

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

McGINN, SMITH & CO., INC.,
et al.,

Defendants.

10 Civ. 457 (GLS/CFH)

DECLARATION OF DAVID STOELTING

I, David Stoelting, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Senior Trial Counsel in the Enforcement Division of the New York Regional Office of the Securities and Exchange Commission. I make this Declaration in order to put before the Court certain documents referred to in Plaintiff's Brief in Support of the Receiver's Motion to Disallow the Broker Claims dated February 12, 2019.

2. Attached hereto are true and correct copies of the following documents:

EXHIBIT	DATE	DESCRIPTION
1	07/03/13	Investigative testimony of Frank Chiappone (excerpts)
2	07/12/11	Deposition testimony of William Lex (excerpts)
3	05/12/11	Deposition testimony of Philip Rabinovich (excerpts)
4	11/15/07	Emails to/from Chiappone
5	09/25/05	Emails to/from Chiappone
6	12/30/08	Emails to/from Chiappone
7	11/15/07	Emails to/from Chiappone
8	11/15/07	Emails to/from Chiappone
9	08/28/08	Email from Chiappone to D. Smith (draft)
10	09/08/09	Email to D. Smith re Chiappone
11	03/17/09	Emails to/from Lex
12	09/08/09	Emails to/from Lex
13	12/12/07	Email to D. Smith re Lex
14	01/06/09	Emails to/from Lex

15	06/04/07	Email to D. Smith re Lex
16	12/19/07	Email to D. Smith re Lex
17	01/25/08	Email from Lex to D. Smith
18	01/28/08	Email from Lex to D. Smith
19	05/05/08	Email from Lex
20	09/23/08	Email from Lex to D. Smith
21	02/17/09	Emails to/from Lex
22	04/07/09	Emails to/from Lex
23	07/15/09	Email from Lex to D. Smith/T. McGinn
24	02/04/08	Email attaching "McGinn Smith Directors Council Rankings"

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
February 12, 2019


David Stoelting

Page 1

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
 2
 3 In the Matter of:
 4 MC GINN SMITH & CO., INC.) File No. NY-8229
 5)
 6 WITNESS: Frank Chiappone
 7 PAGES: 1 through 205
 8
 9 PLACE: Securities and Exchange Commission
 10 3 World Financial Center
 11 New York, New York 10281
 12
 13 DATE: Wednesday, July 3, 2013
 14
 15 The above-entitled matter came on for investigation,
 16 pursuant to notice, at 9:50 a.m.
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 C O N T E N T S
 2 WITNESS: EXAMINATION
 3 Frank Chiappone 7
 4
 5 EXHIBITS: DESCRIPTION IDENTIFIED
 6 1 Form 1662 6
 7 2 Subpoena dated January 11, 2011 7
 8 3 Subpoena dated June 21, 2013 8
 9 4 Brokerage report of Frank Chiappone 12
 10 5 Second amended complaint 30
 11 6 E-mail dated February 5, 2004 37
 12 7 E-mail dated October 22, 2004 37
 13 8 E-mail dated November 11, 2004 37
 14 9 PPM dated September 15, 2003 47
 15 10 E-mail dated September 29, 2005 62
 16 11 First Advisory Income Notes, 10/31/06 68
 17 12 E-mail dated July 31, 2012 86
 18 13 Allen/Betty Barmen private placement 95
 19 list
 20 14 E-mail dated November 15, 2007 107
 21 15 E-mail dated November 15, 2007 107
 22 16 E-mail dated November 15, 2007 107
 23 17 E-mail dated November 15, 2007 107
 24 18 Client list with holdings 115
 25 19 E-mail to David Smith, not sent 126

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1
 2 APPEARANCES:
 3
 4 On behalf of the Securities and Exchange Commission:
 5
 6 HAIMAVATHI VARADAN MARLIER, ESQ.
 7 DAVID STOELTING, ESQ.
 8 MICHAEL PALEY, ESQ.
 9 Securities and Exchange Commission
 10 3 World Financial Center
 11 New York, New York 10281
 12
 13 On behalf of the Witness:
 14
 15 ROLAND M. CAVALIER, ESQ.
 16 Tuczinski, Cavalier, Gilchrist & Collura, P.C.
 17 524 State Street, Suite 803
 18 Albany, NY 12207
 19
 20
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1 C O N T E N T S (Cont'd)
 2 EXHIBIT NO. DESCRIPTION IDENTIFIED
 3 20 Security Alarm Receivables 134
 4 Overview
 5 21 First Line Senior Trust PPM 135
 6 22 First Line Trust Series B PPM 135
 7 23 E-mail dated September 8, 2009 144
 8 24 E-mail dated December 11, 2009 149
 9 25 E-mail dated July 30, 2009 153
 10 26 Benchmark Trust '09 PPM 154
 11 27 E-mail dated December 29, 2009 159
 12 28 Series of e-mails, November 18, 2009 164
 13 29 E-mail dated November 19, 2009 168
 14 30 E-mail dated November 23, 2009 170
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Redacted

[Redacted text block]

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1 Notes LLC issued by McGinn Smith & Co., Inc.
 2 Q Mr. Chiappone, are you familiar with this PPM?
 3 A Yes.
 4 Q Did you read it before selling this investment
 5 to your clients?
 6 A Yes, but would I say I read it page for page,
 7 word for word, no.
 8 Q Did you have any role in drafting this
 9 document?
 10 A I did not.
 11 Q Who drafted the document?
 12 A I believe David Smith.
 13 Q Did you have any discussions with Mr. Smith
 14 regarding the Four Funds while he was drafting this PPM?
 15 A I do not believe I did.
 16 Q Did you ever review any drafts of the FIIN PPM
 17 which we've marked as Exhibit No. 9 or any of the other
 18 Four Funds PPM's before they were issued to your clients?
 19 A No.
 20 Q Do you know if any other brokers did?
 21 A I do not have that information, I do not
 22 recall.
 23 Q Did you provide the FIIN PPM to clients before
 24 selling this particular investment?
 25 A Some investors perhaps before they purchased,

