

*McGinn Smith
& Company Inc.*

Investment Bankers • Investment Brokers

6 Executive Park Dr.
Clifton Park, NY 12065
518-348-0060
Fax 518-348-0107
www.mcginnsmith.com

April 25, 2008

Mr. [REDACTED]
[REDACTED]
[REDACTED] TX77551-

Re: \$25000 First Excelsior Income Notes, LLC – Internal Investment # 6415
Registration: DCGT CUST IRA of [REDACTED] IRA R/O

Dear Mr. [REDACTED]

In our communication of January 25, 2008 we outlined for you the negative impact that the present credit crisis resulting from the sub-prime mortgage collapse was having on First Excelsior Income Notes (FEIN), LLC. We provided the background leading to the crisis and reasons why we felt it was likely to worsen before the markets were able to stabilize. We cited the tremendous losses that the major commercial and investment banks were being forced to take and that these losses were spreading to institutions worldwide and to credit markets far beyond the mortgage business. We mentioned that the major impact was on market liquidity and that debt holders were being forced to sell securities and investments at prices below fair market value in an effort to deleverage their balance sheets and to meet forced margin calls. Unfortunately, all the problems that we cited have become more acute, and by now the daily news brings repeated announcements of the adverse effects the crisis is having on the general economy and of major financial institutional failures such as the collapse of Bear Stearns, Inc.

The central theme for all fixed income investments and managed funds of such investments has been the inability to refinance their investments and thus be forced to cease or eliminate interest payments and distributions. Leading the way in this category has been the area of Auction Rate Securities (ARS) which are long term municipal bonds, corporate bonds, and preferred stocks that are traded at auctions that set the instrument's interest rate and ultimately the price of the security. The market in total is somewhere around \$320 billion and it is estimated that \$80 billion or 25% of the market has recently failed. These investments were often marketed as substitutes for money market accounts with a higher yield. Many businesses invested their excess cash in these instruments and now find themselves not only not receiving interest, but with no access to their cash as well. The good news is that the majority of the underlying investments are still paying interest, but the funds just are not able to refinance them at rates that allow them to pay investors their principal.

Since our last communication with you, two of our investments have been forced to eliminate their dividend or cease distributions. One was a result of their loss of refinancing from a bank that was a major lender to Countrywide Credit, the country's largest sub-prime mortgage lender and who suffered major losses from that relationship and had to withdraw their commitment. The other was a holder of only AAA mortgages and who in November assured us

MGS0011302

that they were at limited risk and the dividend was safe. In February, they were forced to sell most of their portfolio to meet margin calls and suffered losses that have wiped out their earnings and their ability to pay their dividend. This in turn has put increased pressure on our cash flow and our ability to meet our obligations. Consequently, we are being forced to eliminate the interest payment to the Junior Subordinated debt holders for this quarter.

In keeping with our goal to solve the longer term problem of capital preservation we have been working on two fronts. First, we are working with individual companies within our portfolio to help them gain access to capital that would allow them to operate during this crisis. I am pleased to report, that in two of our investments we have been successful and that I am confident that later in the year both of these companies will be successful in obtaining permanent financing that will bring liquidity back to our investment.


The second area is to restructure the Funds, or at least the Junior Subordinated debt, in order to have a plan that will provide investors with an eventual exit. The issues here are complex because of the need to preserve the rights of the Senior and Senior Subordinated Noteholders. We have engaged securities counsel to assist us with the restructuring, but they have not yet been willing to provide a legal opinion as to a particular course of action. One of the ideas that we are pursuing is that instead of a total restructuring that will carry the risk that the Senior Noteholders might find objectionable we will keep the structure intact, but offer Junior Subordinated Noteholders an opportunity to receive equity in other investments that will provide them an additional source of return for their investment in the FUNDS.

In addition to having the cash flow in the FUNDS recently reduced and therefore causing us to suspend the quarterly interest for the Junior Subordinated Noteholders, we have also been advised by counsel that distributions at this time quite probably reflect a return of capital and not interest, and therefore distributions might be considered an invasion of the principal due to the Senior and Senior Subordinated Noteholders. This is a result of not knowing how and where to price our investments in these very illiquid markets. We have also heard from several Junior Subordinated Noteholders that until market conditions become clearer, they would rather suspend their distributions which are taxable interest in order to preserve future distributions of return of capital which of course are not taxable.

We do expect to have a better picture by next quarter as to a specific plan of action available to us going forward and of course the hope that markets will at least stabilize and stop retreating. However, we repeat, we do not view this crisis to be easily settled or to exhaust itself anytime soon. There has been severe and long lasting damage to the U.S. and world financial markets that will require patience to work through.

As always, if there are any questions regarding your account or this memorandum, please contact your McGinn, Smith & Company representative.

Sincerely,



David L. Smith
Managing Member
MS Advisors, LLC

DLS/gbg

MGS0011301

First Advisory Income Notes, LLC

99 Pine Street
 Albany, NY 12207
 Phone 518-449-5131
 Fax 518-449-4894

October 22, 2008

 Re: \$ _____ First Advisory Income Notes _____ % due _____
 Internal Investment # _____
 Registration: _____

Dear _____:

This communication is being sent to investors of First Advisory Income Notes, LLC (the FUND) in each of the three classes of Notes, Senior, Senior Subordinated, and Junior maturing on November 15, 2008, November 15, 2008, and November 15, 2010 respectfully. The purpose of the communication is to apprise you of the status of your investment and also inform you of the restructuring plan that has been presented to the FUND's Trustee, McGinn, Smith Capital Holdings Corp. by the FUND's managing member, McGinn, Smith Advisors, LLC.

McGinn, Smith Advisors, LLC (MSA) has determined that as a result of losses incurred in the FUND's investments and the total illiquidity for the vast majority of the FUND's investments it is not possible to redeem the Notes on the due date of November 15, 2008 and will require a restructuring of all classes of Notes. In restructuring the notes, MSA has taken into account the responsibility of the Trustee to address both the principal and interest payments due to the Senior noteholders and therefore must reschedule future interest and principal payments for all three classes of noteholders, giving priority to the Senior noteholders. Based on best estimates of current cash flow and present liquidity, MSA has developed a plan that alters scheduled interest and principal payments for all three classes. All three classes are having their maturities extended and their interest payments reduced. MSA has the responsibility to manage the FUND consistent with the provisions of the note's indenture and in a manner that best protects the assets of the FUND. Accordingly, MSA will be presenting a plan outlined later in this communication that in its sole judgment provides for an orderly liquidation of assets, payment of reasonably expected cash flows, and gives priority to the Senior Noteholders over the Senior Subordinated Noteholders and the Junior Noteholders. The plan takes into account that current conditions in financial credit markets presently offer

MGSON16102

no liquidity for almost any financial instrument other than U.S. Treasury Notes and Bonds. The investments in the FUND are primarily non public securities that presently have no secondary market for resale and in fact do not have the ability to even establish a fair market value. The plan makes assumptions that cannot be relied upon with any certainty. Events in the US and world financial markets have been changing with a degree of volatility never before experienced at any time in history. The Credit market crisis that started approximately 18 months ago with the troubles in the sub prime mortgage market has accelerated to the point that threatens to impair the entire world's financial foundations and has spread from Wall Street to Main Street. Under these conditions, any planning has to be subject to changing events. We have assumed that markets will continue to be unstable and primarily illiquid for at least two years. The damage to the world's banking system and investment markets is very severe and in our judgment will dramatically change the nature of markets for years to come. While governments, worldwide are rushing to shore up the system with liquidity and taking steps to restore confidence the fact is that no one knows what the ultimate impact of their actions and the reaction of markets will be. What was initially a financial crisis is now a full blown worldwide economic crisis with unknown consequences. MSA is fully confident that financial markets will eventually stabilize and that investor confidence and liquidity will be restored. Anything less is just not acceptable, and therefore the allocation of resources, new efforts of governmental oversight and regulation, and cooperation on a global scale of financial markets is expected to ultimately resolve the present crisis. But the aforementioned intervention in markets will certainly change the way markets work and with any change comes the need for patience and time for investors to first understand and then accept those changes.

