product type:
- Other product type(s):
7. Allegation(s):
8. Current status: Final
9. Appealed to:
10. Resolution: Consent
11. Resolution date/Explanation: 12/05/1994
12. A. Resolution detail: Monetary/Fine Sanction (Amount: \$3,000.00), Censure Sanction
- B. Other sanction(s) ordered:
- C. Sanction detail:
13. Comment:

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Reportable Events

| | | | |
|-------------------------------|------------|---------------------|--------------|
| Filing ID | 146370 | Form (Form Version) | U6 (08/1999) |
| Filing Date | 07/07/1999 | | |
| Source | FINRA | | |
| Disclosure Questions Answered | | | |

Regulatory Action DRP

DRP Version 10/2005

1. Regulatory action initiated by: NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
2. Principal sanction:
Other sanction(s):
3. Date Initiated/Explanation: 12/05/1994
4. Docket/Case#: C11940056
5. Employing firm: MCGINN SMITH & CO, INC
6. Principal product type:
Other product type(s):
7. Allegation(s):
8. Current status: Final
9. Appealed to:
10. Resolution: Consent
11. Final order:
12. Resolution date/Explanation: 12/05/1994
13. A. Resolution detail: Monetary/Fine Sanction (Amount: \$3,000.00), Censure Sanction
B. Other sanction(s) ordered:
C. Sanction detail:
14. Comment: ON DECEMBER 5, 1994, DISTRICT NO. 11 NOTIFIED MCGINN SMITH & CO., INC., TIMOTHY M. MCGINN AND DAVID L. SMITH THAT THE LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. C11940056 WAS ACCEPTED; THEREFORE, THEY ARE CENSURED AND FINED \$3,000, JOINTLY AND SEVERALLY - (ARTICLE III, SECTION 1 OF THE RULES OF FAIR PRACTICE - RESPONDENT MEMBER, ACTING THROUGH RESPONDENT MCGINN, FAILED TO COMPLY WITH SEC RULE 15C3-3 IN THAT WHILE PURPORTING TO OPERATE WITHIN AN EXEMPTIVE PROVISION OF THE RULE AND NOT OTHERWISE COMPLYING WITH THE PROVISIONS OF THE RULE, RECEIVED AND HELD CUSTOMER FUNDS AND SECURITIES; AND, IN

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Reportable Events

Regulatory Action DRP

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CONTRAVENTION OF THE BOARD OF GOVERNORS FREE-RIDING AND WITHHOLDING INTERPRETATION, RESPONDENT MEMBER, ACTING THROUGH RESPONDENT SMITH, SOLD SHARES OF A NEW ISSUE WHICH TRADED AT A PREMIUM IN THE IMMEDIATE AFTERMARKET TO A RESTRICTED PERSON). INTERPRETATION, RESPONDENT MEMBER, ACTING THROUGH RESPONDENT ON DECEMBER 5, 1994, DISTRICT NO. 11 NOTIFIED MCGINN SMITH & CO., INC., TIMOTHY M. MCGINN AND DAVID L. SMITH THAT THE LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. C11940056 WAS ACCEPTED; THEREFORE, THEY ARE CENSURED AND FINED \$3,000, JOINTLY AND SEVERALLY - (ARTICLE III, SECTION 1 OF THE RULES OF FAIR PRACTICE - RESPONDENT MEMBER, ACTING THROUGH RESPONDENT MCGINN, FAILED TO COMPLY WITH SEC RULE 15C3-3 IN THAT WHILE PURPORTING TO OPERATE WITHIN AN EXEMPTIVE PROVISION OF THE RULE AND NOT OTHERWISE COMPLYING WITH THE PROVISIONS OF THE RULE, RECEIVED AND HELD CUSTOMER FUNDS AND SECURITIES; AND, IN CONTRAVENTION OF THE BOARD OF GOVERNORS FREE-RIDING AND WITHHOLDING INTERPRETATION, RESPONDENT MEMBER, ACTING THROUGH RESPONDENT SMITH, SOLD SHARES OF A NEW ISSUE WHICH TRADED AT A PREMIUM IN THE IMMEDIATE AFTERMARKET TO A RESTRICTED PERSON).

\$3,000 J&S PAID 1/9/95 INVOICE #94-11-816

| | | | |
|--|--|----------------------------|-------------------|
| Occurrence# | 188765 | Disclosure Type | Regulatory Action |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |
| Filing ID | 6719888 | Form (Form Version) | U4 (08/1999) |
| Filing Date | 08/04/2000 | | |
| Source | 104334 - ONLINE CAPITAL SECURITIES, INC. | | |
| Disclosure Questions Answered | 23E(2) | | |

Regulatory Action DRP

DRP Version 10/2005

1. Regulatory action initiated by: NASD REGULATION, INC.
2. Principal sanction: Censure
- Other sanction(s): & FINED

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Reportable Events

Regulatory Action DRP

DRP Version 10/2005

3. Date Initiated/Explanation: 08/14/1996
4. Docket/Case#: C11960043
5. Employing firm: MGINN, SMITH & CO., INC.
6. Principal product type: Other
Other product type(s): PRIVATE OFFERINGS
7. Allegation(s): IN CONNECTION WITH THREE PRIVATE OFFERINGS REPRESENTATED AS MINIMUM/MAXIMUM, CAUSED FUNDS TO BE RELEASED TO ISSUER WHEN REQUIRED AMOUNTS WERE NOT RECEIVED BY DATES STATED IN OFFERING MEMORANDUM, AGAINST SEC RULE 10B-9 AND NASD CONDUCT RULE 2110.
8. Current status: Final
9. Appealed to:
10. Resolution: Settled
11. Resolution date/Explanation: 12/27/1996
12. A. Resolution detail: Monetary/Fine Sanction (Amount: \$7,500.00), Censure Sanction
B. Other sanction(s) ordered:
C. Sanction detail: SETTLEMENT BY LETTER OF ACCEPTANCE, WAIVER AND CONSENT. CENSURED AND FINED \$7500 JOINTLY & SEVERALLY WITH FIRM.
13. Comment: SETTLEMENT BY LETTER OF ACCEPTANCE, WAIVER & CONSENT. CENSURED AND FINED \$7500. JOINTLY & SEVERALLY WITH THE FIRM.

Filing ID 146370
 Filing Date 07/07/1999
 Source FINRA
 Disclosure Questions Answered

Form (Form Version) U6 (08/1999)

Regulatory Action DRP

DRP Version 10/2005

1. Regulatory action initiated by: NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
2. Principal sanction:
Other sanction(s):

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Reportable Events

Regulatory Action DRP

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3. Date Initiated/Explanation: 08/14/1996
4. Docket/Case#: C11960043
5. Employing firm: MCGINN, SMITH & CO., INC.
6. Principal product type:
Other product type(s):
7. Allegation(s):
8. Current status: Final
9. Appealed to:
10. Resolution: Acceptance, Waiver & Consent(AWC)
11. Final order:
12. Resolution date/Explanation: 12/09/1996
13. A. Resolution detail: Monetary/Fine Sanction (Amount: \$7,500.00), Censure Sanction
- B. Other sanction(s) ordered:
- C. Sanction detail:
14. Comment:

ON DECEMBER 9, 1996, DISTRICT NO. 11 NOTIFIED MCGINN, SMITH & CO., INC. AND DAVID L. SMITH THAT THE LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. C11960043 WAS ACCEPTED; THEREFORE, THEY ARE CENSURED AND FINED \$7,500, JOINTLY AND SEVERALLY - (NASD RULE 2110 - RESPONDENT MEMBER, ACTING THROUGH RESPONDENT SMITH, IN CONNECTION WITH THREE PRIVATE SECURITIES OFFERINGS WHICH WERE REPRESENTED AS ALL-OR-NONE OR MINIMUM/MAXIMUM, CAUSED FUNDS TO BE RELEASED TO THE ISSUERS WHEN REQUIRED AMOUNTS HAD NOT BEEN RECEIVED BY THE DATES STATED IN THE RESPECTIVE OFFERING CIRCULARS IN CONTRAVENTION OF SEC RULE 10b-9).

\$7,500.00 PAID J&S ON 1/3/97, INVOICE #96-11-927

| | | | |
|-----------------------------------|----------------------------------|---------------------|--------------------|
| Occurrence# | 1087899 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |
| Filing ID | 22262249 | Form (Form Version) | U4 (10/2005) |
| Filing Date | 01/07/2008 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 141(1)(a) | | |

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Snapshot - Individual

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): RINDA FARNHAM
2. Customer(s) state of residence: Connecticut
Other state(s) of residence/Detail:
3. Employing firm: MCGINN, SMITH & CO., INC.
4. Allegation(s): CLIENT BLAMES MR. SMITH FOR FAILURE TO SUPERVISE REGISTERED REPRESENTATIVE [BROKER] DURING THE PERIOD OCTOBER 1999 TO MARCH 2000, DURING WHICH SHE SUFFERED LOSSES IN HER ACCOUNT.
5. Principal product type: Equity - OTC
Other product types: EQUITY - LISTED
6. Alleged compensatory damages: \$150,000.00
7. Date complaint received/Explanation: 05/15/2001
8. Currently pending: No
9. Status: Settled
10. Status date/Explanation: 11/01/2002
11. Settlement amount: \$50,000.00
12. Individual contribution amount: \$0.00
13. Arbitration/Reparation claim filed with, Docket/Case#:
14. Date notice served/ Explanation:
15. Arbitration/Reparation pending:
16. Disposition:
17. Disposition date/Explanation:
18. Compensation amount:
19. Individual contribution amount:
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 10/2005

27. Appeal date/Explanation:

28. Comment:

| | | | |
|-----------------------------------|---------|-----------------|--------------------|
| Occurrence# | 1210995 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |

Filing ID 13913706

Form (Form Version) U4 (06/2003)

Filing Date 08/02/2004

Source 8453 - MCGINN, SMITH & CO., INC.