[Redacted text block]

18 Q What I want to do is mark the first private
 19 placement memorandum only which is the First Independent
 20 Income Note offering. With that said, I have the other
 21 PPM's here if you want to look at them, I'm just trying to
 22 save us some time.
 23 MS. MARLIER: Let's mark this as Exhibit No.
 24 9. Exhibit No. 9 is the September 15, 2003 confidential
 25 private placement memorandum for First Independent Income

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1 others at the time of purchase.
 2 Q What did you tell them about the PPM?
 3 A I went over the structure of the notes
 4 regarding the income stream, what the -- as had been
 5 explained to me, what the use of proceeds was going to be
 6 used for and based much of that on the successful history
 7 that I had had with prior private placements with McGinn
 8 Smith. Many of the clients that bought the Four Funds
 9 notes had been investors in a number of other successful
 10 McGinn Smith offerings and understood and also believed in
 11 the ability of McGinn Smith to do due diligence and
 12 research on investments that they were looking to put into
 13 the offering.
 14 Q That was all information you got from Mr.
 15 Smith. Correct?
 16 A Right.
 17 Q For example you said you provided the client
 18 with information on the due diligence done on the
 19 offering. That was what Mr. Smith told you about the due
 20 diligence.
 21 A Exactly.
 22 Q Did you undertake any independent investigation
 23 of the due diligence done on these investments?
 24 A No.

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[Redacted text block containing approximately 25 lines of obscured content]

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1 time of which is 11:24 in the morning of September 8th,
 2 you write to Mr. Guzzetti, do you see that?
 3 A Yes.
 4 Q At the end of your first full paragraph you say
 5 "We also have a division that acts as a finance company.
 6 Through this division we have been offering investors some
 7 very attractive alternatives to the stock and bond
 8 markets." Do you see those two sentences?
 9 A Yes.
 10 Q Are you referring there to the Four Funds?
 11 A Not specifically the Four Funds.
 12 Q What types of attractive alternatives are you
 13 referring to?
 14 A It could have been anything we had done over
 15 the last -- the prior eighteen years at the time.
 16 Q Are you referring to FAIN and private placement
 17 offerings that were before FAIN?
 18 A Right, it could have been any of the alarm
 19 receivable financings, it could have been any of the other
 20 projects we have brought to our clients attention through
 21 the years.
 22 Q You go on to state "I have enclosed an outline
 23 on a new offering we currently have available." Is it
 24 fair to assume you're referring to the FAIN offering given
 25 the date and the subject of the e-mail?

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[Redacted text block containing approximately 25 lines of obscured content]

17 Q What we've marked as Exhibit No. 10 is an
 18 e-mail from Andrew Guzzetti to Frank Chiappone, it is
 19 dated September 29, 2005, the subject is "Letter for
 20 prospective clients of FAIN" and the bates number is
 21 MGS E-mail 0833305. Mr. Chiappone, would you please read
 22 Exhibit No. 10.
 23 (Witness perusing document)
 24 A Okay.
 25 Q Starting with your e-mail at the bottom, the

1 A We could assume that, yes.
 2 Q Do you have any recollection of sending this
 3 e-mail?
 4 A I do not.
 5 Q You go on to say "Through this offering we will
 6 be raising capital for four to six different companies so
 7 the risk in the investment will be diversified." Do you
 8 see that sentence?
 9 A Yes.
 10 Q Who told you McGinn Smith was raising capital
 11 for four to six different companies?
 12 A It would have been David Smith.
 13 Q When did he tell you that?
 14 A When FAIN was being formulated and put
 15 together.
 16 Q Did Mr. Smith also tell you, I'm quoting from
 17 your e-mail, that the risk in the investment will be
 18 diversified?
 19 A I don't recall Mr. Smith telling me that but
 20 just hypothetically thinking back that would have been
 21 stated at some point.
 22 Q Did you have any independent information that
 23 would indicate that the risk of investing in this offering
 24 would be diversified?
 25 A Not any verified information other than what I

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1 was led to believe from the formulation of the offerings
 2 from Mr. Smith.

3 Q Why did you believe that the investment would
 4 be diversified?

5 A I was told that by Mr. Smith who I had worked
 6 with for eighteen years and believed the information that
 7 he was giving me.

8 Q You then state "These notes are suitable for
 9 retirement accounts." Do you see that sentence?

10 A Yes.

11 Q What are you referring to by retirement
 12 accounts?

13 A Individual -- IRA's.

14 Q Why did you believe the notes were suitable for
 15 retirement accounts?

16 A Just as for regular transactions, somebody with
 17 a long term time horizon with a retirement account would
 18 be looking for various investments to go ahead and have
 19 growth of their capital.

20 Q How were you able to make the determination
 21 that the notes were suitable for retirement accounts
 22 without an understanding of what the money would be
 23 invested in?

24 A Again it was based on my understanding and
 25 belief from again dealings with Mr. Smith or the type of

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[Redacted text]

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1 investments he was looking to put in to the vehicles as
 2 well as the type of returns they were offering and also my
 3 belief from trusting Mr. Smith that the maturities were
 4 going to be consistent and the investors would have
 5 opportunities to come out of these investments and move
 6 their assets elsewhere.

[Redacted text]

[Redacted text]

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[Redacted text block]

1 near Manhattan, something Island, I don't recall the name
2 of it, and the gentleman that ran that particular company
3 was a gentleman named Bert Ellis who owned this Aquatic
4 Development company and deemed that in discussions with
5 Dave he would not have been interested in having everybody
6 in the Albany financial markets know that he was raising
7 capital with McGinn Smith.
8 Q That's what Smith told you.
9 A Yes.
10 Q But why would it have to be kept secret from
11 you, the brokers?
12 A No idea other the fact that I'm guessing that,
13 again this is just conjecture on my part, that he thought
14 if we knew about it it would get out and would cause a
15 greater problem.
16 Q You understood that the ability of -- first of
17 all, the Four Funds were newly created entities. Right?
18 A Right.
19 Q They didn't have any operating history. Right?
20 A Correct.
21 Q You knew that at the time. Right?
22 A Yes.
23 Q And Smith and McGinn were the owners of the
24 issuers. Right?
25 A Yes.