As I write this memo, the US Stock Market has undergone incredible volatility in the last two weeks and has lost approximately 20% of its value. This of course is subsequent to the "rescue bill" or formally the "Emergency Economic Stabilization Act of 2008" signed into law October 3rd, after several weeks of Congressional wrangling. While in my opinion this was a necessary first step, the idea in some circles that its ultimate passage would bring instant cure to what was ailing the credit markets was ill founded. The stock market's decline is just a symptom of the credit crisis, and while I am in total sympathy for all of us suffering market losses, the real issue is the total lack of liquidity in the credit markets. This is the major issue that impacts your investment in the FUND. Lack of liquidity simply means that there are no efficient markets to buy and sell investments because investors have lost confidence that they can fairly judge what those investments are worth. As the events of the mortgage markets and eventually all fixed income markets played out over the last 18 months, investors repeatedly got burned on making a decision to invest. A sophisticated hedge fund investor made a \$1.8 billion investment last April in Washington Mutual, the country's largest saving bank, only to see it reduced to zero after being taken over by the FDIC last month. National political leaders assured us this summer that Fannie Mae and Freddie Mac, our two leading GSE (Government Sponsored Enterprises) mortgage lenders, were financially sound only to be declared bankrupt and taken over by the FDIC in mid September. Three of the five largest investment banks, Bear Stearns, Merrill Lynch, and Lehman Brothers no longer exist. AIG, the world's largest insurance company required an \$85 billion cash infusion

and equity investors were wiped out. Hundreds of banks and mortgage companies have been closed including the forced sales of Wachovia to Wells Fargo and Citi Corp. Virtually all financial institutions have had to either cut or eliminate dividends in order to strengthen their balance sheets. Other evidence of the cessation of liquidity in the credit markets include:

- 1.) billion dollar hedge funds such as D.B. Zwirn and Pardus Capital Management refused to allow investors to redeem because they were unable to sell assets to raise cash
- 2.) last week \$120 billion of commercial paper not marketable, causing companies to lose liquidity for normal operating functions like payroll
- 3.) despite a lowering of interest rates, banks refusing to lend overnight to other banks from fear of not knowing the financial soundness of the borrower
- 4.) Reserve Money Market Fund assets fall below the one dollar redemption price and overnight withdrawal of \$40 billion of the \$60 billion in assets forces the fund to cease redemptions
- 5.) The College Fund, who manages assets for 1500 college endowments and their operating funds restrict access to their money market fund to 38% of their deposits and state that 100% of your capital won't be available until 2010

There are hundreds of other examples that have occurred and demonstrate the liquidity crisis. Most of you are aware of this because the media has been giving this story full attention for months. The reason that it is important for you to be aware of the freezing of the credit markets is because it impacts the investments in the FUND in a variety of ways. First, if the most liquid and strongest investment assets such as money market funds, commercial paper, and mortgages are having difficulty in finding buyers, than the ability for almost all other assets to have liquidity is impossible. Second, if forced to sell these assets in order to redeem the notes, the market price would be far below fair market value. As an example, Merrill Lynch in July, in an effort to get some of these assets off their balance sheet and receive cash, sold \$30 billion worth for just 22 cents on the dollar. And even then, the buyer forced Merrill Lynch to finance 75% of the purchase with a non-recourse loan which meant the true cost of the purchase was just 6 cents on the dollar. Third, many of the assets, including loans of the companies in our portfolio, were dependent on subsequent financing in order to repay us. Often, our loans were bridge loans to companies until they could get permanent financing through stock or bond offerings. The initial public offerings (IPO's) hit a 5 year low in July and included only some of the most visible companies in the world such as Visa International. Of the 25 billion dollars in offerings through July, Visa accounted for 18 billion dollars, leaving just 6 billion dollars for the other 23 companies taken public. Thus, the companies in our portfolio have been totally shut out, and in several instances the capital raises included money to satisfy their debts to us or to provide us with liquidity for our investments. When these offerings will once again be available is not determinable, but it is not likely to be anytime soon.

So what is next for what former Chairman of the Federal Reserve, Alan Greenspan, has identified as the once in a century financial crisis? First, the Federal Government continues to be active through all of its agencies. As mentioned earlier, Congress recently passed a bill that is to provide \$700 billion dollars to help purchase some of these distressed assets and restore liquidity to the banks so that they can begin to make the loans and provide the credit that allows our economy to begin to function normally. The SEC has decreed that short selling in financial stocks is no longer permitted until further notice. The FDIC has instituted an insurance program for money market funds. They have raised FDIC insurance on bank deposits from \$100,000 per account to \$250,000. This week they have opened the discount window, normally reserved only for banks, to allow for the purchase of commercial paper. Those actions are designed to both restore a semblance of confidence and provide sufficient liquidity for the most critical markets of our economy. However, time is what ultimately is required for banks and financial institutions to deleverage their balance sheets and restore sufficient liquidity that will allow them to once again start lending to businesses and consumers. J.P. Morgan, one of our leading financial institutions, believes that credit losses will eventually exceed 4 trillion dollars and that the housing price decline will bottom out down 30% from 2006 levels and last until 2010.

MSA has tried to evaluate and model the impact of the current crisis on its own investments and put forth a plan that provides for all classes of note holders to first get their principal back and second provide them with some return on their investment in the interim. We have communicated with some of you earlier in the year indicating that MS was working on a plan to meet those objectives, mindful of the Senior notes and the subordination issues of the other two classes. Anything that we would have proposed earlier this year certainly would have already proven to be too optimistic. Thus, our current plan we believe to be very achievable, and we are hopeful that as markets and liquidity are restored to a more normal operational mode, we in fact may be able to accelerate the repayment. However, we must emphasize that we are in uncharted waters and what we have learned from the last 18 months is to expect the unexpected.