Disclosure Questions Answered 14I(2)

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): DR. JOEL ZOLDESSY, CAROL ZOLDESSY, SHIRLEY ZOLDESSY

2. Customer(s) state of residence: Nevada

Other state(s) of residence/Detail: CALIFORNIA - CLIENTS LIVED THERE FOR JULY & AUGUST, 2001

3. Employing firm: MERCER PARTNERS & MCGINN, SMITH & CO., INC.

4. Allegation(s): MR. SMITH IS ACCUSED OF FAILURE TO SUPERVISE.

5. Principal product type: Equity - OTC

Other product types:

6. Alleged compensatory damages: \$155,484.39

7. Date complaint received/Explanation: 02/03/2003

8. Currently pending: No

9. Status: Settled

10. Status date/Explanation: 11/24/2003

11. Settlement amount: \$20,000.00

12. Individual contribution amount: \$0.00

13. Arbitration/Reparation claim filed with, Docket/Case#:

14. Date notice served/ Explanation:

15. Arbitration/Reparation pending:

16. Disposition:

17. Disposition date/Explanation:

18. Compensation amount:

19. Individual contribution amount:

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 10/2005

20. Court, Docket/Case#:

21. Date/Explanation:

22. Litigation pending:

23. Disposition:

24. Date/Explanation:

25. Compensation amount:

26. Individual contribution amount:

27. Appeal date/Explanation:

28. Comment:

SETTLEMENT STATES THAT "NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE AN ADMISSION OF ANY LIABILITY OR WRONGDOING BY ANY OF THE PARTIES WITH RESPECT TO ANY OF THE CLAIMS."

| | | | |
|-----------------------------------|---------|-----------------|--------------------|
| Occurrence# | 1268869 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |

| | | | |
|-------------------------------|----------------------------------|---------------------|--------------|
| Filing ID | 22262645 | Form (Form Version) | U4 (10/2005) |
| Filing Date | 01/07/2008 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14I(1)(c) | | |

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): DANIEL C. O'BRIEN

2. Customer(s) state of residence: Virginia

Other state(s) of residence/Detail:

3. Employing firm: MCGINN, SMITH & CO., INC.

4. Allegation(s): FAILURE TO SUPERVISE BROKER'S ACTIVITY.

5. Principal product type: Equity - OTC

Other product types:

6. Alleged compensatory damages: \$64,000.00

7. Date complaint received/Explanation: 07/29/2004

8. Currently pending: No

9. Status: Arbitration/Reparation

10. Status date/Explanation: 08/17/2005

11. Settlement amount:

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 10/2005

12. Individual contribution amount:
13. Arbitration/Reparation claim filed with, Docket/Case#: NASD CASE #05-01731
14. Date notice served/ Explanation: 08/17/2005
AS DISCUSSED WITH NASD EMPLOYEE [FINRA REPRESENTATIVE] APPARENTLY THE STATEMENT OF CLAIM WAS COMPOSED BY [CUSTOMER] IN MAY 2005. WE WERE NOT AWARE THAT THIS WAS A REPORTABLE ARBITRATION UNTIL AUGUST 17, 2005.
15. Arbitration/Reparation pending: No
16. Disposition: Settled
17. Disposition date/Explanation: 05/31/2006
18. Compensation amount: \$25,000.00
19. Individual contribution amount: \$0.00
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:
28. Comment: IN THE SETTLEMENT AGREEMENT THE CLIENT WITHDREW ALL ALLEGATIONS AGAINST MR. SMITH. (WE WERE UNAWARE THAT THIS COMPLAINT HAD OFFICIALLY BECOME AN ARBITRATION AND FILED THIS U-4 AMENDMENT IMMEDIATELY UPON REALIZING THAT SUCH WAS THE CASE. THIS WAS DISCUSSED WITH NASD EMPLOYEE [FINRA REPRESENTATIVE] AT 202-728-8958 ON 08/17/2005.)

| | | | |
|-----------------------------------|----------------------------------|---------------------|--------------------|
| Occurrence# | 1427453 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |
| Filing ID | 24208210 | Form (Form Version) | U4 (10/2005) |
| Filing Date | 11/20/2008 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14I(1)(a) | | |

Customer Complaint DRP

DRP Version 10/2005

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): BERNARD MALMUD
2. Customer(s) state of residence: New York
Other state(s) of residence/Detail:
3. Employing firm: MCGINN, SMITH & CO., INC.
4. Allegation(s): UNSUITABILITY AND BREACH OF CONTRACT
5. Principal product type: Other
Other product types: PRIVATE PLACEMENTS
6. Alleged compensatory damages: \$238,000.00
7. Date complaint received/Explanation:
8. Currently pending:
9. Status: Arbitration/Reparation
10. Status date/Explanation: 10/07/2008
RECEIVED IN THE MAIL APPROXIMATELY OCTOBER 7, 2008.
11. Settlement amount:
12. Individual contribution amount:
13. Arbitration/Reparation claim filed with, Docket/Case#: FILED WITH FINRA
08-03127
14. Date notice served/ Explanation: 10/07/2008
RECEIVED IN THE MAIL APPROXIMATELY OCTOBER 7, 2008.
15. Arbitration/Reparation pending: Yes
16. Disposition:
17. Disposition date/Explanation:
18. Compensation amount:
19. Individual contribution amount:
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:

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Reportable Events

Customer Complaint DRP

DRP Version 10/2005

28. Comment:

Occurrence# 1437948

Disclosure Type Customer Complaint

FINRA Public Disclosable Yes

Reportable Yes

Material Difference in Disclosure No

Filing ID 24637061

Form (Form Version) U4 (10/2005)

Filing Date 01/15/2009

Source 8453 - MCGINN, SMITH & CO., INC.

Disclosure Questions Answered 14I(1)(a)

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): ARTHUR A. DELUCA AND JOHN NED ALASKEY

2. Customer(s) state of residence: New York

Other state(s) of residence/Detail:

3. Employing firm: MCGINN, SMITH & CO., INC.

4. Allegation(s): CLIENTS HAVE ACCUSED MR. SMITH OF FAILURE TO PROPERLY SUPERVISE.

5. Principal product type: Other

Other product types: PRIVATE PLACEMENTS

6. Alleged compensatory damages: \$237,500.00

7. Date complaint received/Explanation:

8. Currently pending:

9. Status: Arbitration/Reparation

10. Status date/Explanation: 01/06/2009

11. Settlement amount:

12. Individual contribution amount:

13. Arbitration/Reparation claim filed with, Docket/Case#: FINRA DISPUTE RESOLUTION ARBITRATION # 09-00008

14. Date notice served/ Explanation: 01/06/2009

15. Arbitration/Reparation pending: Yes

16. Disposition:

17. Disposition date/Explanation:

18. Compensation amount:

19. Individual contribution amount:

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 10/2005

- 20. Court, Docket/Case#:
- 21. Date/Explanation:
- 22. Litigation pending:
- 23. Disposition:
- 24. Date/Explanation:
- 25. Compensation amount:
- 26. Individual contribution amount:
- 27. Appeal date/Explanation:
- 28. Comment:

| | | | |
|--|---------|------------------------|--------------------|
| Occurrence# | 1438414 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |

| | | | |
|--------------------------------------|----------------------------------|----------------------------|--------------|
| Filing ID | 24661989 | Form (Form Version) | U4 (10/2005) |
| Filing Date | 01/16/2009 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14I(1)(a) | | |

Customer Complaint DRP

DRP Version 10/2005

- 1. Customer name(s): DUCKKYU CHANG, KEE CHANG AND DUCKKYS CHANG TTEE
CUMBERLAND PATHOLOGY ASSOCIATES, LLC
- 2. Customer(s) state of residence: Pennsylvania
Other state(s) of residence/Detail:
- 3. Employing firm: MCGINN, SMITH & CO., INC.
- 4. Allegation(s): FAILURE TO SUPERVISE. ALSO ALLEGES MR. SMITH SENT OUT
LETTER(S) WITHOUT ALL SALIENT FACTS.
- 5. Principal product type: Other
Other product types: PRIVATE PLACEMENTS
- 6. Alleged compensatory damages: \$2,577,000.00
- 7. Date complaint received/Explanation:
- 8. Currently pending:
- 9. Status: Arbitration/Reparation
- 10. Status date/Explanation: 01/06/2009
- 11. Settlement amount:
- 12. Individual contribution amount:

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 10/2005

13. Arbitration/Reparation claim filed with, Docket/Case#: FINRA DISPUTE RESOLUTION ARBITRATION NUMBER 08-04924
14. Date notice served/ Explanation: 01/06/2009
15. Arbitration/Reparation pending: Yes
16. Disposition:
17. Disposition date/Explanation:
18. Compensation amount:
19. Individual contribution amount:
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:
28. Comment:

Filing ID 27407815

Form (Form Version) U6 (05/2009)