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[Redacted text block]

8 BY MR. STOELTING:
9 Q Did -- with regard to confidentiality, did you
10 ever have the understanding that there was written
11 confidentiality agreements with the borrowers?
12 A I did not have any inter-dealings or knowledge
13 with what was inside with regards to the confidentiality.
14 Q Did you ever have any understanding of why a
15 borrower would have an interest in keeping confidential
16 his borrowing arrangement with a financing? Let me
17 qualify that. Even from you, the brokers.
18 A Yes, there was. There were companies and
19 people that over the years McGinn Smith had raised -- were
20 looking to do deals for that -- one investment I believe
21 that he had in here and I have no way of authenticating it
22 but I believe the investments was with a company called
23 Aquatic Development which was a local Albany based company
24 that was looking to raise -- do a major capital raise for
25 a water park, water amusement part down here someplace

1 Q And Smith and McGinn owned the broker dealer.
2 Correct?
3 A Yes.
4 Q And the broker dealer was the placement agent
5 for the notes. Right?
6 A Correct.
7 Q Didn't those circumstances cause you to think
8 you had some greater duty to find out what was happening
9 given the fact that the issuers and newly created company,
10 that is owned and controlled by the same fellow that runs
11 it?
12 A I think my belief and all that was again based
13 on 22 years of experience of a firm that had a president,
14 a chairman, an executive vice president in a fellow named
15 Tom Livingston, legal counsel in Joe Carr, before him I
16 believe it was Marian Cody and before that they probably
17 had someone else but the compliance officer for the firm
18 and Steven Smith and I believe the firm also had an
19 outside compliance officer at that time as well as
20 controllers. So it was an organization that I believed in
21 for 20 years and much of my belief was based on the
22 ability of this organization to do what they said they
23 were going to do in the PPM.
24 Q Well you understood that the ability of the
25 issuer to make the interest payments and return maturity

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1 depended on the quality of the investments that the issuer
 2 makes. Right?
 3 A Yes.
 4 Q And if the issuer invests in startup companies
 5 that are in completely speculative or industries that are
 6 hard to get going, that's a different kind of investment
 7 than investing in say IBM or Microsoft or a company that
 8 already has a history. Right?
 9 A Yes.
 10 Q In my first example, that would be highly risky
 11 type of investment and in my second example that would be
 12 a kind of risk. Right?
 13 A Yes.
 14 Q So – and you understood that at the time.
 15 Right?
 16 A Yes.
 17 Q So when you recommended these Four Funds to
 18 your clients, how could you make that recommendation when
 19 you didn't know really know Smith – what kind of company
 20 Smith was investing in?
 21 A It was my belief he was investing as the
 22 memorandum – he mentioned from the beginning of the
 23 memorandum in receivable financing, trust preferreds,
 24 preferred stocks, things along those lines and ultimately
 25 those were the type of investments that I thought were

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1 inside the notes, preferred stocks, stocks that were
 2 paying dividends as well as accounts receivable financing
 3 transactions and in regards to alarm notes he mentioned he
 4 had in the notes which were ongoing entities and we had
 5 had a track record with that had worked out again from my
 6 viewpoint for clients worked out very, very well.
 7 Q But the fact is when you recommended the Four
 8 Funds to your clients, you didn't really know yourself how
 9 Smith was investing the investor money. Right?
 10 A Specifically, no.
 11 Q And that was a total of \$90 million at least in
 12 the Four Funds. Right?
 13 A Roughly, yes.
 14 Q I just want to read – I guess this was marked
 15 as Exhibit No. 5.
 16 MR. CAVALIER: The PPM?
 17 MR. STOELTING: The PPM, yes.
 18 Q If you look on page 18 –
 19 MS. MARLIER: I believe the PPM was marked as
 20 Exhibit No. 9.
 21 MR. STOELTING: Okay.
 22 MR. CAVALIER: What page are you on?
 23 MR. STOELTING: Page 18.
 24 Q At the bottom where it says "Where you can find
 25 more information," it says "Upon request of a perspective

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1 investor we will make available to you, such investor, the
 2 opportunity to ask questions and receive answers from us."
 3 Do you remember any investors doing that?
 4 A Not to my knowledge.
 5 Q If you look on page 15, it says "At the request
 6 of the holder our servicing agent which is another McGinn
 7 Smith entity will provided to the holders of the notes our
 8 annual statement of the operations consisting of a balance
 9 sheet and an income statement."
 10 MR. CAVALIER: Where are you?
 11 MR. STOELTING: I'm sorry, it's the middle of
 12 page 15.
 13 MR. CAVALIER: Got it.
 14 Q Did you ever ask McGinn or Smith for the annual
 15 statement of operations consisting of a balance sheet and
 16 income statement?
 17 A I did not.
 18 Q Did you understand at the time that you read
 19 the PPM that investors had a right to receive a balance
 20 sheet and income statement?
 21 A I don't recall.
 22 Q And if you look above, it says "Reports to
 23 Trustee," the trustee is another McGinn Smith entity.
 24 A I'm going back on your reports where it says
 25 they're a servicing agent, to my recollection they had –

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1 I believe they had some other outside servicing agent.
 2 Q We'll just clarify then, if you look back on
 3 page 11, where it says Servicing Agent, it says "We have
 4 engaged McGinn Smith Capital Holdings Corp., an affiliate
 5 of our managing member, McGinn Smith Advisors LLC and of
 6 our placement agent, McGinn Smith & Co., Inc. to act as
 7 our service agent." Does that refresh your recollection
 8 if the servicing agent was another McGinn Smith entity
 9 owned and controlled by Smith?
 10 A No.
 11 Q As you said, you thought the servicing agent
 12 was –
 13 A Completely unaffiliated with McGinn Smith.
 14 Q But that's not true, right?
 15 A Right, as I read this.
 16 Q Okay. Didn't you ever think to ask the
 17 servicing agent meaning Smith for the balance sheet and
 18 income statement as it represents in the PPM will be
 19 available?
 20 A I never thought to.
 21 Q And it never concerned you that the issuer of
 22 the notes that Smith controlled, the issuer, the servicing
 23 agent, the placement agent and the trustee.
 24 A No, because again going back to my history of
 25 having them control all the different entities that we

1 were affiliated with and the chain of command for the
2 people we had at the firm, I placed my belief that the
3 firm was doing the proper things in regards to the
4 clients.