The plan calls for immediate implementation on the next interest payment due date. We have taken great care, and with consultation with our attorneys, to present a plan that we believe to be fair, protect all classes, and still give priority to the rule of seniority. We understand that many of you have personal liquidity issues due to retirement or other financial needs and this plan may put a personal hardship on you. MSA and its affiliate McGinn, Smith & Co. will be making its own sacrifice. Management fees, commissions, and administrative fees aggregate approximately \$2,750,000 per year for all of our FUNDS that are part of this reorganization. In an effort to improve liquidity we have agreed to forfeit all such future fees while this reorganization plan is in effect. Legal fees attributed to defense of our actions and fees incurred in the pursuit of recovering any of our investments will be the responsibility of the FUNDS. The plan will be implemented for the benefit of all investors. Obviously, to be fair and acceptable to all investors, we cannot entertain a different approach for individual investors. If circumstances change in the future, hopefully for the better, we reserve the right to restructure and implement a new plan.

In conclusion, we thank you in advance for your patience and understanding of the very difficult position that we are in. If there are any questions regarding your accounts or this memorandum, please contact your McGinn, Smith & Company representative.

Sincerely,

David L. Smith
Managing Partner
McGinn, Smith Advisors

DLS/gg

MGS0016106

The attached is the restructuring plan for First Advisory Income Notes, LLC (FAIN) for the Senior, Senior Subordinated, and Junior Noteholders. This Schedule makes no attempt to configure the benefit of asset sales beyond approximately 8% per year of the capital base for the first 6 years due to the manager's inability to predict the timing and price received for asset sales. While we believe that the market environment will remain difficult for the first 2-3 years for asset sales, we remain optimistic that the market should improve subsequent to that period. Fifty percent of the proceeds of those sales will be a return of principal to the Senior noteholders until they are paid in full. Subsequently, the same 50% of asset sales will be returned as principal to the Senior Subordinated noteholders. When both Senior and Senior Subordinated noteholders are paid out in full, distribution of future sales to the Junior noteholders will be at the discretion of MSA, deemed to be consistent with successfully being able to return full principal to those Junior noteholders.



**First Advisory Income Notes, LLC
Restructuring Plan of October 2008**

I. Senior Notes 7%, due November 15, 2008

Payments: November 15th
February 15th
May 15th
August 15th

1. Starting November 15, 2008 through August 15, 2009
Annual rate of 5%, interest only
2. Starting November 15, 2009 through November 15, 2014
Annual rate of 5%
10 year amortization
3. Maturity – November 15, 2014

Example of \$100,000 note:

1st year: 5% interest
4 quarterly payments of \$1,250

2nd – 6th year - 5% interest, 10 year amortization
20 quarterly payments of \$3,192.14

Maturity payment - \$56,179.51

Note: 50% of all liquidated investment proceeds will be applied immediately to principal.

II. Senior Subordinated Notes 7.75%, due November 15, 2008

Payments: November 15th
February 15th
May 15th
August 15th

1. 1st payment November 15, 2010 through August 15, 2013
Annual rate of 3%,
10 year amortization
2. Starting November 15, 2013 through August 15, 2020
Annual rate of 6%
7 year amortization

Final payment November 15, 2020

Example of \$100,000 note:

Year 1-2	no payments
Year 3-5	3% interest, 10 year amortization 12 quarterly payments of \$2,903.02
Year 6-12	6% interest, 7 years amortization 28 quarterly payments of \$3,215.20

Note: Starting in year 7, 50% of all liquidated investment proceeds will be applied immediately to principal.

III. Junior Subordinated Notes 10.25%, due November 15, 2010

Payments: November 15th
February 15th
May 15th
August 15th

1. 1st payment November 15, 2010 through August 15, 2014
5% principal only
2. Starting November 15, 2014 through August 15, 2023
Annual rate of 5%,
15 year amortization
3. Maturity August 15, 2023

Example of \$100,000 note:

Year 1-2	no payments
Year 3-6	5% principal only 16 quarterly payments of \$1,250
Year 7-15	5% cpn, 15 year amortization 36 payments of \$1,903.19

Maturity payment - \$39,251.93

MGS0016101

*McGinn Smith
Transaction Funding Corp.*

Timothy M. McGinn
Chairman & CEO

99 Pine Street
Albany, NY 12207
518-449-5131
Fax 518-320-1033
tim.mcginn@mcginnsmith.com

March 4, 2009

To: Noteholders of McGinn, Smith Transaction Funding Corp.

We are pleased to have distributed on March 2, a contingent interest payment, which when added to floor interest has created an aggregate return of 16.15% for 2008.

As everyone knows, 2008 was a most difficult year in the economy, with particular pain felt in the investment banking and capital market sectors.

McGinn, Smith Transaction Funding Corp. assisted in doing five transactions during the period of April 30 – December 31. These transactions created aggregate investment banking fees of \$1,440,000. Of the \$10,000,000 offering, we closed on \$6,875,000. As you may recall, contingent interest is equal to 30% of the first \$2,500,000 of investment banking fees earned by McGinn, Smith. Consequently, the contingent interest earned was:

\$	1,440,000
x	.30
x	<u>.6875</u>
\$	297,000

The contingent interest of \$297,000 on a time weighted basis added 8.15% to the floor interest of 8.00%, yielding a total return of 16.15%.

We have started 2009 with a transaction which has contributed \$625,000 of investment banking fees to McGinn, Smith. That transaction alone will create contingent interest of approximately \$129,000 adding 188 basis points to the total return for 2009.

Noteholders of McGinn, Smith Transaction Funding Corp.

March 4, 2009

Furthermore, to the extent that any transaction effected carries warrants or other equity components, 30 percent of the warrants retained by McGinn, Smith & Co., Inc. will be distributed on a pro-rata basis to noteholders of McGinn, Smith Transaction Funding Corp.

We thank you for your confidence.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. McGinn", with a stylized flourish at the end.

Timothy M. McGinn
Chairman & CEO
McGinn, Smith Transaction Funding Corp

tmm:cb

**McGinnSmith
& Company, Inc.**

Investment Bankers • Investment Brokers

99 Pine Street
Albany, NY 12207
518-449-5131
Fax 518-449-4894
www.mcginnsmith.com

To: Tom Grygiel, Associate Examiner
From: David L. Smith, CEO, McGinn, Smith & Company, Inc.
Date: November 4, 2008

RE: Affiliations

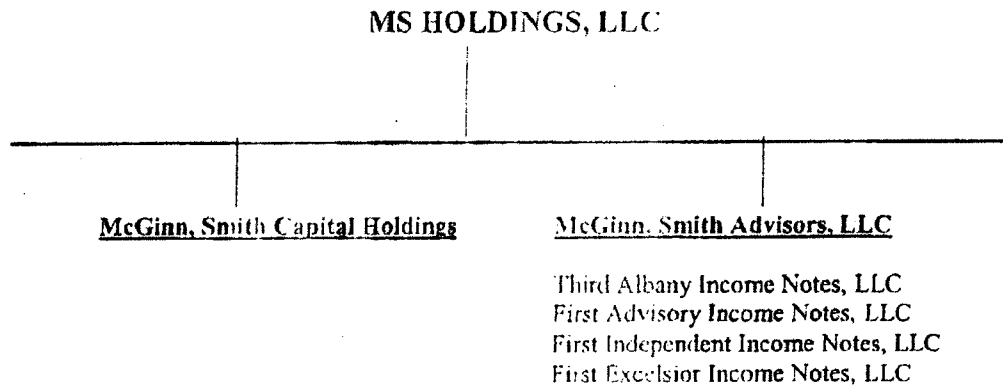
Dear Tom,

You have asked that I state for the record why my involvement in the following entities are not considered outside employment and therefore be required to be disclosed on my U-4:

- a. MS Partners
- b. MS Capital Holdings
- c. CMS Financial Services
- d. First Independent Income Notes, LLC
First Excelsior Income Notes, LLC
Third Albany Income Notes, LLC
First Advisory Income Notes, LLC

All of these entities are affiliates of McGinn, Smith & Company, Inc. and are related to the duties and responsibilities that I share with McGinn, Smith & Company, Inc.