Filing Date 01/19/2010

Source FINRA

Disclosure Questions Answered

SRO Arbitration/Reparation DRP

DRP Version 05/2009

1. Case name: DUCKKYU CHANG, KEE CHANG AND DUCKKYU CHANG TTEE CUMBERLAND PATHOLOGY ASSOCIATES, LLC VS MCGINN, SMITH & CO., INC., DAVID L. SMITH, LEX & SMITH ASSOCIATES LTD., MCGINN SMITH ADVISORS, LLC, MCGINN SMITH CAPITAL HOLDINGS CORP., ET AL.
2. Arbitration/Reparation filed with: FINRA
3. Date initiated: 12/22/2008
4. Docket/Case#: 08-04924
5. Employing firm: MCGINN, SMITH & CO., INC.
6. Allegation(s): UNSUITABLE INVESTMENTS; NEGLIGENCE; BREACH OF CONTRACT; VIOLATIONS OF INDUSTRY RULES; FAILURE TO DIVERSIFY; BREACH OF FIDUCIARY DUTY; FRAUD; MISREPRESENTATIONS AND OMISSIONS; NEGLIGENT SUPERVISION

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Reportable Events

SRO Arbitration/Reparation DRP

DRP Version 05/2009

7. Product type: Other: UNSPECIFIED PRIVATE PLACEMENT PRODUCTS, NOTES AND TRUSTS
8. Alleged compensatory damage amount: \$2,577,000.00
9. Currently pending resolution: No
10. Resolution details:
- A. Resolution: Award
- B. Resolution date: 12/31/2009
- C. Disposition details: DAVID SMITH IS JOINTLY AND SEVERALLY LIABLE FOR AND SHALL PAY CLAIMANTS \$805,110 IN COMPENSATORY DAMAGES. CONCURRENTLY, THE CLAIMANTS ARE TO PROVIDE OWNERSHIP RIGHTS TO THE RESPONDENTS OF 45% OF THE FACE VALUE OF THE INITIAL VALUE OF PRIVATE PLACEMENT NOTES AS DEFINED IN THE AWARD DOCUMENT.
11. Comment:

| | | | |
|--|---------|------------------------|--------------------|
| Occurrence# | 1461222 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |

| | | | |
|--------------------------------------|----------------------------------|----------------------------|--------------|
| Filing ID | 26243633 | Form (Form Version) | U4 (05/2009) |
| Filing Date | 08/05/2009 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14I(1)(a) | | |

Customer Complaint DRP

DRP Version 05/2009

1. Customer name(s): ESTATE OF JAYNE REGAN HARRIS
2. Residence information:
- A. Customer(s) state of residence: New York
- B. Other state(s) of residence/ detail:
3. Employing firm: MCGINN, SMITH & CO., INC.
4. Allegation(s): MR. SMITH IS ALLEGED TO HAVE SOLD [CUSTOMER] INVESTMENTS THAT WERE UNSUITABLE.
5. Product type(s): Other: PRIVATE PLACEMENTS
6. Alleged compensatory damage amount: \$327,000.00
- Explanation:
7. Customer complaints:
- A. Oral complaint:

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 05/2009

- B. Written complaint:
- C. Arbitration/CFTC reparation or civil litigation:
 - i. Arbitration/Reparation forum court name/location:
 - ii. Docket/Case#:
 - iii. Arbitration or civil litigation filing date:
- D. Date received by/Served on firm/Explanation:
- 8. Arbitration/CFTC reparation, civil litigation pending:
- 9. Complaint, arbitration/CFTC reparation or civil status:
- 10. Status date/Explanation:
- 11. Settlement/Award/Monetary judgment:
 - A. Award amount:
 - B. Contribution amount:
- 12. Arbitration/CFTC reparation information:
 - A. Arbitration/CFTC reparation claim filed with: FINRA
 - B. Docket/Case#: FINRA DISPUTE RESOLUTION ARBITRATION # 09-03284
 - C. Date notice/Process was served/Explanation: 06/09/2009
- 13. Pending arbitration/ CFTC reparation: Yes
- 14. Disposition:
- 15. Disposition date/Explanation:
- 16. Monetary compensation details:
 - A. Total compensation amount:
 - B. Contribution amount:
- 17. Court in which case was filed:
 - A. Name of court:
 - B. Location of court:
 - C. Docket/Case#:

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 05/2009

18. Date notice/process was served/Explanation:
19. Pending civil litigation:
20. Civil litigation status:
21. Disposition date/Explanation:
22. Monetary compensation details:
 - A. Total compensation amount:
 - B. Contribution amount:
23. If action is currently on appeal:
 - A. Appeal date/Explanation:
 - B. Court appeal filed with:
 - i. Name of court:
 - ii. Location of court:
 - iii. Docket/Case#:

24. Comment:

| | | | |
|--|---------|------------------------|--------------------|
| Occurrence# | 1477157 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |

| | | | |
|--------------------------------------|----------------------------------|----------------------------|--------------|
| Filing ID | 26558966 | Form (Form Version) | U4 (05/2009) |
| Filing Date | 09/24/2009 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14I(1)(a) | | |

Customer Complaint DRP

DRP Version 05/2009

1. Customer name(s): MARY T. MCDOWELL AND CATHERINE M. BRANNAN, AS TRUSTEE OF THE MARY T. MCDOWELL IRREVOCABLE TRUST
2. Residence information:
 - A. Customer(s) state of residence: New York
 - B. Other state(s) of residence/ detail:
3. Employing firm: MCGINN, SMITH & CO., INC.
4. Allegation(s): STATEMENT OF CLAIM ALLEGES BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, FRAUDULENT CONCEALMENT, COMMON LAW FRAUD, FRAUDULENT MISREPRESENTATION AND FAILURE TO SUPERVISE.
5. Product type(s): Other: PRIVATE PLACEMENT

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Reportable Events

Customer Complaint DRP

DRP Version 05/2009

6. Alleged compensatory damage amount: \$207,000.00

Explanation:

7. Customer complaints:

A. Oral complaint:

B. Written complaint:

C. Arbitration/CFTC reparation or civil litigation:

i. Arbitration/Reparation forum court name/location:

ii. Docket/Case#:

iii. Arbitration or civil litigation filing date:

D. Date received by/Served on firm/Explanation:

8. Arbitration/CFTC reparation, civil litigation pending:

9. Complaint, arbitration/CFTC reparation or civil status:

10. Status date/Explanation:

11. Settlement/Award/Monetary judgment:

A. Award amount:

B. Contribution amount:

12. Arbitration/CFTC reparation information:

A. Arbitration/CFTC reparation claim filed with: FINRA

B. Docket/Case#: ARBITRATION NUMBER 09-05163

C. Date notice/Process was served/Explanation: 09/17/2009

13. Pending arbitration/ CFTC reparation: Yes

14. Disposition:

15. Disposition date/Explanation:

16. Monetary compensation details:

A. Total compensation amount:

B. Contribution amount:

17. Court in which case was filed:

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 05/2009

- A. Name of court:
- B. Location of court:
- C. Docket/Case#:
- 18. Date notice/process was served/Explanation:
- 19. Pending civil litigation:
- 20. Civil litigation status:
- 21. Disposition date/Explanation:
- 22. Monetary compensation details:
 - A. Total compensation amount:
 - B. Contribution amount:
- 23. If action is currently on appeal:
 - A. Appeal date/Explanation:
 - B. Court appeal filed with:
 - i. Name of court:
 - ii. Location of court:
 - iii. Docket/Case#:

24. Comment:

FIRM MAINTAINS THAT CLIENT INVESTED IN PRIVATE PLACEMENT WITH FULL KNOWLEDGE OF RISKS OUTLINED IN MEMORANDUM PROVIDED. CLIENT(S) SIGNED SUBSCRIPTION AGREEMENTS TO PARTICIPATE IN INVESTMENTS.

| | | | |
|--|----------------------------------|----------------------------|--------------------|
| Occurrence# | 1477869 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |
| Filing ID | 26577086 | Form (Form Version) | U4 (05/2009) |
| Filing Date | 09/28/2009 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14I(1)(a) | | |

Customer Complaint DRP

DRP Version 05/2009

- 1. Customer name(s): KEVIN J. SULLIVAN
- 2. Residence information:
 - A. Customer(s) state of residence: New York
 - B. Other state(s) of residence/ detail:

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Reportable Events

Customer Complaint DRP

DRP Version 05/2009

3. Employing firm: MCGINN, SMITH & CO., INC.
4. Allegation(s): UNSUITABILITY
5. Product type(s): Other: PRIVATE PLACEMENTS
6. Alleged compensatory damage amount: \$661,000.00
Explanation:
7. Customer complaints:
 - A. Oral complaint:
 - B. Written complaint:
 - C. Arbitration/CFTC reparation or civil litigation:
 - i. Arbitration/Reparation forum court name/location:
 - ii. Docket/Case#:
 - iii. Arbitration or civil litigation filing date:
 - D. Date received by/Served on firm/Explanation:
8. Arbitration/CFTC reparation, civil litigation pending:
9. Complaint, arbitration/CFTC reparation or civil status:
10. Status date/Explanation:
11. Settlement/Award/Monetary judgment:
 - A. Award amount:
 - B. Contribution amount:
12. Arbitration/CFTC reparation information:
 - A. Arbitration/CFTC reparation claim filed with: FINRA
 - B. Docket/Case#: FINRA DISPUTE RESOLUTION ARBITRATION NUMBER 09-05307
 - C. Date notice/Process was served/Explanation: 09/21/2009
13. Pending arbitration/ CFTC reparation: Yes
14. Disposition:
15. Disposition date/Explanation:
16. Monetary compensation details:

CRD® or IARD(SM) System Report -- See notice regarding CRD Data on cover page.