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Redacted

[Redacted text block]

[Redacted text block]

[Redacted text block]

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Redacted

[Redacted text block]

10 Q Does this refresh your recollection on whether

11 you needed to find replacement clients when existing

12 private placement investors in the Four Funds wanted to be

13 redeemed on the 28th?

14 A Yes.

15 Q What's your recollection of the policy?

16 A This is seven, six years ago, I don't recall

17 exactly the verbiage but clearly by what we have in these

18 e-mails I was being instructed that they were looking to

19 have replacement tickets to go ahead and take investors'

20 redemptions out.

[Redacted text block]

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2 BY MR. STOELTING:

3 Q This e-mail, Exhibit No. 14, an e-mail from
4 Guzzetti saying "We have no received any replacement
5 tickets," was that a phrase, replacement tickets, that you
6 recall being familiar with in your career?

7 A Not per se as a term that was always thrown
8 around, replacement tickets.

9 Q It seems like your response is not "what is a
10 replacement ticket" or "what do you mean by that," your
11 response is "I'm working on it." Do you remember being
12 aware in 2007 of the concept of a replacement ticket?

13 A I'm still trying to get the point of the
14 question.

15 Q Do you agree that's a fair inference from this
16 e-mail exchange that you knew on November 15, 2007 what a
17 replacement ticket was?

18 A Yes, I would say from the reference of this.

19 Q You would agree that that's not consistent with
20 the representations in the PPM's about what would happen
21 when those matured?

22 A Correct. The PPM's -- I don't think the term
23 "replacement," you would be cashed out when a replacement
24 ticket was put in place. I don't think you would find any
25 verbiage like that in the PPM.

[Redacted]

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1 Q Did you disclose to any of your customers that
2 their ability to collect the principal at maturity
3 depended on finding a replacement?

4 A I don't believe so because I believe -- when we
5 were selling the notes, I didn't believe that was the
6 case.

7 Q But in November '07 when you learned that was
8 the case, did you tell any of your clients that, that
9 potentially there had been a change in the terms?

10 A No, I don't recall taking the phone and making
11 those types of calls to clients.

[Redacted]

[Redacted]

Redacted

1 Redacted

4 Q You can put this aside for now, we may look at
5 it later. You sold the Four Funds notes to non-accredited
6 investors. Is that correct?

7 A Yes.

8 Q Do you have any understanding of whether that
9 was consistent with the Four Funds PPM's?

10 A I subsequently found out that it was not
11 consistent with the PPM's, up until then I saw that the
12 PPM's were -- on the first page said they were being
13 offered subject to a Reg D filing and my understanding at
14 the time of a Reg D filing it was that it was available to
15 35 unaccredited investors and an unlimited amount of
16 accredited investors. Then to followup on that, for the
17 20 years I had been at McGinn Smith the PPM's were or the
18 private placements were sold under Reg D filings and we
19 had through the firm established chains of command in
20 regards to documents being handed in and supervised and
21 then eventually stamped to be okay and I would have felt
22 that if I overlooked that fact that somebody else would
23 have picked up on it and brought it back to my attention
24 and no one ever did.

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[Redacted text block]

Page 1

1 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF NEW YORK
 2 10 CIV. 457 (GLS/DRH)
 3 _____x
 4 SECURITIES AND EXCHANGE COMMISSION, :
 Plaintiff, :
 5 v. :
 MCGINN, SMITH & CO., INC., :
 6 MCGINN, SMITH ADVISORS, LLC, :
 MCGINN, SMITH CAPITAL HOLDINGS CORP., :
 7 FIRST ADVISORY INCOME NOTES, LLC, :
 FIRST EXCELSIOR INCOME NOTES, LLC, :
 8 FIRST INDEPENDENT INCOME NOTES, LLC, :
 THIRD ALBANY INCOME NOTES, LLC, :
 9 TIMOTHY M. MCGINN, DAVID L. SMITH, :
 LYNN A. SMITH, DAVID M. WOJESKI, :
 10 Trustee of the David L. and Lynn A. :
 Smith Irrevocable Trust U/A 8/04/04, :
 11 GEOFFREY R. SMITH, LAUREN T. SMITH, :
 and NANCY MCGINN, :
 12 Defendants, :
 LYNN A. SMITH, and NANCY MCGINN, :
 13 Relief Defendants, and :
 DAVID M. WOJESKI, Trustee of the :
 14 David L. and Lynn A. Smith Irrevocable :
 Trust U/A 8/04/04, :
 15 Intervenor. :
 _____x
 16 DEPOSITON OF WILLIAM F. LEX
 17 TUESDAY, JULY 12, 2011
 18
 19
 20 ROSENBERG & ASSOCIATES, INC.
 21 Certified Court Reporters & Videographers
 22 425 Eagle Rock Ave., Ste 201 250 Park Ave., 7th Fl.
 23 Roseland, NJ 07068 New York, NY 10177
 24 (973) 228-9100 1-800-862-8878 (212) 888-1938
 25 www.rosenbergandassociates.com