The following organizational chart demonstrates the relationship between McGinn, Smith & Company, Inc. and the various affiliates:



MS Holdings, LLC – acts as the holding Company for McGinn, Smith Capital Holdings, Inc. and McGinn, Smith Advisors, LLC

Ownership in MS Holdings, LLC:

- David L. Smith, President 50%
- Timothy M. McGinn, Chairman of the Board 30%
- Thomas E. Livingston, Vice President
- McGinn, Smith Capital Holdings, Inc. 100% owned by MS Holdings, LLC

McGinn, Smith Advisors, LLC 100% owned by MS Holdings, LLC acts as the sole managing member of:


- First Independent Income, Notes, LLC
- First Excelsior Income Notes, LLC
- Third Albany Income Notes, LLC
- First Advisory Income Notes, LLC

In addition, there are two other affiliates that are not owned by, MS Holdings LLC. They are:

1. MS Partners - a general partnership between David L. Smith (50%) and Timothy M. McGinn (50%). This entity has existed since 1980 and has held private and public investments over that period.
 2. CMS Financial Services, Inc. – formed in 2007 to operate as an insurance holding corporation, primarily in the long term care insurance business. McGinn, Smith Capital Holdings will have voting control of 30.32% of the common stock of CMS Financial Services, Inc.
- David L. Smith Serves as the Chairman of the Board
 - Timothy M. McGinn serves as Vice Chairman
- McGinn, Smith & Co., Inc. acted as placement agent for an offering in October 2007 for CMS and presently serves as CMS's investment bankers.

Through its affiliate status in all of these entities, David L. Smith does not consider these outside businesses, but rather direct business relationships with the named entities.

Sincerely,



David L. Smith
President

Buchanan Ingersoll & Rooney PC
Attorneys & Government Relations Professionals

Francis X. Taney, Jr.
215 665 3846
francis.taney@bipc.com

Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555
T 215 665 8700
F 215 665 8760
www.buchananingersoll.com

April 15, 2009

VIA UPS

Mr. William F. Lex
Lex and Smith Associates, Ltd.
King Of Prussia Medical Center
491 Allendale Road, Suite 207
King of Prussia, PA 19406

Mr. David L. Smith
First Advisory Income Notes, LLC
Third Albany Income Notes, LLC
McGinn, Smith & Co, Inc.
McGinn, Smith Advisors, LLC
McGinn, Smith Capital Holdings Company
90 Pine Street
Albany, NY 12208

Re: [REDACTED]

Dear Messrs. Lex and Smith:

We represent Dr. and Mrs. [REDACTED], husband and wife, in connection with the securities that you sold to the [REDACTED].

In or about November, 2004, the [REDACTED] asked Mr. Lex for advice with respect to their investments. The [REDACTED] were neither sophisticated nor accredited investors, and because they had known Mr. Lex for many years were relying upon Mr. Lex's judgment and advice as their investment advisor. At all relevant times Mr. Lex owed a fiduciary duty to the [REDACTED] as their investment advisor.

The [REDACTED] explained to Mr. Lex at the time that they sought to make very conservative, safe investments, and that they could not afford to lose the principal amount of their investment. Mr. Lex told the [REDACTED] that he would place them in investments consistent with the [REDACTED] objectives in this regard. Mr. Lex then advised the [REDACTED] to invest in two entities known as First Albany Income Notes, LLC ("First Albany") and Third Albany Income Notes, LLC ("Third Albany"). Mr. Lex described both of these investments as safe, conservative, and appropriate for the [REDACTED] given their situation and stated investment objectives.

Mr. David L. Smith
Mr. William F. Lex
April 15, 2009
Page - 2 -

In or about November, 2004, in reliance on Mr. Lex's representations, the [REDACTED] made a \$30,000 investment in First Albany and a \$50,000 investment in Third Albany. The [REDACTED] subsequently made a second investment in First Albany in the amount of \$10,000, again in reliance on Mr. Lex's advice. In exchange for their investments, the [REDACTED] received notes from First Albany and Third Albany providing for the payment of interest at fixed rates and the return of their principal upon the maturity of the notes.

Contrary to Mr. Lex's misrepresentations, these investments were completely inappropriate and unsuitable for the [REDACTED] purposes. The investments were, *inter alia*, high risk, uninsured investments in connection with which the entirety of the [REDACTED] principal would be at risk. At the same time, the terms of the investments limited the [REDACTED] potential gains from the investment to a fixed return in the form of interest payments at relatively low rates. Thus, apart from being inappropriately risky investments for the [REDACTED], the investments did not offer any prospect of a return on investment commensurate with their high risk.

We also understand that the sole and managing member of both First Albany and Third Albany is McGinn, Smith Advisors, LLC, a wholly-owned subsidiary of McGinn, Smith Holdings, LLC and an affiliate of the broker-dealer for this transaction, McGinn, Smith & Co., Inc. The [REDACTED] were not aware of these relationships at the time they made their investments. Mr. Lex utterly failed to make the disclosures required in this situation, especially in light of the [REDACTED] unaccredited status.

Finally, we are advised that in or about October, 2008, First Albany and Third Albany notified the [REDACTED] that neither entity would be able to honor its obligations to the [REDACTED]. First Albany and Third Albany both purported to unilaterally change the terms of the [REDACTED] investments to lengthen the terms of the notes and to reduce the rate of interest payable to the [REDACTED] on the notes.

The [REDACTED] demand that you arrange for the immediate return of the principal of their investments along with all accrued interest. All of the notes that the [REDACTED] hold have matured, and First Albany and Third Albany have no right to unilaterally change the terms of the [REDACTED] investment.

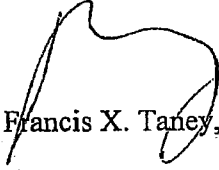
Moreover, by misrepresenting the nature of these investments to the [REDACTED] and by recommending that the [REDACTED] make these investments, Mr. Lex, *inter alia*, violated SEC Rule 10b-5 and breached his breach of his fiduciary duty to the [REDACTED]. In addition, in light of the gross unsuitability of the investments at issue here, Mr. Lex and McGinn, Smith & Co., Inc., as broker-dealer for the transaction, violated FINRA Rule 2310. Further, it is clear from the circumstances that Lex & Smith Associates, Ltd and the various McGinn, Smith entities all played significant roles in the fraudulent marketing and sale of the securities at issue, and are therefore liable to the [REDACTED] under SEC Rule 10b-5 as well.