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Individual 427284 - SMITH, DAVID LEE

Reportable Events

Customer Complaint DRP

DRP Version 05/2009

A. Total compensation amount:

B. Contribution amount:

17. Court in which case was filed:

A. Name of court:

B. Location of court:

C. Docket/Case#:

18. Date notice/process was served/Explanation:

19. Pending civil litigation:

20. Civil litigation status:

21. Disposition date/Explanation:

22. Monetary compensation details:

A. Total compensation amount:

B. Contribution amount:

23. If action is currently on appeal:

A. Appeal date/Explanation:

B. Court appeal filed with:

i. Name of court:

ii. Location of court:

iii. Docket/Case#:

24. Comment:

Regulator Archive and Z Records

| | |
|-----------------------------------|----------------------|
| Occurrence# | 368448 |
| FINRA Public Disclosable | No |
| Material Difference in Disclosure | No |
| Filing ID | 10599 |
| Filing Date | 07/06/1999 |
| Source | UNKNOWN ORGANIZATION |
| Disclosure Questions Answered | |

| | |
|---------------------|--------------|
| Disclosure Type | Criminal |
| Reportable | No |
| Form (Form Version) | U4 (08/1999) |

Criminal DRP

DRP Version 10/2005

1. Organization:

2. Charges brought in:

3. Event disclosure detail:

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Snapshot - Individual

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Individual 427284 - SMITH, DAVID LEE

Regulator Archive and Z Records

Criminal DRP

DRP Version 10/2005

A. Date first charged/Explanation: 09/01/1962

B. Event disclosure detail:

C. Involve a felony:

D. Current status: Final

E. Event status date/Explanation: 09/01/1962

4. Disposition disclosure detail:

5. Comment: U4 DISCLOSES SMITH WAS CONVICTED OF DISTURBING THE PEACE IN 9/62. HE WAS FINED \$10.00.

Occurrence# 1182150

Disclosure Type

Customer Complaint

FINRA Public Disclosable No

Reportable

No

Material Difference in Disclosure No

Filing ID 20257257

Form (Form Version) U4 (10/2005)

Filing Date 02/23/2007

Source 8453 - MCGINN, SMITH & CO., INC.

Disclosure Questions Answered 141(1)(a)

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): ROM AND ELAINE CHARMIN & CHARMIN MEDICAL CENTER

2. Customer(s) state of residence: Indiana

Other state(s) of residence/Detail: ILLINOIS. ON TWO OF THE FOUR ACCOUNTS CONTROLLED BY THE CLIENT, ADDRESS CHANGED FROM IL TO IN ON MARCH, 2002 STATEMENT. OTHER TWO ACCOUNTS USED IL ADDRESS

3. Employing firm: MERCER PARTNERS & MCGINN, SMITH & CO., INC.

4. Allegation(s): CLIENTS' ATTORNEY ALLEGES NEGLIGENT EXCESSIVE TRADING, MISREPRESENTATIONS AND OMISSIONS, UNSUITABLE INVESTMENT RECOMMENDATIONS, SELLING OF NON-REGISTERED, NON-EXEMPT SECURITIES, ETC. DAVID SMITH IS NAMED AS A RESPONDENT DUE TO HIS STATUS AS PRESIDENT OF MCGINN, SMITH, PART OWNER OF THE FIRM, AND A CONTROL PERSON OF THE FIRM.

5. Principal product type: Equity - OTC

Other product types: EQUITIES - LISTED, OPTIONS, WARRANTS, MUTUAL FUNDS

6. Alleged compensatory damages: \$2,903,125.00

7. Date complaint received/Explanation:

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Individual 427284 - SMITH, DAVID LEE

Regulator Archive and Z Records

Customer Complaint DRP

DRP Version 10/2005

8. Currently pending: No
9. Status: Arbitration/Reparation
10. Status date/Explanation: 09/24/2003
11. Settlement amount:
12. Individual contribution amount:
13. Arbitration/Reparation claim filed with, Docket/Case#: ARBITRATION FILED WITH NASD. DOCKET/CASE NUMBER 03-06918
14. Date notice served/ Explanation: 09/24/2003
15. Arbitration/Reparation pending: No
16. Disposition: Dismissed
17. Disposition date/Explanation: 01/24/2007
18. Compensation amount: \$0.00
19. Individual contribution amount: \$0.00
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:
28. Comment: ON 02/15/07, FIRM ENDED UP BEING ORDERED TO PAY \$158,400 FOR FAILURE TO SUPERVISE, ALTHOUGH PANEL FOUND THAT A CLASSIC CASE OF FAILURE TO SUPERVISE WAS NOT MADE. CLAIMANT HAD DISMISSED ALL CLAIMS AGAINST MR. SMITH PRIOR TO THIS. THIS AMENDMENT WAS COMPLETED IN THIS MANNER AT THE DIRECTION OF HUGH KIM AT NASD/CRD. MCGINN, SMITH SAW THIS COMPLAINT AS AN ATTEMPT BY THE PLAINTIFFS TO OBLIGATE MCGINN, SMITH BY WAY OF SUCCESSOR LIABILITY FOR AN ASSET PURCHASE CONSUMMATED IN 07/2001. APPROXIMATELY 98% OF PLAINTIFF'S LOSSES OCCURRED WHEN THE ACCOUNT WAS AT MERCER PARTNERS, WHICH MCGINN SMITH HAD NO AFFILIATION WITH.

Filing ID 20305454

Form (Form Version) U6 (06/2003)

Filing Date 03/02/2007

Source FINRA

Disclosure Questions Answered

CRD® or IARD(SM) System Report -- See notice regarding CRD Data on cover page.

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Individual 427284 - SMITH, DAVID LEE

Regulator Archive and Z Records

SRO Arbitration/Reparation DRP

DRP Version 10/2005

1. Case name: ROM AND ELAINE CHARMIN, ET AL. VS MCGINN SMITH & COMPANY, INC., DAVID L. SMITH, MERCER HOLDINGS CORPORATION, ET AL.
2. Arbitration/Reparation filed with: NASD
3. Date case initiated: 09/23/2003
4. Case number: 03-06918
5. Employing firm: MCGINN SMITH & COMPANY, INC.
6. Allegation(s): CHURNING; MISREPRESENTATIONS; OMISSIONS; SUITABILITY; MANIPULATION; BREACH OF CONTRACT
7. Principal product type: Mutual Fund(s)
Other product types: UNSPECIFIED STOCKS
8. Alleged compensatory damages: \$2,903,125.00
9. Currently pending resolution: No
Resolution: Dismissed
Date resolved: 01/24/2007
10. Disposition details: ON JANUARY 24, 2007, CLAIMANTS DISMISSED ALL CLAIMS WITH PREJUDICE AGAINST SMITH.

| | | | |
|--|----------------------------------|----------------------------|--------------------|
| Occurrence# | 1342261 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | No | Reportable | No |
| Material Difference in Disclosure | No | | |
| Filing ID | 22256552 | Form (Form Version) | U4 (10/2005) |
| Filing Date | 01/04/2008 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14l(1)(a) | | |

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): ROBERT L. GILBERT TRUST
2. Customer(s) state of residence: South Carolina
Other state(s) of residence/Detail:
3. Employing firm: MCGINN, SMITH & CO., INC.
4. Allegation(s): CLIENT ACCUSES MR. SMITH OF "MISREPRESENTING OR FAILING TO DISCLOSE MATERIAL FACTS CONCERNING AN INVESTMENT".
5. Principal product type: Debt - Corporate
Other product types:
6. Alleged compensatory damages: \$0.00

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Individual 427284 - SMITH, DAVID LEE

Regulator Archive and Z Records

Customer Complaint DRP

DRP Version 10/2005

7. Date complaint
received/Explanation:

8. Currently pending:

9. Status: Arbitration/Reparation

10. Status date/Explanation:

11. Settlement amount:

12. Individual contribution amount:

13. Arbitration/Reparation claim filed
with, Docket/Case#: ARBITRATION NUMBER 06-05381

14. Date notice served/ Explanation: 01/04/2007

15. Arbitration/Reparation pending: No

16. Disposition: Dismissed

17. Disposition date/Explanation: 12/18/2007

18. Compensation amount: \$0.00

19. Individual contribution amount: \$0.00

20. Court, Docket/Case#:

21. Date/Explanation:

22. Litigation pending:

23. Disposition:

24. Date/Explanation:

25. Compensation amount:

26. Individual contribution amount:

27. Appeal date/Explanation:

28. Comment: [CUSTOMER] HAS NOT LOST MONEY ON THIS INVESTMENT BUT FEELS THAT "COMPANY FINANCIAL INFORMATION" WAS MISREPRESENTED TO HIM PRIOR TO HIS INVESTMENT AND THAT THE VALUE OF THE INVESTMENT HAS DECREASED. [CUSTOMER] IS SEEKING TO HAVE MCGINN, SMITH REIMBURSE HIM THE \$25,000 HE PAID FOR THE INVESTMENT (PLUS ARBITRATION-RELATED FEES AND EXPENSES). ON 12/18/2007 MCGINN, SMITH'S MOTION TO DISMISS WAS GRANTED AND THE MATTER WAS "DISMISSED IN ITS ENTIRETY, WITH PREJUDICE".