Page 3

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 15 Philadelphia, Pennsylvania 19103
 16 BY: GILBERT B. ABRAMSON, ESQ.
 17 (215) 772-1070
 18 www.gbalaw.com
 19
 20 ALSO PRESENT:
 21 TIMOTHY M. MCGINN
 22 ANDREW WARK
 23
 24
 25

Page 2

1
 2 Deposition of WILLIAM F. LEX, taken
 3 by Plaintiff, pursuant to Subpoena, at the
 4 office of the United States Securities and
 5 Exchange Commission, 701 Market Street, 2nd
 6 Floor, Philadelphia, Pennsylvania, on July 12,
 7 2011 at 9:45 a.m., before Robert M. Levine, a
 8 Court Reporter and Notary Public of the State
 9 of Pennsylvania.
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Page 4

1
 2 IT IS HEREBY STIPULATED AND
 3 AGREED, by and between the attorney for the
 4 respective parties herein, that the sealing,
 5 filing and certification of the within
 6 deposition be waived; and sworn to before an
 7 officer authorized to administer an oath, with
 8 the same force and effect as if signed and
 9 sworn to before the officer before whom said
 10 deposition is taken.
 11 IT IS FURTHER STIPULATED AND
 12 AGREED that all objections, except as to form,
 13 are reserved to the time of trial.
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Page 53

1 William F. Lex - July 12, 2011
 2 A. Yes.
 3 Q. You recall there was a time when Smith
 4 was mentioning the FIIN notes as something the sales
 5 force could offer?
 6 A. Yes.
 7 Q. What he said was what you just
 8 testified to; that it would be debt-type securities.
 9 And the return of the various -- of the three
 10 different tranches?
 11 A. Debt-type securities is my
 12 understanding, generically, of what it was.
 13 Q. Okay. And...
 14 A. He may not have used that exact word.
 15 Q. But what did you understand that to
 16 mean, a "debt-type security?"
 17 A. That you lend money to a corporation.
 18 They pay interest at some point. They returned the
 19 principal at maturity.
 20 Q. Did Smith say anything, at this time,
 21 in this initial sales call about the types of
 22 companies that he would be lending money to?
 23 A. I don't believe they were identified at
 24 that time.
 25 Q. Did you ask him what types of company

Redacted

[Redacted text block]

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1 William F. Lex - July 12, 2011
 2 you would be lending?
 3 A. I don't know if anyone inquired about
 4 that particular time, that question.
 5 Q. Wouldn't it have been important to know
 6 to what type of company he's lending the money to in
 7 order to know whether the note would be repaid?
 8 A. I was depending on his expertise as CEO
 9 and manager.

[Redacted text block]

Redacted

[Redacted text block]

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1 William F. Lex - July 12, 2011
 2 disagreement I had related to, I think it was TDM.
 3 But I never had any of those conversations regarding
 4 the LLCs. That's why I asked you, were you asking
 5 me in relation to the LLCs.
 6 Q. What do you recall with regard to TDM?
 7 A. I believe there was a situation where
 8 they wouldn't redeem people unless we came up with a
 9 replacement. And I said that that was not what the
 10 sales force was told the way this thing should work.
 11 And I don't believe I participated in that in any
 12 way.

[REDACTED]

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1 William F. Lex - July 12, 2011
 2 believe it was in person.
 3 Q. What was your response?
 4 A. I was very upset. I and the investors
 5 were misled that they could be redeemed at maturity.
 6 Q. What did you say to Mr. McGinn?
 7 A. I don't recall. I can't tell. I don't
 8 know the exact words. There may have been
 9 expletives that we don't want to put on the record.
 10 Q. Well, you can put them on the record.
 11 A. No. But I would be guessing. Really,
 12 I don't have the conversations memorized.
 13 Q. Okay. Sure. What was Mr. McGinn's
 14 response?
 15 A. I think he was kind of taken back that
 16 that was my adjective.
 17 Q. What else? What do you remember him
 18 saying in substance?
 19 A. That the world had changed. And they
 20 couldn't redeem them.

[REDACTED]

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[REDACTED]

7 Q. Can you tell me anyone at all that you
 8 discussed this replacement issue with regarding TDM?
 9 A. Certainly Tim McGinn and I had
 10 conversations.
 11 Q. When did those conversations occur?
 12 A. I'd have to look up the records to see
 13 when that TDM redeemed.
 14 Q. Did it occur at the time of the
 15 redemption of those notes?
 16 A. That's where the disagreement came up.
 17 Q. What did Mr. McGinn say in those
 18 conversations?
 19 A. That they weren't going to wait for the
 20 portfolios to pay the people. But rather we had to
 21 replace the people.
 22 Q. What did you say? This was a
 23 conversation on the telephone?
 24 A. I don't know what was sent via e-mail
 25 versus a conversation on the phone. But I don't

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[REDACTED]