Mr. David L. Smith
Mr. William F. Lex
April 15, 2009
Page - 3 -

If you do not comply with the [REDACTED] demand within 10 days of the date of this letter, the [REDACTED] will proceed with appropriate legal action to protect their interest. In connection with this action, the [REDACTED] will sue in their own capacities and as putative representatives of a class of people similarly situated to them in connection with your fraudulent marketing and sale of the securities at issue.

Please be guided accordingly.

Very truly yours,



Francis X. Taney, Jr.

FXT/lm

McGinn, Smith & Co., Inc.
Banking Transactions: 01/01/03 thru 02/02/09

Date Offered	Transaction Name	Amount Offered	Amount Sold	Maturity Date	
01/01/03	Atlantis Strategic	\$25,000,000	\$1,687,500	N/A Equity	
09/01/03	CCI Group	\$10,000,000	\$6,754,900	08/31/08	
11/01/03	Atlantis Income	\$7,500,000	\$2,240,750	12/15/04	12/15/08
07/01/04	Pine Stree Capital Partners	\$50,000,000	\$28,000,000	12/31/09	
09/01/04	Real Estate Capital Partners, LLC	\$10,000,000	\$2,241,000	N/A Equity	
03/01/05	Biodel	\$2,800,000	\$2,800,000	N/A Equity	
07/15/05	Vigilant	\$1,300,000	\$1,300,000	N/A Equity	
08/01/05	74 State	\$1,250,000	\$1,250,000	N/A Equity	
01/01/06	Hearthstone	\$1,900,000	\$1,900,000	N/A Equity	
04/01/06	Biodel	\$700,000	\$700,000	N/A Equity	
05/16/06	Exchange Boulevard	\$2,432,500	\$2,300,000	N/A Equity	
05/30/06	Vidsoft	\$4,000,000	\$1,700,000	2 yr post closing	
10/11/06	The Club at Bridgemill	\$1,375,000	\$1,375,000	N/A Equity	
11/13/06	TDM Cable Funding LLC	\$3,550,000	\$3,550,000	11/15/08	11/15/10
02/23/07	TDM Verifier Trust 07	\$3,475,000	\$3,475,000	12/15/08	12/15/09
04/01/07	Vigilant	\$400,000	\$400,000	15 months post closing	
04/15/07	L-Path	\$1,700,000	\$1,700,000	N/A Equity	
05/19/07	Firstline Sr Trust 07	\$1,850,000	\$1,850,000	09/01/10	
05/19/07	Firstline Sr Trust 08	\$1,867,000	\$1,867,000	10/01/11	
06/15/07	Xilas	\$2,665,000	\$2,665,000	N/A Equity	
07/16/07	TDM Luxury Cruise 07	\$3,630,000	\$3,630,000	09/01/11	
10/19/07	Firstline Sr Trust 07 Series B	\$1,435,000	\$1,435,000	10/01/11	
10/19/07	Firstline Jr Trust 07 Series B	\$2,115,000	\$2,115,000	10/01/12	
12/17/07	TDM Verifier Trust 08	\$3,850,000	\$3,850,000	06/30/09	12/31/10
02/06/08	CVN	\$2,150,000	\$2,150,000	N/A Equity	
03/01/08	IP Investors LLC	\$975,000	\$975,000	N/A Equity	
04/22/08	McGinn, Smith Transaction Funding Corp.	\$10,000,000	\$6,875,000	07/01/12	
05/30/08	Integrated Excellence Sr Trust 08	\$900,000	\$900,000	06/01/13	
05/30/08	Integrated Excellence Jr Trust 08	\$580,000	\$580,000	12/01/13	
08/01/08	CVN	\$1,365,000	\$1,365,000	N/A Equity	
09/24/08	Fortress Trust 08	\$3,060,000	\$3,060,000	10/01/11	
11/17/08	TDM Cable Trust 06	\$1,380,000	\$1,380,000	12/15/10	
12/15/08	TDM Verifier Trust 09	\$1,300,000	\$1,300,000	12/31/11	
01/19/09	TDMM Cable Sr Trust 09	\$1,550,000	\$1,550,000	02/01/12	
01/19/09	TDMM Cable Jr Trust 09	\$1,325,000	\$1,325,000	08/01/14	
02/02/09	TDM Verifier Trust 07R	\$2,100,000	\$1,525,000	08/15/10	
TOTALS:		\$171,479,500	\$103,771,150		

MGS0000005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

**ANNUAL AUDITED REPORT
FORM X-17A-5
PART III**

OMB APPROVAL	
OMB Number:	3235-0123
Expires:	February 28, 2010
Estimated average burden hours per response.....	12.00

SEC FILE NUMBER
8- 25374

FACING PAGE

**Information Required of Brokers and Dealers Pursuant to Section 17 of the
Securities Exchange Act of 1934 and Rule 17a-5 Thereunder**

REPORT FOR THE PERIOD BEGINNING 01/01/08 AND ENDING 12/31/08
MM/DD/YY MM/DD/YY

A. REGISTRANT IDENTIFICATION

NAME OF BROKER-DEALER:
McGinn, Smith & Co., Inc.
ADDRESS OF PRINCIPAL PLACE OF BUSINESS: (Do not use P.O. Box No.)
99 Pine Street, 5th Floor

OFFICIAL USE ONLY
FIRM I.D. NO.

Albany New York 12207
(City) (State) (Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT IN REGARD TO THIS REPORT
David L. Smith, President (518) 449-5131
(Area Code - Telephone Number)

B. ACCOUNTANT IDENTIFICATION

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this Report*

Piaker & Lyons

(Name - if individual, state last, first, middle name)

572 South Salina Street Syracuse New York 13202
(Address) (City) (State) (Zip Code)

CHECK ONE:

- ☒ Certified Public Accountant
☐ Public Accountant
☐ Accountant not resident in United States or any of its possessions.

FOR OFFICIAL USE ONLY	RECEIVED
-----------------------	----------

*Claims for exemption from the requirement that the annual report be covered by the opinion of an independent public accountant must be supported by a statement of facts and circumstances relied on as the basis for the exemption. See Section 240.17a-5(e)(2)

FEB 26 2009
U.S. SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
BROKER-DEALER INSPECTION PROGRAM

SEC 1410 (06-02)

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

McGINN, SMITH & CO., INC.

FINANCIAL STATEMENTS

DECEMBER 31, 2008

CONTENTS

**McGINN, SMITH & CO., INC.
FINANCIAL STATEMENTS
DECEMBER 31, 2008**

	PAGE
<u>FINANCIAL STATEMENTS</u>	
INDEPENDENT AUDITORS' REPORT.....	3
STATEMENTS OF FINANCIAL CONDITION.....	4
STATEMENTS OF OPERATIONS.....	5
STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY.....	6
STATEMENTS OF CASH FLOWS.....	7
NOTES TO FINANCIAL STATEMENTS.....	8
<u>SUPPLEMENTAL INFORMATION</u>	
INDEPENDENT AUDITORS' REPORT ON SUPPLEMENTAL INFORMATION.....	9
COMPUTATIONS OF AGGREGATE INDEBTEDNESS AND NET CAPITAL UNDER RULE 15c3-1.....	10
RECONCILIATIONS OF NET CAPITAL TO FORM X-17a-5.....	11



INDEPENDENT AUDITORS' REPORT

To the Board of Directors
McGinn, Smith & Co., Inc.