Filing ID 22234754

Form (Form Version) U6 (06/2003)

Filing Date 01/03/2008

Source FINRA

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Individual 427284 - SMITH, DAVID LEE

Regulator Archive and Z Records

Disclosure Questions Answered

SRO Arbitration/Reparation DRP**DRP Version 10/2005**

- | | |
|---------------------------------------|---|
| 1. Case name: | ROBERT L. GILBERT TTEE, ROBERT LEE GILBERT TRUST DTD 2/25/91 VS. MCGINN SMITH & CO., INC., DAVID L. SMITH, ET AL |
| 2. Arbitration/Reparation filed with: | NASD |
| 3. Date case initiated: | 12/28/2006 |
| 4. Case number: | 06-05381 |
| 5. Employing firm: | MCGINN SMITH & CO., INC. |
| 6. Allegation(s): | MISREPRESENTATION, FAILURE TO DISCLOSE |
| 7. Principal product type: | Debt - Corporate |
| Other product types: | CORPORATE BOND WITH STOCK WARRANTS |
| 8. Alleged compensatory damages: | \$25,000.00 |
| 9. Currently pending resolution: | No |
| Resolution: | Dismissed |
| Date resolved: | 12/18/2007 |
| 10. Disposition details: | RESPONDENTS' MOTION TO DISMISS IS GRANTED AND THIS MATTER IS DISMISSED IN ITS ENTIRETY, WITH PREJUDICE. |
-

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Individual 813935 - MGINN, TIMOTHY MICHAEL

Administrative Information

Composite Information

Full Legal Name MGINN, TIMOTHY MICHAEL

Year of Birth 1948

State of Residence NY

Active Employments

Current Employer MGINN, SMITH & CO., INC.(8453)

Firm Main Address CAPITAL CENTER
99 PINE STREET
ALBANY
NY, UNITED STATES
12207-3167Firm Mailing Address CAPITAL CENTER
99 PINE STREET
ALBANY
NY, UNITED STATES
12207-3167

Business Telephone# 518 449-5131

Independent Contractor No

Office of Employment Address

| CRD Branch# | NYSE Branch Code# | Firm Billing Code | Registered Location? | Private Residence? | Address Start Date | Address End Date | Type of Office |
|----------------|---|----------------------|-------------------------|-----------------------|-----------------------|---------------------|-------------------|
| 292317 | | | Yes | No | 07/03/2006 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207 UNITED STATES | | | | | | |
| BD Main | | | Yes | No | 09/04/1980 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207-3167 UNITED STATES | | | | | | |
| | | | No | No | 09/04/1980 | 04/26/2006 | Located At |
| Address | ONE CAPITAL CTR., 99 PINE ST. ALBANY, NY 12207 | | | | | | |

Reportable Disclosures? Yes

Statutory Disqualification? BLNK

Registered With Multiple Firms? No

Material Difference in Disclosure? No

Personal Information

Individual CRD# 813935

Other Names Known By <<No Other Names found for this Individual.>>

CRD® or IARD(SM) System Report -- See notice regarding CRD Data on cover page.

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Individual 813935 - MCGINN, TIMOTHY MICHAEL

Administrative Information

Year of Birth 1948

Registrations with Current Employer(s)

From 09/04/1980 To Present MCGINN, SMITH & CO., INC.(8453)

| Regulator | Registration Category | Status Date | Registration Status | Approval Date |
|-----------|-----------------------|-------------|---------------------|---------------|
| FINRA | FN | 08/10/1983 | APPROVED | 08/10/1983 |
| FINRA | GP | 01/09/1981 | APPROVED | 01/09/1981 |
| FINRA | GS | 01/09/1981 | APPROVED | 01/09/1981 |
| FINRA | OP | 01/09/1981 | APPROVED | 01/09/1981 |
| MA | AG | 12/31/2009 | TERMED | 12/24/1981 |
| NY | AG | 12/24/1981 | APPROVED | 12/24/1981 |
| PA | AG | 11/08/1981 | APPROVED | 11/08/1981 |
| VA | AG | 02/14/1988 | PURGED | |

Registrations with Previous Employer(s)

From 06/22/2000 To 07/15/2003 POINTE CAPITAL, L.L.C.(112097)

Reason for Termination Voluntary

Termination Comment

| Regulator | Registration Category | Status Date | Registration Status | Approval Date |
|-----------|-----------------------|-------------|---------------------|---------------|
| FINRA | FN | 08/07/2003 | TERMED | 10/25/2001 |
| FINRA | GP | 08/07/2003 | TERMED | 10/25/2001 |
| FINRA | GS | 08/07/2003 | TERMED | 10/25/2001 |
| FINRA | OP | 08/07/2001 | T_NOREG | |
| NY | AG | 03/07/2002 | T_NOREG | |

From 05/01/2000 To 05/15/2003 ONLINE CAPITAL SECURITIES, INC.(104334)

Reason for Termination Voluntary

Termination Comment

| Regulator | Registration Category | Status Date | Registration Status | Approval Date |
|-----------|-----------------------|-------------|---------------------|---------------|
| FINRA | FN | 05/29/2003 | TERMED | 02/09/2001 |
| FINRA | GP | 05/29/2003 | TERMED | 02/09/2001 |
| FINRA | GS | 05/29/2003 | TERMED | 02/09/2001 |
| FINRA | OP | 02/07/2001 | T_NOREG | |
| NY | AG | 12/17/2002 | TERMED | 07/14/2001 |

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Individual 813935 - MCGINN, TIMOTHY MICHAEL

Administrative Information

Professional Designations

<<No Professional Designations found for this Individual.>>

Employment History

From 05/2000 To Present
Name ONLINE CAPITAL SECURITIES
Location NEW YORK, NY
Position EXECUTIVE VICE PRESIDENT
Investment Related Yes

From 09/1980 To Present
Name MCGINN, SMITH & CO., INC.
Location ALBANY, NY
Position CHAIRMAN OF THE BOARD, OP,GP,FN
Investment Related Yes

Office of Employment History

From 09/1980 To Present

Name MCGINN, SMITH & CO., INC.(8453)**Independent Contractor** No

Office of Employment Address

| CRD Branch# | NYSE Branch Code# | Firm Billing Code | Registered Location? | Private Residence? | Address Start Date | Address End Date | Type of Office |
|----------------|---|-------------------|----------------------|--------------------|--------------------|------------------|----------------|
| 292317 | | | Yes | No | 07/03/2006 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207 UNITED STATES | | | | | | |
| BD Main | | | Yes | No | 09/04/1980 | | Located At |
| Address | CAPITAL CENTER, 99 PINE STREET ALBANY, NY 12207-3167 UNITED STATES | | | | | | |
| | | | No | No | 09/04/1980 | 04/26/2006 | Located At |
| Address | ONE CAPITAL CTR., 99 PINE ST. ALBANY, NY 12207 | | | | | | |

From 06/2000 To 07/2003

Name POINTE CAPITAL, L.L.C.(112097)**Independent Contractor** No

Office of Employment Address

| CRD Branch# | NYSE Branch Code# | Firm Billing Code | Registered Location? | Private Residence? | Address Start Date | Address End Date | Type of Office |
|----------------|--|-------------------|----------------------|--------------------|--------------------|------------------|----------------|
| | | | No | No | 06/22/2000 | 07/15/2003 | Located At |
| Address | 21845 POWERLINE RD BOCA RATON, FL 33433 | | | | | | |

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Individual 813935 - MCGINN, TIMOTHY MICHAEL

Administrative Information**Office of Employment History**

From 05/2000 To 05/2003

Name ONLINE CAPITAL SECURITIES, INC.(104334)

Independent Contractor No

Office of Employment Address

| CRD Branch# | NYSE Branch Code# | Firm Billing Code | Registered Location? | Private Residence? | Address Start Date | Address End Date | Type of Office |
|----------------|---|----------------------|-------------------------|-----------------------|-----------------------|---------------------|-------------------|
| | | | No | No | 05/01/2000 | 05/15/2003 | Located At |
| Address | 225 LAFAYETTE ST. NEW YORK, NY 10012 | | | | | | |

Other Business

ALL BUSINESSES LISTED BELOW ARE INVESTMENT RELATED AND THE ADDRESS FOR ALL OF THEM IS 99 PINE STREET, ALBANY, NY 12207

FIRST INDEPENDENT INCOME NOTES, LLC. - MANAGING PARTNER. 2003

FIRST EXCELSIOR INCOME NOTES, LLC. - MANAGING PARTNER. 2004

THIRD ALBANY INCOME NOTES, LLC - MANAGING PARTNER. 2004

FIRST ADVISORY INCOME NOTES, LLC - MANAGING PARTNER. 2005

CMS FINANCIAL SERVICES - BOARD MEMBER 2006 4 HOURS PER MONTH, NONE DURING TRADING HOURS.

M&S PARTNERS - PARTNER 1980 2 HOURS PER MONTH, NONE DURING TRADING HOURS.

MCGINN, SMITH CAPITAL HOLDINGS - BOARD MEMBER 1989 4 HOURS PER MONTH, NONE DURING TRADING HOURS.

MCGINN, SMITH ADVISORS - BOARD MEMBER 2003 30 HOURS A MONTH , ONE HOUR DURING TRADING HOURS. THIS TIME IS USED FOR FIIN, FEIN, TAIN AND FAIN, ABOVE.