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK 2 Case No. 10 CIV 457 (GLS/DRH) 3 -----x 4 SECURITIES AND EXCHANGE COMMISSION, : 5 Plaintiff, : 6 -against- : 7 : 8 McGINN, SMITH & CO., INC., 9 McGINN, SMITH ADVISORS, LLC, McGINN, : 10 SMITH CAPITAL HOLDINGS CORP., FIRST 11 ADVISORY INCOME NOTES, LLC, FIRST : 12 EXCELSIOR INCOME NOTES, LLC, FIRST 13 INDEPENDENT INCOME NOTES, LLC, : 14 TIMOTHY M. McGINN, DAVID L. SMITH, 15 LYNN A. SMITH, DAVID M. WOJESKI, : 16 TRUSTEES OF THE DAVID L. AND LYNN A. 17 SMITH IRREVOCABLE TRUST U/A 8/04/04. : 18 GEOFFREY R. SMITH, LAUREN T. SMITH 19 and NANCY McGINN, : 20 Defendants. : 21 : 22 LYNN A. SMITH and NANCY McGINN, 23 Relief Defendants, and : 24 : 25 DAVID M. WOJESKI, TRUSTEE OF THE : 26 DAVID L. AND LYNN A. SMITH 27 IRREVOCABLE TRUST U/A 8/04/04. : 28 Intervenor. : 29 : 30 -----x 31 VIDEOTAPE DEPOSITION OF PHILIP RABINOVICH 32 Thursday, May 12, 2011 33 ROSENBERG & ASSOCIATES, INC. 34 Certified Court Reporters & Videographers 35 425 Eagle Rock Ave., Ste 201 250 Park Ave., 7th Fl. 36 Roseland, NJ 07068 New York, NY 10177 37 (973) 228-9100 1-800-862-8678 (212) 888-1938 38 www.rosenbergandassociates.co</p> <p style="text-align: right;">Page 2</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 HAIMAVATHI VARADAN MARLIER, ESQ. 4 KEVIN McGRATH, ESQ. 5 UNITED STATES SECURITIES AND EXCHANGE COMMISSION 6 3 World Financial Center, Suite 400 7 New York, New York 10281-1022 8 212-336-1055 9 Attorneys for Plaintiff 10 11 12 M. WILLIAM MUNNO, ESQ. 13 BRIAN P. MALONEY, ESQ. 14 SEWARD & KISSEL, LLP 15 One Battery Park Plaza, 21st Floor 16 New York, New York 10004 17 212-574-1200 18 Attorneys for Witness 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S (Continued): 2 3 BENJAMIN W. HILL, ESQ. 4 DREYER BOYAJIAN, LLP 5 75 Columbia Street 6 Albany, New York 12210 7 518-478-2762 8 Attorneys for Defendant David L. Smith 9 10 11 ALSO PRESENT: 12 ROBERT CALVERT, Videographer 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p style="text-align: right;">Page 69</p> <p>Redacted</p> <p>3 Q. At that time did you trust Mr. Smith's 4 assessment of the expected rates of return on the 5 FINN, LLC investments? 6 A. I did. 7 Q. Why did you trust him? 8 A. Well, he had a good track record. We 9 had had a lot of success in the previous years with 10 the securitized alarm cash flow instruments and he 11 had a long track record. I trusted his assessment 12 of the market and his ability to make wise choices 13 and good investments. 14 Q. Did you ever see four funds LLCs' 15 balance sheets? 16 A. Not until after the news broke in 17 January 2008. 18 Q. Did you ask to see the balance sheets in 19 January of 2008? 20 A. Let me correct that. 21 I don't know if I actually saw the 22 balance sheets, but we got -- we got a schedule of 23 how the investments were performing. So we got a 24 sense for some of the impairments inside the funds. 25 Q. Was that your first sense of the LLCs'</p>	<p style="text-align: right;">Page 71</p> <p>1 into the funds. 2 Q. Did you have any role in the investments 3 you just described? By that I mean did you have any 4 role in obtaining those investments? 5 A. They were brought to my attention by 6 Mr. Smith. 7 Q. Did you ever, you know, attend any of 8 the meetings with any of the underwriters that you 9 just described? 10 A. I recall being at a CMET meeting where 11 Dave said this is the type of investments that we're 12 going to be making once we create these structures. 13 Q. And is that CMET? 14 A. CMET. 15 Q. At the CMET meeting that you were at, 16 was that prior to the closure of the deal? 17 A. I don't recall exactly when that was. I 18 suspect, yes, it would have been. 19 Q. Do you ever remember a similar 20 involvement prior to a deal closing for a four 21 funds' LLC? 22 A. No, nothing in particular. 23 Q. Do you think it is possible you might 24 have been at other such meetings? 25 A. I don't recall being at any other</p>
<p style="text-align: right;">Page 70</p> <p>1 investment portfolios? 2 A. Yes. 3 Q. Before you got that better sense of the 4 investment portfolios, prior to that, prior to 5 January 2008, did you have any understanding of any 6 of the investments of the LLCs? 7 A. Yes. I had -- you know, my 8 understanding was that, as I said, there were equity 9 and debt instruments, a number of which were 10 institutional type of transactions where the funds 11 were co-investors with some large banks and 12 underwritten by any of the top tier banks, as well. 13 There was a transaction that we worked 14 on with a company called CMET Holdings, for example, 15 which was a hundred million dollar transaction, 16 specialty finance company, underwritten by Friedman 17 Billings. A couple of CDO alternative investment 18 companies. Deerfield Capital. GSC Capital. 19 Co-investors there were Deutsche Bank Credit Suisse 20 underwritten by Deutsche and Steve Nickels. 21 GFG, for example, was a 22 20-billion-dollar CDO manager. Again, another deal 23 brought out by, I believe -- I believe we saw that 24 deal through Steve Nickels. So these are the type 25 of investments that was my understanding were going</p>	<p style="text-align: right;">Page 72</p> <p>1 meetings. 2 Q. Did Mr. Smith rely on your expertise in 3 determining whether the CMET deal was going to be 4 good for the particular four funds' LLC at issue? 5 A. No. 6 Q. Did you feel that it was just more for 7 your information? 8 A. Yes. We were at a conference and he 9 said, why don't you come with me and listen to the 10 story. It is an investment I'm thinking making 11 personally, as well as through one of our vehicles. 12 Q. Did Mr. Smith or Mr. McGinn ever seek 13 your input in the sorts of investment decisions to 14 make for the LLCs? 15 A. No. 16 Q. When you worked at McGinn, Smith & 17 Company, were you ever given information regarding 18 the total assets of a four funds' LLC as compared to 19 a notes payable? 20 A. No. 21 Q. After January 2008 when there was an 22 indication that these LLCs were having financial 23 difficulties, were you then given any type of 24 information like that? 25 A. No. We just got a list of investments.</p>

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1 I think a general list of investments at that
 2 meeting and kind of a sense for their condition/
 3 impairment.
 4 Q. Were you ever – were you ever curious
 5 at any point when you were selling these notes what
 6 the balance of total assets was compared to the
 7 notes payable?
 8 A. Was I – I'm sorry?
 9 Q. Were you ever curious at the time you
 10 were selling the four funds' notes what the balance
 11 of total assets were to the notes that would be
 12 coming, notes payable coming due?
 13 A. Sure.
 14 Q. Did you ever ask questions about those?
 15 A. I must have.
 16 Q. Do you recall any specific questions?
 17 A. No specific questions, no.