We have audited the accompanying statements of financial condition of **McGINN, SMITH & CO., INC.** (a New York corporation) as of December 31, 2008 and 2007, and the related statements of operations, changes in stockholders' equity, and cash flows for the years then ended that you are filing pursuant to rule 17a-5 under the Securities Exchange Act of 1934. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of McGinn, Smith & Co., Inc. as of December 31, 2008 and 2007, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 11 to the financial statements, the Company's significant operating losses raise substantial doubt about its ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

PIAKER & LYONS

Syracuse, New York
February 16, 2009

McGINN, SMITH & CO., INC.**STATEMENTS OF FINANCIAL CONDITION
DECEMBER 31, 2008 AND 2007****ASSETS**

	<u>2008</u>	<u>2007</u>
Cash	\$ 154,278	\$ 132,757
Marketable Securities	94,606	2,028,624
Not Readily Marketable Investments, at Estimated Fair Market Value	145,144	145,146
Receivables – Clearing Agent and Other	316,725	376,509
Receivables – Corporate Income Tax Refunds	345,000	-
Advances Due From Employees	344,485	357,756
Notes Receivable – Affiliates	218,675	620,184
Property, Equipment, and Software – Net	332,977	356,350
Cash Surrender Value – Life Insurance	172,253	132,787
Prepaid Expenses and Deposits	<u>196,799</u>	<u>486,807</u>
TOTAL ASSETS	\$ <u>2,320,942</u>	\$ <u>4,636,920</u>

The Notes to Financial Statements are an integral part of this statement.

(continued on the following page)

McGINN, SMITH & CO., INC.**STATEMENTS OF FINANCIAL CONDITION
DECEMBER 31, 2008 AND 2007****LIABILITIES AND STOCKHOLDERS' EQUITY**

	<u>2008</u>	<u>2007</u>
LIABILITIES		
Accounts Payable and Accrued Expenses	\$ 58,310	\$ 612,335
Accrued Retirement Plan Expense	41,071	65,693
Commissions Payable to Brokers	156,652	295,888
Dividends Payable	61,404	59,377
Income Taxes Payable – Deferred	<u>-</u>	<u>666,100</u>
TOTAL LIABILITIES	<u>317,437</u>	<u>1,699,393</u>
STOCKHOLDERS' EQUITY		
Preferred Stock – 1987 Series - \$100 Par Value – 30,000 Shares Authorized and Issued, 30,000 and 29,800 Shares Outstanding, Respectively	3,000,000	3,000,000
Preferred Stock – 1992 Series - \$100 Par Value – 7,500 Shares Authorized and Issued, No Shares Outstanding	750,000	750,000
Preferred Stock – 2008 Series - \$100 Par Value – 15,000 Shares Authorized, 11,500 Shares Issued and Outstanding	1,150,000	-
Common Stock - \$.01 Par Value – 2,000,000 Shares Authorized – 1,000,000 Shares Issued and Outstanding	10,000	10,000
Additional Paid in Capital	-	1,183
Dividend Payments in Excess of Capital	(235,677)	-
Retained Earnings (Deficit)	<u>(1,920,818)</u>	<u>(53,656)</u>
	2,753,505	3,707,527
Less: Preferred Stock in Treasury – At Cost: 1987 Series – -0- and 200 Shares at December 31, 2008 and 2007, Respectively	-	20,000
1992 Series – 7,500 Shares	<u>750,000</u>	<u>750,000</u>
TOTAL STOCKHOLDERS' EQUITY	<u>2,003,505</u>	<u>2,937,527</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 2,320,942</u>	<u>\$ 4,636,920</u>

The Notes to Financial Statements are an integral part of this statement.

McGINN, SMITH & CO., INC.**STATEMENTS OF OPERATIONS
FOR THE YEARS ENDED DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
REVENUES		
Commissions	\$ 2,988,986	\$ 3,920,668
Investment Banking	1,570,224	2,815,116
Advisory Fees	2,866,038	2,545,397
Interest and Dividends	25,553	61,080
Gain on Securities – Net	<u>57,407</u>	<u>1,260,449</u>
TOTAL REVENUES	<u>7,508,208</u>	<u>10,602,710</u>
EXPENSES		
Employee Compensation and Benefits	6,385,339	6,282,076
Commissions and Floor Brokerage	1,212,035	985,603
Communications	594,892	472,091
Interest	3,875	132,042
Fees and Permits	103,460	92,924
Other Operating Expenses	<u>2,081,177</u>	<u>2,058,630</u>
TOTAL EXPENSES	<u>10,380,778</u>	<u>10,023,366</u>
INCOME (LOSS) BEFORE TAXES	(2,872,570)	579,344
PROVISION (CREDIT) FOR INCOME TAXES	(<u>1,005,408</u>)	<u>263,976</u>
NET INCOME (LOSS)	\$(<u>1,867,162</u>)	\$ <u>315,368</u>

The Notes to Financial Statements are an integral part of this statement.

MCGINN, SMITH & CO., INC.

STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
FOR THE YEARS ENDED DECEMBER 31, 2008 AND 2007

	Capital Stock			Additional Paid-In Capital	Dividend Payments In Excess of Capital	Retained Earnings (Deficit)	Treasury Stock		Total Stockholders' Equity
	1987 Series Preferred	1992 Series Preferred	2008 Series Preferred				1987 Series Preferred	1992 Series Preferred	
BALANCE - JANUARY 1, 2007	\$ 3,000,000	\$ 750,000	\$ -	\$ 1,183	\$ -	\$ (130,788)	\$ (33,000)	\$ (750,000)	\$ 2,847,395
Dividends	-	-	-	-	-	(238,236)	-	-	(238,236)
Sale of Preferred Stock	-	-	-	-	-	-	13,000	-	13,000
Net Income	-	-	-	-	-	315,368	-	-	315,368
BALANCE - DECEMBER 31, 2007	3,000,000	750,000	-	1,183	-	(53,656)	(20,000)	(750,000)	2,937,527
Dividends	-	-	-	(1,183)	(235,677)	-	-	-	(236,860)
Sale of Preferred Stock	-	-	1,150,000	-	-	-	20,000	-	1,170,000
Net Loss	-	-	-	-	-	(1,867,162)	-	-	(1,867,162)
BALANCE - DECEMBER 31, 2008	\$ 3,000,000	\$ 750,000	\$ 1,150,000	\$ -	\$ (235,677)	\$ (1,920,818)	\$ -	\$ (750,000)	\$ 2,003,505

The Notes to Financial Statements are an integral part of this statement.