MCGINN SMITH HOLDINGS 2003 MANAGING MEMBER

Examination Information

| Exam | Status | Status Date | Exam Date | Grade | Score | Window Dates |
|------|-----------------|-------------|------------|--------|-------|--------------|
| S4 | OFFICIAL_RESULT | 11/25/1980 | 11/25/1980 | PASSED | 84 | - |
| S7 | EXPIRED | 06/20/1991 | | | 0 | - |
| S7 | OFFICIAL_RESULT | 10/18/1975 | 10/18/1975 | PASSED | 224 | - |
| S24 | EXPIRED | 06/20/1991 | | | 0 | - |
| S24 | OFFICIAL_RESULT | 11/25/1980 | 11/25/1980 | PASSED | 80 | - |
| S27 | OFFICIAL_RESULT | 08/12/1982 | 08/12/1982 | PASSED | 71 | - |
| S27 | WITHDRAW | 04/28/1982 | | | | - |
| S63 | EXPIRED | 05/24/1997 | | | 0 | - |
| S63 | EXPIRED | 10/15/1987 | | | 0 | - |
| GPA | OFFICIAL_RESULT | 11/08/1981 | 11/08/1981 | | 0 | - |

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Individual 813935 - MCGINN, TIMOTHY MICHAEL

Administrative Information**CE Regulatory Element Status**

Current CE Status REQUIRED

CE Base Date 01/09/1981

Current CE

| Requirement Type | Status | Current Window | Session | Status Date | Result |
|------------------|----------|-----------------------|---------|-------------|--------------|
| Anniversary | REQUIRED | 01/09/2010-05/08/2010 | 201 | 01/11/2010 | 01/11/2010 - |

Next CE

| Requirement Window | Requirement Type | Session |
|-----------------------|------------------|---------|
| 01/09/2013-05/08/2013 | Anniversary | 201 |

CE Directed Sequence History

<<No CE Directed Sequence History found for this Individual.>>

Inactive CE History Dates

<<No Inactive CE History Dates found for this Individual.>>

Previous CE Requirement Status

| Requirement Type | Status | Previous Window | Session | Status Date | Result |
|------------------|-----------|-----------------------|---------|-------------|--------------------|
| Anniversary | REQUIRED | 01/09/2007-05/08/2007 | 201 | 01/09/2007 | 01/09/2007 - |
| Anniversary | SATISFIED | 01/09/2007-05/08/2007 | 201 | 04/23/2007 | 04/23/2007 - CMPLT |

Filing History

| Filing Date | Form Type | Filing type | Source |
|-------------|-----------|--------------------------------|--|
| 01/19/2010 | U6 | Individual registered with CRD | FINRA |
| 12/24/2009 | U5 | Partial termination | MCGINN, SMITH & CO., INC. (8453) |
| 08/27/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 01/16/2009 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 10/10/2008 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 03/06/2007 | U4 | Amendment filing | FINRA |
| 03/02/2007 | U6 | Individual registered with CRD | FINRA |
| 02/23/2007 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 07/03/2006 | BR | Initial filing | MCGINN, SMITH & CO., INC. (8453) |
| 06/06/2006 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 04/27/2006 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 08/22/2005 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 06/09/2005 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 08/02/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 07/29/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 03/16/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 03/04/2004 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 08/07/2003 | U5 | Full termination | JHS CAPITAL ADVISORS, INC. (112097) |
| 05/29/2003 | U5 | Full termination | ONLINE CAPITAL SECURITIES, INC. (104334) |
| 12/17/2002 | U5 | Partial termination | ONLINE CAPITAL SECURITIES, INC. (104334) |

CRD® or IARD(SM) System Report -- See notice regarding CRD Data on cover page.

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Individual 813935 - MCGINN, TIMOTHY MICHAEL

Administrative Information

Filing History

| Filing Date | Form Type | Filing type | Source |
|-------------|-----------|---------------------|--|
| 12/16/2002 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 12/12/2002 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 07/26/2002 | U4 | Amendment filing | MCGINN, SMITH & CO., INC. (8453) |
| 09/14/2001 | U4 | Amendment filing | JHS CAPITAL ADVISORS, INC. (112097) |
| 08/07/2001 | U5 | Partial termination | JHS CAPITAL ADVISORS, INC. (112097) |
| 03/26/2001 | U4 | Dual | JHS CAPITAL ADVISORS, INC. (112097) |
| 02/07/2001 | U5 | Partial termination | ONLINE CAPITAL SECURITIES, INC. (104334) |
| 02/06/2001 | U4 | Amendment filing | ONLINE CAPITAL SECURITIES, INC. (104334) |
| 08/04/2000 | U4 | Dual | ONLINE CAPITAL SECURITIES, INC. (104334) |
| 07/07/1999 | U6 | Conversion Filing | FINRA |
| 07/07/1999 | U6 | Conversion Filing | UNKNOWN |
| 07/06/1999 | U4 | Conversion Filing | MCGINN, SMITH & CO., INC. (8453) |
| 07/05/1999 | U4 | Conversion Filing | MCGINN, SMITH & CO., INC. (8453) |

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Individual 813935 - MCGINN, TIMOTHY MICHAEL

Reportable Events

Number of Reportable Events

| | |
|--------------------|---|
| Bankruptcy | 0 |
| Bond | 0 |
| Civil Judicial | 0 |
| Criminal | 0 |
| Customer Complaint | 4 |
| Internal Review | 0 |
| Investigation | 0 |
| Judgement/Lien | 0 |
| Regulatory Action | 2 |
| Termination | 0 |

| | | | |
|-----------------------------------|--------|-----------------|-------------------|
| Occurrence# | 116143 | Disclosure Type | Regulatory Action |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |

| | | | |
|-------------------------------|--|---------------------|--------------|
| Filing ID | 6723268 | Form (Form Version) | U4 (08/1999) |
| Filing Date | 08/04/2000 | | |
| Source | 104334 - ONLINE CAPITAL SECURITIES, INC. | | |
| Disclosure Questions Answered | 23E(2) | | |

Regulatory Action DRP

DRP Version 10/2005

1. Regulatory action initiated by: NASD REGULATION, INC.
2. Principal sanction: Censure
Other sanction(s): FINE
3. Date Initiated/Explanation: 10/22/1981
4. Docket/Case#: 81-373 BOS-481-AWC
5. Employing firm: MCGINN SMITH & CO., INC.
6. Principal product type: Equity Listed (Common & Preferred Stock)
Other product type(s):
7. Allegation(s): VIOLATIONS OF ARTICLE III, SECTIONS 1 AND 15(B) OF THE RULES OF FAIR PRACTICE. ALLEGED LOSSES=\$3350.
8. Current status: Final
9. Appealed to:
10. Resolution: Acceptance, Waiver & Consent(AWC)
11. Resolution date/Explanation: 05/07/1982
12. A. Resolution detail: Monetary/Fine Sanction (Amount: \$500.00), Disgorgement/Restitution Sanction

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Individual 813935 - MCGINN, TIMOTHY MICHAEL

Reportable Events

Regulatory Action DRP

DRP Version 10/2005

B. Other sanction(s)
ordered:

C. Sanction detail:

RESTITUTION TO CLAIMANTS OF \$3350 BY APPLICANT ON 04/26/1982.
PAID NASD FINE OF \$500. CLOSED 5/7/1982

13. Comment:

VIOLATION OF RULES OF FAIR PRACTICE, ARTICLE III SECTIONS 1
AND 15(B). RESTITUTION TO CLIENTS AND FINE PAID. CLOSED
5/7/1982.

Filing ID 150038

Form (Form Version) U6 (08/1999)

Filing Date 07/07/1999

Source FINRA

Disclosure Questions Answered

Regulatory Action DRP

DRP Version 10/2005

1. Regulatory action initiated by: NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

2. Principal sanction:

Other sanction(s):

3. Date Initiated/Explanation: 05/07/1982

4. Docket/Case#: BOS-481

5. Employing firm:

6. Principal product type:

Other product type(s):

7. Allegation(s):

8. Current status: Final

9. Appealed to:

10. Resolution: Consent

11. Final order:

12. Resolution date/Explanation: 05/07/1982

13. A. Resolution detail: Monetary/Fine Sanction (Amount: \$500.00), Censure Sanction

B. Other sanction(s)
ordered:

C. Sanction detail:

14. Comment:

COMP #BOS-481 FILED 5/7/82, DIST. #13, LETTER OF ADMISSION,
WAIVER AND CONSENT SUBMITTED BY MCGINN WAS ACCEPTED;
THEREFORE
HE IS CENSURED AND FINED \$500 (ARTICLE III - SECTION 1 AND 15(b))
INITIATED 2 UNAUTHORIZED TRANSACTIONS IN A CUSTOMER'S

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Reportable Events

Regulatory Action DRP

DRP Version 10/2005

ACCOUNT).
ALL RIGHTS OF APPEAL AND REVIEW HAVE BEEN WAIVED, THE
LETTER OF
AWC WAS FINAL 5/7/82. FC#8239 PAID 6/2/82.

| | | | |
|-----------------------------------|--------|-----------------|-------------------|
| Occurrence# | 116144 | Disclosure Type | Regulatory Action |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |

| | | | |
|-------------------------------|--|---------------------|--------------|
| Filing ID | 6723268 | Form (Form Version) | U4 (08/1999) |
| Filing Date | 08/04/2000 | | |
| Source | 104334 - ONLINE CAPITAL SECURITIES, INC. | | |
| Disclosure Questions Answered | 23E(2) | | |

Regulatory Action DRP

DRP Version 10/2005

1. Regulatory action initiated by: NASD REGULATION, INC.
2. Principal sanction: Censure
Other sanction(s): MONETARY PENALTY/FINE
3. Date Initiated/Explanation: 05/20/1994
4. Docket/Case#: C11940056
5. Employing firm: MCGINN SMITH & CO., INC.
6. Principal product type: Direct Investment(s) - DPP & LP Interest(s)
Other product type(s): EQUITY
7. Allegation(s): FAILURE TO COMPLY WITH SEC RULE 15C3-3 WHILE PURPORTING TO OPERATE WITHIN AN EXEMPTION PROVISION, NOT COMPLYING WITH THE PROVISIONS, RECEIVED AND HELD CUSTOMER FUNDS AND SECURITIES. SOLD SHARES OF NEW ISSUE, WHICH TRADED AT A PREMIUM IN THE AFTERMARKET, TO A RESTRICTED PERSON. ARTICLE III SECTION 1 RULES OF FAIR PRACTICE.
8. Current status: Final
9. Appealed to:
10. Resolution: Acceptance, Waiver & Consent(AWC)
11. Resolution date/Explanation: 12/05/1994
12. A. Resolution detail: Monetary/Fine Sanction (Amount: \$3,000.00), Censure Sanction
B. Other sanction(s) ordered:

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C. Sanction detail: \$3000. FINE, JOINTLY AND SEVERALLY, PAID 01/09/1995 BY SINGLE PAYMENT. NOTHING WAIVED.