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[Redacted text block]

Redacted

[Redacted text block]

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1 stuff had pulled back to single digits.
 2 Q. Were you ever given any information that
 3 would indicate financial difficulties in any of the
 4 four funds LLCs prior to January 2008?
 5 A. No.
 6 Q. You mentioned that you didn't sell FINN
 7 initially, is that correct?
 8 A. Correct.
 9 Q. Do you recall why?
 10 A. I didn't know what was in the portfolio.
 11 Q. At what point did you feel comfortable
 12 enough with the FINN, LLC portfolio that you started
 13 selling it to clients?
 14 A. Well, the FINN I only sold as a resale
 15 later when it became available in inventory years
 16 later.
 17 Q. At that point did you feel comfortable
 18 with the portfolio?
 19 A. I did.
 20 Q. What sort of information did you have
 21 about the portfolio at that time?
 22 A. Well, I had a general knowledge of what
 23 was in the portfolio but nothing specific.
 24 Q. Who gave you the general knowledge?
 25 A. Mr. Smith.

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1 Q. Did he give you a document that
 2 indicated some investments?
 3 A. No.
 4 Q. Did you talk with him?
 5 A. I would have spoken to him about it,
 6 yes.
 7 Q. Do you recall the approximate date that
 8 you got that information about the FINN portfolio?
 9 A. I don't, but it was marketed out to the
 10 sales force at par. So my understanding was that it
 11 was a healthy investment.
 12 Q. FEIN, F-E-I-N, was offered in
 13 January 2004, is that correct?
 14 A. Correct.
 15 Q. When do you recall your earliest FEIN
 16 sales?
 17 A. Shortly thereafter.
 18 Q. Did you feel more comfortable with your
 19 understanding of FEIN's investment portfolio?
 20 A. Yes.
 21 Q. Why?
 22 A. Well, I got a sense for what the
 23 portfolio was going to look like, what types of
 24 investments we were going to see.
 25 Q. Did you rely on what FINN had done to

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1 that point to get your understanding?
 2 A. Yes. Yes.
 3 Q. Did you feel that the PPMs for the four
 4 fund notes gave specific enough information about
 5 the types of investments that the LLCs would be
 6 making?
 7 A. No.
 8 Q. Why did you feel that way?
 9 A. I think it's a bit too general. I mean,
 10 it is sort of very broad mandate. So that's why I
 11 was looking for more sort of specific guidelines as
 12 to what type of investments were we were going to be
 13 making.
 14 Q. You wanted to get more information
 15 before offering them to your clients?
 16 A. Correct.
 17 Q. And do you feel you got an adequate
 18 level of information to then sell these notes to
 19 your clients?
 20 A. I did.
 21 Q. And that was based on conversations with
 22 Mr. Smith?
 23 A. Correct.

[Redacted]

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1 it was a confidential nature to some of those
 2 investments, especially some of the loans that he
 3 was making to sort of local area companies. So
 4 there was a hesitancy on his part to talk or full
 5 disclosure on the portfolio.
 6 Q. Did you have a problem with that when
 7 you worked as a broker as McGinn, Smith?
 8 A. I'm not sure I had a problem with it as
 9 long as I knew the investment was performing, my
 10 clients were getting their interest payments and
 11 that he was managing the assets properly. I didn't
 12 have a problem with it, no.
 13 Q. You mentioned that around this time
 14 period you trusted Mr. Smith, is that right?
 15 A. I did.
 16 Q. That was based on his past performance?
 17 A. Uh-hum. And his character, as I
 18 understood it.

[Redacted]

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[Redacted]

18 Q. Did you ever feel that financial
 19 information about the four funds LLCs was withheld
 20 from you?
 21 A. I know that Mr. Smith didn't want to
 22 compromise the sales process, and so I think he was
 23 sort of reluctant to give out specific financial
 24 information, number one. And, number two, what
 25 types of investments were in the portfolios because

Redacted

[Redacted]

Redacted

[Redacted text block]

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1 Q. Do you recall roughly when you started
 2 to doubt Mr. Smith's abilities?
 3 A. Probably when I started learning more
 4 about the portfolio posts, January 2008.
 5 Q. Do you know if anyone helped Mr. Smith
 6 with his due diligence?
 7 A. Yes. I believe Tom Livingston helped
 8 him.
 9 Q. Anyone else?
 10 A. Not that I'm aware of.
 11 Q. Mr. Livingston at one point was a
 12 principal of McGinn, Smith & Company, correct?
 13 A. Yes.
 14 Q. And he ultimately left the firm,
 15 correct?
 16 A. Correct.
 17 Q. And this was after a dispute with
 18 Mr. McGinn, correct?
 19 A. Correct.
 20 Q. Did he have a dispute with anybody else?
 21 A. Not that I'm aware of.
 22 Q. The word "substantial" to describe the
 23 due diligence, was that Mr. Smith's term?
 24 A. Yes.
 25 Q. At the time you wrote this letter, did

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[Redacted text block]

16 Q. Do you any longer today trust
 17 Mr. Smith's ability to do due diligence for
 18 investments such as -- investments of the nature of
 19 the four funds' debt offerings?
 20 A. No.
 21 Q. When would you say you lost your trust
 22 in his due diligence abilities?
 23 A. I don't recall exactly when, but --
 24 Q. Would you say it was a slow erosion?
 25 A. Yes, I think it was.