McGINN, SMITH & CO., INC.**STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
Cash Flows From Operating Activities:		
Net Income (Loss)	<u>\$(1,867,162)</u>	<u>\$ 315,368</u>
Adjustments to Reconcile Net Income (Loss) to Net Cash Used in Operating Activities:		
Depreciation and Amortization	82,397	88,489
Deferred Income Taxes	(666,100)	239,900
Changes in Operating Assets and Liabilities:		
Securities and Investments	1,934,020	(1,338,104)
Receivables – Clearing Agent and Other	59,784	(435,874)
Receivables – Corporate Income Tax Refunds	(345,000)	-
Prepaid Expenses and Deposits	290,008	(101,282)
Accounts Payable and Accrued Expenses	(554,025)	425,083
Accrued Retirement Plan Expense	(24,622)	7,654
Commissions Payable to Brokers	<u>(139,236)</u>	<u>80,035</u>
Total Adjustments	<u>637,226</u>	<u>(1,034,099)</u>
Net Cash Used in Operating Activities	<u>\$(1,229,936)</u>	<u>\$ (718,731)</u>

The Notes to Financial Statements are an integral part of this statement.

(continued on the following page)

McGINN, SMITH & CO., INC.**STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
Cash Flows From Investing Activities:		
Purchases of Property and Equipment	\$(59,024)	\$(30,191)
Cash Surrender Value – Officers Life Insurance	(39,466)	(35,457)
Repayments From Employee Advances	13,271	30,121
Repayments From Affiliates	<u>401,509</u>	<u>343,658</u>
Cash Provided by Investing Activities	<u>316,290</u>	<u>308,131</u>
Cash Flows From Financing Activities:		
Principal Payments Made on Borrowings	-	(82,225)
Dividends Paid	(234,833)	(239,683)
Sale of 2008 Series Preferred Stock	1,150,000	-
Sale of 1987 Series Preferred Treasury Stock	<u>20,000</u>	<u>13,000</u>
Net Cash Provided by (Used in) Financing Activities	<u>935,167</u>	<u>(308,908)</u>
Net Increase (Decrease) in Cash and Cash Equivalents	21,521	(719,508)
Cash – Beginning of Year	<u>132,757</u>	<u>852,265</u>
Cash – End of Year	<u>\$ 154,278</u>	<u>\$ 132,757</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Interest Paid	\$ 3,875	\$ 132,042
Corporate Income Tax Payments	8,225	17,624

The Notes to Financial Statements are an integral part of this statement.

McGINN, SMITH & CO., INC.

**NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2008**

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Company Operations and Concentration of Credit Risk – McGinn, Smith & Co., Inc. (Company), a corporation organized in the state of New York during September 1980, is engaged in the securities and investment brokerage business in Albany and New York City, New York. The company is a broker-dealer registered with the Securities and Exchange Commission (SEC) and is a member of the National Association of Securities Dealers (NASD). The Company monitors its cash balances which at times exceed FDIC insurance coverages.

Accounting Method – The Company's financial statements are prepared using the accrual basis as specified in the AICPA's Audit and Accounting Guide – "Audits of Brokers and Dealers in Securities." The Company maintains its records for income tax reporting purposes on the cash basis. Transactions in securities are recorded on a trade date basis for financial statements and tax purposes. Amounts receivable and payable for securities transactions that have not reached their contractual settlement date are recorded net on the statement of financial condition.

Customer Accounts – Fully Disclosed Basis – The Company operates pursuant to paragraph (k)(2)(B) of Rule 15c3-3 and does not carry customer accounts or clear customer transactions. Accordingly, all customer transactions are executed and cleared on behalf of the Company by National Financial Services, LLC (NFS), on a fully disclosed basis. The Company's agreement with NFS provides that as clearing broker, NFS will make and keep such records of the transactions effected and cleared in the customer accounts as are customarily made and kept by a clearing broker pursuant to the requirements of Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934, as amended, and will perform all services customarily incident thereto. All customer funds and securities received, if any, are promptly transmitted directly to NFS. As a result, the Company is exempt from the remaining provisions and requirements of Rule 15c3-3.

Use of Estimates – The preparation of financial statements in conformity with generally accepted accounting principles requires the use of estimates based on management's knowledge and experience. Due to their prospective nature, actual results could differ from those estimates.

Marketable Securities and Not Readily Marketable Investments – Marketable securities are valued at fair market value. Not readily marketable investments are valued at estimated fair value as determined by the Company's management. The resulting difference between cost and market is included in income as an unrealized investment gain or loss. At December 31, 2008 the market value of marketable securities and not readily marketable investments exceeded cost by \$184,330. At December 31, 2007 the market value of marketable securities exceeded the cost of marketable securities by \$1,781,344. The Company's gain on marketable securities and not readily marketable investments is comprised of both realized and unrealized gains and losses.

McGINN, SMITH & CO., INC.**NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2008****NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

Receivables – Receivables are stated at the amount management expects to collect from outstanding balances. Management provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to receivables. At December 31, 2008 and 2007, no allowance was deemed necessary by management.

Property, Equipment, and Software – Purchases of Property, Equipment, and Software are recorded at cost. Depreciation and amortization is provided on the straight-line and accelerated methods, which are considered adequate for the recovery of the assets over their estimated useful lives. Depreciation and amortization expense totaled \$82,397 and \$88,489 for the years ended December 31, 2008 and 2007, respectively.

Property, Equipment, and Software are comprised of the following at December 31:

	<u>2008</u>	<u>2007</u>
Leasehold Improvements	\$ 96,639	\$ 96,639
Equipment	852,208	793,184
Software	<u>300,000</u>	<u>300,000</u>
	1,248,847	1,189,823
Less: Accumulated Depreciation	<u>915,870</u>	<u>833,473</u>
	<u>\$ 332,977</u>	<u>\$ 356,350</u>

Income Taxes – Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due plus deferred taxes related primarily to temporary differences caused by filing tax returns on the cash basis. The deferred tax assets and liabilities represent the future tax return consequences of those differences, which will either be taxable or deductible when the assets and liabilities are recovered or settled.

Advertising – The Company expenses advertising costs as they are incurred. Advertising expenses amounted to \$38,995 and \$3,085 in 2008 and 2007, respectively.

Cash and Cash Equivalents – For purposes of the statements of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

Reclassifications – Certain 2007 items have been reclassified to conform to the 2008 method of presentation.

McGINN, SMITH & CO., INC.**NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2008****NOTE 2 – NOT READILY MARKETABLE INVESTMENTS**

The Company owned limited partnership interests, common stock, and other investments for which a ready market did not exist during the years ended December 31, 2008 and 2007. These investments, which were valued at their estimated fair value, as determined by the Company's management or by available market information, totaled \$145,144 and \$145,146 at December 31, 2008 and 2007, respectively.

NOTE 3 – NOTES RECEIVABLES – AFFILIATES

The Company has notes receivable from, affiliated companies which bear interest at market rates, and totaled \$218,675 and \$620,184 at December 31, 2008 and 2007, respectively.

NOTE 4 – INCOME TAXES

The Company's provision (credit) for income taxes is comprised of the following for the years ended December 31:

	<u>2008</u>	<u>2007</u>
Current	\$(339,308)	\$ 24,076
Deferred	(666,100)	<u>239,900</u>
	<u>\$(1,005,408)</u>	<u>\$ 263,976</u>

McGINN, SMITH & CO., INC.

**NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2008**

NOTE 4 – INCOME TAXES (CONTINUED)

At December 31, 2008 and 2007, deferred tax liabilities recognized for taxable temporary differences totaled approximately \$120,000 and \$971,400, respectively. Deferred tax assets recognized for deductible temporary differences totaled approximately \$120,000 and \$305,300, respectively. At December 31, 2008, the Company has a \$345,000 corporate income tax refund receivable related to the carryback of approximately \$1,050,000 in net operating losses from the year 2008.

The actual tax expense for 2008 and 2007 differs from the “expected tax expense (computed by applying the federal statutory tax rate of thirty-four percent to income before taxes) as a result of the net effect of federal surtax exemptions, tax-exempt income, non-deductible items, the impact of state income taxes, net operating loss carryovers, and charitable contribution deduction carryovers.

NOTE 5 – RETIREMENT PLAN

The Company maintains a 401(k) plan for the benefit of substantially all of its full time employees who are at least twenty-one years of age and have had at least one year of service. The plan is based on a voluntary salary reduction by employees. The Company provides a safe harbor match based on a certain percentage of each participant’s plan contributions, not to exceed \$3,500 per participant. The Company can also make discretionary contributions to the plan. Plan expense for the years ended December 31, 2008 and 2007 was \$41,071 and \$65,693, respectively.

NOTE 6 – COMMITMENTS AND CONTINGENCIES

The Company has a lease for its Albany location, which expires in July 2013, for the use of office space with additional charges for common area maintenance. The Company’s minimum annual lease obligation is approximately \$115,000. Additional rent is provided for certain cost escalations.

The Company has a lease for its New York City location which expires in November 2009. The Company’s minimum annual lease obligation is approximately \$315,000. At December 31, 2008, the Company had an outstanding letter of credit for \$88,602 with its New York City landlord, in lieu of a security deposit for the same amount.

McGINN, SMITH & CO., INC.

**NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2008**

NOTE 6 – COMMITMENTS AND CONTINGENCIES (CONTINUED)

The Company has a lease for its Clifton Park location which requires monthly payments of \$4,936 through June 2009.

Rent expense was \$640,583 and \$513,011 for the years ended December 31, 2008 and 2007, respectively.

In the normal course of business, customer complaints may arise. Some of these complaints may lead to civil actions. At this time the Company is not currently aware of any pending litigation that would have a material effect on the financial position of the firm. Accordingly, no provisions for losses, if any, are included in the financial statements. However, no assurances can be given as to the outcome of these proceedings.

NOTE 7 – PREFERRED STOCK

1987 Series

Dividends on 1987 Series Preferred Stock are cumulative and are determined by applying the applicable rate to the par value of outstanding shares times the number of days the shares are outstanding divided by 365 days. The rate is determined by the Company's Board of Directors on or about April 1 of each year to cover the period from April 1 through the following March 31. The rate is determined by adding three and one-half percentage points to the yield of seven year United States Treasury obligations in effect on March 15 of the applicable year. The rate used to calculate dividends on outstanding shares of Preferred Stock for the period April 1, 2007 through March 31, 2008, was 7.9%, and for the period April 1, 2008 through March 31, 2009, was 6.2%.

2008 Series

Dividends on 2008 Series Preferred Stock are cumulative and are determined by applying the applicable rate (5.75%) to the par value of outstanding shares times the number of days the shares are outstanding divided by 365 days.

McGINN, SMITH & CO., INC.**NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2008****NOTE 7 – PREFERRED STOCK (CONTINUED)**

Preferred shares (1987 and 2008 series) are redeemable in whole or in part at the election of the Board of Directors on thirty days written notice at a price equal to \$100 per share plus accrued but unpaid dividends. If the Board of Directors elects to redeem less than one hundred percent of outstanding Preferred Stock, the redemption will be pro-rated among holders of the outstanding Preferred Stock. Preferred stockholders (1987 series) have the right to require the Company to repurchase shares on ninety days written notice to the Company at a price equal to the par value of those shares plus accrued but unpaid dividends. The Company's obligation to repurchase Preferred Stock is limited to twenty-five percent of the originally issued and outstanding preferred shares. The Company is prohibited from repurchasing shares of Preferred Stock and distributing dividends, and the Preferred stockholders are prohibited from demanding such payments, if such a withdrawal would cause the Company to violate its net capital requirements and its legal capital requirements.

The Company had sales of treasury stock which totaled \$20,000 and \$13,000 in 2008 and 2007, respectively.

NOTE 8 – NET CAPITAL REQUIREMENTS

Pursuant to the net capital provisions of Rule 15c3-1 of the Securities Exchange Act of 1934, the Company is required to maintain a minimum level of net capital of \$100,000 as defined under such provisions. Additionally, the Company is required to maintain a net capital ratio (a ratio of aggregate indebtedness to net capital) of not more than 15 to 1. The Company had net capital of \$127,577 and \$829,313 as of December 31, 2008 and 2007, respectively. The Company's net capital ratio was approximately 2.49 to 1 and 1.25 to 1 at December 31, 2008 and 2007, respectively.

NOTE 9 – RELATED PARTY TRANSACTIONS

The Company had several different types of transactions with related parties during the years ended December 31, 2008 and 2007. The Company provides investment banking and management services to affiliates. A summary of the related party transactions, by category, are as follows as of, and for the years ending December 31:

	<u>2008</u>	<u>2007</u>
Advisory Fees, Commissions, and Other Income	\$ 752,736	\$ 701,145
Receivables – Other	48,176	115,311
Notes Receivable – Affiliates	218,675	620,184

MCGINN, SMITH & CO., INC.

**NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2008**

NOTE 10 – ACCOUNTING PRONOUNCEMENT

The Financial Accounting Standards Board (FASB) has issued FASB Interpretation No. 48 (FIN 48), *Accounting for Uncertainty in Income Taxes*, effective for financial statements for years beginning after December 15, 2006. FASB later issued two FASB Staff Positions, deferring the effective date of FIN 48 for nonpublic companies' financial statements for years beginning after December 15, 2008. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statements No. 109, "*Accounting for Income Taxes*". FIN 48 will apply to all tax positions, including both positions in previously filed tax returns as well as positions expected to be taken in future returns. Management has not yet completed its analysis of the impact of implementing FIN 48, and accordingly no amounts have been reflected in these financial statements as a result of the future implementation of FIN 48 during the year ending December 31, 2009.

NOTE 11 – GOING CONCERN CONSIDERATIONS

As shown in the accompanying financial statements, the Company incurred a \$1,867,162 loss from operations for the year ended December 31, 2008. This factor raises substantial doubt about the Company's ability to continue as a going concern. Management has instituted a cost reduction program which included a reduction in salaries, benefits and certain operating expenses. In addition, the Company plans to obtain additional capital to fund the Company's operations and maintain capital requirements as required by the Securities and Exchange Commission. Management believes these factors will contribute towards achieving profitability. The financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.