13. Comment: AWC ACCEPTED BY NASD. FINE OF \$3,000. PAID 01/09/1995.

Filing ID 150038

Form (Form Version) U6 (08/1999)

Filing Date 07/07/1999

Source FINRA

Disclosure Questions Answered

Regulatory Action DRP

DRP Version 10/2005

1. Regulatory action initiated by: NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

2. Principal sanction:

Other sanction(s):

3. Date Initiated/Explanation: 12/05/1994

4. Docket/Case#: C11940056

5. Employing firm: MGINN SMITH & CO, INC

6. Principal product type:

Other product type(s):

7. Allegation(s):

8. Current status: Final

9. Appealed to:

10. Resolution: Consent

11. Final order:

12. Resolution date/Explanation: 12/05/1994

13. A. Resolution detail: Monetary/Fine Sanction (Amount: \$3,000.00), Censure Sanction

B. Other sanction(s)
ordered:

C. Sanction detail:

14. Comment: ON DECEMBER 5, 1994, DISTRICT NO. 11 NOTIFIED MGINN SMITH & CO., INC., TIMOTHY M. MGINN AND DAVID L. SMITH THAT THE LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. C11940056 WAS ACCEPTED; THEREFORE, THEY ARE CENSURED AND FINED \$3,000, JOINTLY AND SEVERALLY - (ARTICLE III, SECTION 1 OF THE RULES OF FAIR PRACTICE - RESPONDENT MEMBER, ACTING THROUGH RESPONDENT MGINN, FAILED TO COMPLY WITH SEC RULE 15C3-3 IN THAT WHILE

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PURPORTING TO OPERATE WITHIN AN EXEMPTIVE PROVISION OF THE RULE
AND NOT OTHERWISE COMPLYING WITH THE PROVISIONS OF THE RULE,
RECEIVED AND HELD CUSTOMER FUNDS AND SECURITIES; AND, IN CONTRAVENTION OF THE BOARD OF GOVERNORS FREE-RIDING AND
WITHHOLDING INTERPRETATION, RESPONDENT MEMBER, ACTING THROUGH
RESPONDENT SMITH, SOLD SHARES OF A NEW ISSUE WHICH TRADED AT A
PREMIUM IN THE IMMEDIATE AFTERMARKET TO A RESTRICTED PERSON).
INTERPRETATION, RESPONDENT MEMBER, ACTING THROUGH RESPONDENT ON
DECEMBER 5, 1994, DISTRICT NO. 11 NOTIFIED MCGINN SMITH & CO., INC., TIMOTHY M. MCGINN AND DAVID L. SMITH THAT THE LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. C11940056 WAS ACCEPTED;
THEREFORE, THEY ARE CENSURED AND FINED \$3,000, JOINTLY AND SEVERALLY - (ARTICLE III, SECTION 1 OF THE RULES OF FAIR PRACTICE - RESPONDENT MEMBER, ACTING THROUGH RESPONDENT MCGINN,
FAILED TO COMPLY WITH SEC RULE 15C3-3 IN THAT WHILE PURPORTING
TO OPERATE WITHIN AN EXEMPTIVE PROVISION OF THE RULE AND NOT
OTHERWISE COMPLYING WITH THE PROVISIONS OF THE RULE, RECEIVED
AND HELD CUSTOMER FUNDS AND SECURITIES; AND, IN CONTRAVENTION
OF THE BOARD OF GOVERNORS FREE-RIDING AND WITHHOLDING INTERPRETATION, RESPONDENT MEMBER, ACTING THROUGH RESPONDENT
SMITH, SOLD SHARES OF A NEW ISSUE WHICH TRADED AT A PREMIUM IN
THE IMMEDIATE AFTERMARKET TO A RESTRICTED PERSON).

\$3,000 J&S PAID 1/9/95 INVOICE #94-11-816

| | | | |
|-----------------------------------|----------------------------------|---------------------|--------------------|
| Occurrence# | 1087904 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | Yes | Reportable | Yes |
| Material Difference in Disclosure | No | | |
| Filing ID | 11032565 | Form (Form Version) | U4 (03/2002) |
| Filing Date | 12/12/2002 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14I(1)(a) | | |

Customer Complaint DRP

DRP Version 10/2005

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Individual 813935 - MCGINN, TIMOTHY MICHAEL

Reportable Events

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): RINDA FARNHAM
2. Customer(s) state of residence: Connecticut
Other state(s) of residence/Detail:
3. Employing firm: MCGINN, SMITH & CO., INC.
4. Allegation(s): CLIENT BLAMES MR. MCGINN FOR FAILURE TO SUPERVISE REGISTERED REPRESENTATIVE ROBERT C. DEANE DURING THE PERIOD OCTOBER 1999 TO MARCH 2000 DURING WHICH SHE SUFFERED LOSSES IN HER ACCOUNT.
5. Principal product type: Equity - OTC
Other product types: EQUITY - LISTED
6. Alleged compensatory damages: \$150,000.00
7. Date complaint received/Explanation: 05/15/2001
8. Currently pending: No
9. Status: Settled
10. Status date/Explanation: 11/01/2002
11. Settlement amount: \$50,000.00
12. Individual contribution amount: \$0.00
13. Arbitration/Reparation claim filed with, Docket/Case#:
14. Date notice served/ Explanation:
15. Arbitration/Reparation pending:
16. Disposition:
17. Disposition date/Explanation:
18. Compensation amount:
19. Individual contribution amount:
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:

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Reportable Events

Customer Complaint DRP

DRP Version 10/2005

28. Comment:

Occurrence# 1210967

Disclosure Type Customer Complaint

FINRA Public Disclosable Yes

Reportable Yes

Material Difference in Disclosure No

Filing ID 13913347

Form (Form Version) U4 (06/2003)

Filing Date 08/02/2004

Source 8453 - MCGINN, SMITH & CO., INC.

Disclosure Questions Answered 14I(2)

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): DR. JOEL ZOLDESSY, CAROL ZOLDESSY, SHIRLEY ZOLDESSY

2. Customer(s) state of residence: Nevada

Other state(s) of residence/Detail: CALIFORNIA - CLIENTS LIVED THERE FOR JULY & AUGUST 2001

3. Employing firm: MERCER PARTNERS AND MCGINN, SMITH & CO., INC.

4. Allegation(s): MR. MCGINN WAS ACCUSED OF FAILURE TO SUPERVISE.

5. Principal product type: Equity - OTC

Other product types:

6. Alleged compensatory damages: \$155,484.39

7. Date complaint received/Explanation: 02/03/2003

8. Currently pending: No

9. Status: Settled

10. Status date/Explanation: 11/24/2003

11. Settlement amount: \$20,000.00

12. Individual contribution amount: \$0.00

13. Arbitration/Reparation claim filed with, Docket/Case#:

14. Date notice served/ Explanation:

15. Arbitration/Reparation pending:

16. Disposition:

17. Disposition date/Explanation:

18. Compensation amount:

19. Individual contribution amount:

20. Court, Docket/Case#:

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Reportable Events

Customer Complaint DRP

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21. Date/Explanation:

22. Litigation pending:

23. Disposition:

24. Date/Explanation:

25. Compensation amount:

26. Individual contribution amount:

27. Appeal date/Explanation:

28. Comment:

SETTLEMENT STATES "NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE AN ADMISSION OF ANY LIABILITY OR WRONGDOING BY ANY OF THE PARTIES WITH RESPECT TO ANY OF THE CLAIMS."

Occurrence# 1268889

Disclosure Type

Customer Complaint

FINRA Public Disclosable Yes

Reportable

Yes

Material Difference in Disclosure No

Filing ID 20324325

Form (Form Version) U4 (10/2005)

Filing Date 03/06/2007

Source 8453 - MCGINN, SMITH & CO., INC.

Disclosure Questions Answered 14I(1)(c)

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): DANIEL C. O'BRIEN

2. Customer(s) state of residence: Virginia

Other state(s) of residence/Detail:

3. Employing firm: MCGINN, SMITH & CO., INC.

4. Allegation(s): CLIENT IS CLAIMING FAILURE TO SUPERVISE.

5. Principal product type: Equity - OTC

Other product types:

6. Alleged compensatory damages: \$64,000.00

7. Date complaint received/Explanation: 07/29/2004

8. Currently pending: No

9. Status: Arbitration/Reparation

10. Status date/Explanation: 08/17/2005

11. Settlement amount:

12. Individual contribution amount:

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Reportable Events

Customer Complaint DRP

DRP Version 10/2005

13. Arbitration/Reparation claim filed with, Docket/Case#: NASD CASE #05-01731

14. Date notice served/ Explanation: 08/17/2005

15. Arbitration/Reparation pending: No

16. Disposition: Settled

17. Disposition date/Explanation: 05/31/2006

18. Compensation amount: \$25,000.00

19. Individual contribution amount: \$0.00

20. Court, Docket/Case#:

21. Date/Explanation:

22. Litigation pending:

23. Disposition:

24. Date/Explanation:

25. Compensation amount:

26. Individual contribution amount:

27. Appeal date/Explanation:

28. Comment:

IN THE SETTLEMENT AGREEMENT THE CLIENT WITHDREW ALL ALLEGATIONS AGAINST MR. MCGINN. WE WERE UNAWARE THAT THIS COMPLAINT HAD OFFICIALLY BECOME AN ARBITRATION AND FILED THIS U-4 AMENDMENT IMMEDIATELY UPON REALIZING THAT SUCH WAS THE CASE. THIS WAS DISCUSSED WITH NASD EMPLOYEE ANGELA MILLER AT 202-728-8958 ON 08/17/2005.

Occurrence# 1438426

FINRA Public Disclosable No

Material Difference in Disclosure No

Disclosure Type

Reportable

Customer Complaint

Yes

Filing ID 24662132

Filing Date 01/16/2009

Source 8453 - MCGINN, SMITH & CO., INC.

Disclosure Questions Answered 14I(1)(a)

Form (Form Version) U4 (10/2005)

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): DUCKKYU CHANG, KEE CHANG AND DUCKKYU CHANG TTEE CUMBERLAND PATHOLOGY ASSOCIATES, LLC

2. Customer(s) state of residence: Pennsylvania

Other state(s) of residence/Detail:

3. Employing firm: MCGINN, SMITH & CO., INC.

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Reportable Events

Customer Complaint DRP

DRP Version 10/2005

4. Allegation(s): FAILURE TO SUPERVISE.
5. Principal product type: Other
- Other product types: PRIVATE PLACEMENTS
6. Alleged compensatory damages: \$2,577,000.00
7. Date complaint received/Explanation:
8. Currently pending:
9. Status: Arbitration/Reparation
10. Status date/Explanation: 01/06/2009
11. Settlement amount:
12. Individual contribution amount:
13. Arbitration/Reparation claim filed with, Docket/Case#: FINRA DISPUTE RESOLUTION ARBITRATION NUMBER 08-04924
14. Date notice served/ Explanation: 01/06/2009
15. Arbitration/Reparation pending: Yes
16. Disposition:
17. Disposition date/Explanation:
18. Compensation amount:
19. Individual contribution amount:
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:
28. Comment:

Filing ID 27407219

Form (Form Version) U6 (05/2009)

Filing Date 01/19/2010

Source FINRA

Disclosure Questions Answered

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Reportable Events

SRO Arbitration/Reparation DRP

DRP Version 05/2009

1. Case name: DUCKKYU CHANG; KEE CHANG AND DUCKKYU CHANG TTEE CUMBERLAND PATHOLOGY ASSOCIATES, LLC VS MCGINN, SMITH & CO., INC., TIMOTHY M. MCGINN, LEX & SMITH ASSOCIATES LTD., MCGINN SMITH ADVISORS, LLC, MCGINN SMITH CAPITAL HOLDINGS CORP., ET AL.
2. Arbitration/Reparation filed with: FINRA
3. Date initiated: 12/22/2008
4. Docket/Case#: 08-04924
5. Employing firm: MCGINN, SMITH & CO.
6. Allegation(s): UNSUITABLE INVESTMENTS; NEGLIGENCE; BREACH OF CONTRACT; VIOLATIONS OF INDUSTRY RULES; FAILURE TO DIVERSIFY; BREACH OF FIDUCIARY DUTY; FRAUD; MISREPRESENTATIONS AND OMISSIONS; NEGLIGENT SUPERVISION
7. Product type: Other: UNSPECIFIED PRIVATE PLACEMENT PRODUCTS, NOTES AND TRUSTS
8. Alleged compensatory damage amount: \$2,577,000.00
9. Currently pending resolution: No
10. Resolution details:
 - A. Resolution: Denied
 - B. Resolution date: 12/31/2009
 - C. Disposition details: CLAIMANTS' CLAIMS ARE DENIED.
11. Comment:

Regulator Archive and Z Records

| | | | |
|-----------------------------------|----------------------------------|---------------------|--------------------|
| Occurrence# | 1186203 | Disclosure Type | Customer Complaint |
| FINRA Public Disclosable | No | Reportable | No |
| Material Difference in Disclosure | No | | |
| Filing ID | 20257125 | Form (Form Version) | U4 (10/2005) |
| Filing Date | 02/23/2007 | | |
| Source | 8453 - MCGINN, SMITH & CO., INC. | | |
| Disclosure Questions Answered | 14I(1)(a) | | |

Customer Complaint DRP

DRP Version 10/2005

1. Customer name(s): ROM & ELAINE CHARMIN AND CHARMIN MEDICAL CENTER
2. Customer(s) state of residence: Indiana

Other state(s) of residence/Detail: ILLINOIS. ON TWO OF THE FOUR ACCOUNTS CONTROLLED BY THE CLIENT, ADDRESS CHANGED FROM IL TO IN ON MARCH, 2002 STATEMENT. OTHER TWO ACCOUNTS USED IL ADDRESS
3. Employing firm: MERCER PARTNERS AND MCGINN, SMITH & CO., INC.

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Customer Complaint DRP

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4. Allegation(s): CLIENTS' ATTORNEY ALLEGES NEGLIGENT EXCESSIVE TRADING, MISREPRESENTATIONS AND OMISSIONS, UNSUITABLE INVESTMENT RECOMMENDATIONS, SELLING OF NON-REGISTERED, NON-EXEMPT SECURITIES, ETC. TIMOTHY MCGINN IS NAMED AS A RESPONDENT DUE TO HIS STATUS AS CHAIRMAN OF THE BOARD OF MCGINN, SMITH, PART OWNER OF THE FIRM, AND A CONTROL PERSON OF THE FIRM.
5. Principal product type: Equity - OTC
Other product types: EQUITIES - LISTED, OPTIONS, WARRANTS, MUTUAL FUNDS
6. Alleged compensatory damages: \$2,903,125.00
7. Date complaint received/Explanation:
8. Currently pending: No
9. Status: Arbitration/Reparation
10. Status date/Explanation: 09/24/2003
11. Settlement amount:
12. Individual contribution amount:
13. Arbitration/Reparation claim filed with, Docket/Case#: ARBITRATION FILED WITH NASD. DOCKET/CASE NUMBER 03-06918
14. Date notice served/ Explanation: 09/24/2003
15. Arbitration/Reparation pending: No
16. Disposition: Dismissed
17. Disposition date/Explanation: 01/24/2007
18. Compensation amount: \$0.00
19. Individual contribution amount: \$0.00
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:
28. Comment: ON 02/15/07, FIRM ENDED UP BEING ORDERED TO PAY \$158,400 FOR FAILURE TO SUPERVISE, ALTHOUGH PANEL FOUND THAT A CLASSIC CASE OF FAILURE TO SUPERVISE WAS NOT MADE.

CRD® or IARD(SM) System Report -- See notice regarding CRD Data on cover page.

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Regulator Archive and Z Records

Customer Complaint DRP

DRP Version 10/2005

CLAIMANT HAD DISMISSED ALL CLAIMS AGAINST MR. MCGINN PRIOR TO THIS. THIS AMENDMENT WAS COMPLETED IN THIS MANNER AT THE DIRECTION OF HUGH KIM AT NASD/CRD. MCGINN, SMITH SAW THIS COMPLAINT AS AN ATTEMPT BY THE PLAINTIFFS TO OBLIGATE MCGINN, SMITH BY WAY OF SUCCESSOR LIABILITY FOR AN ASSET PURCHASE CONSUMMATED IN 07/2001. APPROXIMATELY 98% OF PLAINTIFF'S LOSSES OCCURRED WHEN THE ACCOUNT WAS AT MERCER PARTNERS, WHICH MCGINN SMITH HAD NO AFFILIATION WITH. APPROXIMATELY 98% OF PLAINTIFF'S LOSSES OCCURRED WHEN THE ACCOUNT WAS AT MERCER PARTNERS, WHICH MCGINN SMITH HAD NO AFFILIATION WITH.

Filing ID 20304709
 Filing Date 03/02/2007
 Source FINRA
 Disclosure Questions Answered

Form (Form Version) U6 (06/2003)

SRO Arbitration/Reparation DRP

DRP Version 10/2005

1. Case name: ROM AND ELAINE CHARMIN, ET AL. VS MCGINN SMITH & COMPANY, INC., TIMOTHY M. MCGINN, MERCER HOLDINGS CORPORATION, ET AL.
2. Arbitration/Reparation filed with: NASD
3. Date case initiated: 09/23/2003
4. Case number: 03-06918
5. Employing firm: MCGINN SMITH & COMPANY, INC.
6. Allegation(s): CHURNING; MISREPRESENTATIONS; OMISSIONS; SUITABILITY; MANIPULATION; BREACH OF CONTRACT
7. Principal product type: Mutual Fund(s)
 Other product types: UNSPECIFIED STOCKS
8. Alleged compensatory damages: \$2,903,125.00
9. Currently pending resolution: No
 Resolution: Dismissed
 Date resolved: 01/24/2007
10. Disposition details: ON JANUARY 24, 2007, CLAIMANTS DISMISSED ALL CLAIMS WITH PREJUDICE AGAINST MCGINN.