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1 you have any independent basis to assess the due
 2 diligence or were you relying on what Mr. Smith told
 3 you?
 4 A. I was relying on what he told me.
 5 Q. What had Mr. Smith conveyed to you at
 6 this point when you wrote Plaintiff's Exhibit 15
 7 regarding the type of due diligence that he had
 8 done?
 9 A. I think, as a fiduciary, anytime you're
 10 in charge of such a large amount of assets, there's
 11 a certain understanding that a significant amount of
 12 due diligence has to go into any process.
 13 Q. Were you aware of any specific due
 14 diligence that Mr. Smith had done for the FEIN, LLC
 15 investments?
 16 A. Nothing specific, no.
 17 Q. Did you undertake any independent
 18 investigation of the due diligence that he did?
 19 A. No.
 [Redacted text block]

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[REDACTED]

11 Q. This was previously marked as
 12 Exhibit 17.
 13 Mr. Rabinovich, you're neither a sender
 14 nor recipient of any part of this e-mail. With that
 15 understanding, have you ever seen this e-mail
 16 before?
 17 A. I don't recall seeing this.
 18 Q. I'd like to get your opinion on the
 19 document.
 20 At the bottom we have the first e-mail
 21 from Patricia Sicluna to David Smith. Who is
 22 Patricia?
 23 A. Patricia Sicluna, I guess she was kind
 24 of operations manager for the private placements.
 25 Dave's assistant in this process.

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1 Q. Did she handle redemptions of matured
 2 notes?
 3 A. Yes.
 4 Q. Could you describe to me how the
 5 redemption process worked? Let's say you had a
 6 client whose note matured and they would like their
 7 principal back.
 8 A. Yes.
 9 Q. What would you do?
 10 A. There would be a letter that is sent out
 11 to them giving them the option to decide and they
 12 would choose. They would mail back that response.
 13 Q. Would they mail the response to you?
 14 A. No, I believe they would mail it back to
 15 either Patty or Mr. Smith.
 16 Q. Ms. Sicluna writes, "Phil's client is
 17 redeeming a hundred thousand dollars TAIN
 18 7.75 percent due December 15, 2006 and purchasing a
 19 hundred thousand dollar TDM 9.25 percent."
 20 Is the reference to Phil, is that you?
 21 A. Yes.
 22 Q. Do you have any recollection of which
 23 client this was?
 24 A. I don't.
 25 Q. So your client wishes to redeem his or

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1 her TAIN note?
 2 A. Correct.
 3 Q. They want to purchase what is referenced
 4 here as TDM.
 5 What is TDM product?
 6 A. TDM Cable 06.
 7 Q. So they're purchasing another McGinn,
 8 Smith product?
 9 A. Correct.
 10 Q. Mr. Smith replies to Ms. Sicluna saying,
 11 "Yes, Phil needs to replace the one hundred thousand
 12 before doing the trade."
 13 Do you see that sentence?
 14 A. I do.
 15 Q. Do you have an understanding of what he
 16 means?
 17 A. Yes.
 18 Q. What is it?
 19 A. It means that he doesn't have the
 20 money – or he'd rather not redeem the client. He'd
 21 like me to replace the investor. So have somebody
 22 else buy the investment rather than redeeming back
 23 to the notes and having credit situation where
 24 Mr. Smith has to buy him out of the hundred
 25 thousand.

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1 Q. Do you have any understanding of why he
 2 needed this replacement when your client was
 3 purchasing another McGinn, Smith product in the same
 4 amount?
 5 A. I don't know.
 6 Q. He goes on to state, "I am running on
 7 fumes with all of these redemptions and cannot
 8 afford any more."
 9 Do you have any understanding of that
 10 statement?
 11 A. Yes.
 12 Q. What do you think he means?
 13 A. I think that he was bombarded with
 14 redemptions in this particular case and he didn't
 15 have enough liquidity to redeem everybody.

[REDACTED]

[Redacted]

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1 want to get your opinion about it. It was
2 previously marked as Plaintiff's Exhibit 18 during
3 the deposition of Richard Feldmann.
4 Have you ever seen this document before?
5 A. No.
6 Q. Please take a moment to read it to
7 yourself and just let me know when you're done.
8 A. Okay.
9 Q. Do you see, "As we discussed on numerous
10 calls, Dave has asked that you replace all
11 redemption dollar signs with new money."
12 Do you see that sentence?
13 A. Yes.
14 Q. Do you recall any calls with David Smith
15 where he outlined a policy where four funds'
16 redemption request had to be replaced with new
17 client purchases?
18 A. I do recall that towards the end of '07,
19 as I said. This was November of 2007.
20 Q. Were these during the weekly sales calls
21 that we talked about earlier?
22 A. I don't recall exactly when they took
23 place, but I do recall them taking place.

[Redacted]

[Redacted]

23 This was Plaintiff's Exhibit 18.
24 Q. Mr. Rabinovich, again, I'll represent
25 for the record you're not on this e-mail. I just

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8 MS. MARLIER: This was previously
 9 marked as Plaintiff's Exhibit 19.
 10 Q. Mr. Rabinovich, do you see that
 11 Plaintiff's Exhibit 19, it's an e-mail from
 12 Mr. Guzzetti to all brokers?
 13 A. Yes.
 14 Q. Do you recall receiving this e-mail?
 15 A. This particular one, no.
 16 Q. Do you have any reason to doubt that you
 17 might have received it?
 18 A. No.
 19 Q. Do you see in the fourth sentence in the
 20 first paragraph, "We have one year and three-year
 21 TAIN and a one-year FINN. FINN rolling December 15.
 22 Please make sure you replace any redemptions
 23 promptly."
 24 Do you see that?
 25 A. Yes.

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1 Q. Did you inform any of your clients
 2 around the end of 2007 time period regarding what
 3 you perceived to be a lack of liquidity?
 4 A. I don't recall any specific discussions,
 5 but I'm sure that we had discussions about it.
 6 Q. Do you think that it was part of your
 7 duties to your clients, to inform them of things of
 8 that nature?
 9 A. Yes.

[Redacted]

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1 Q. What's your understanding of
 2 Mr. Guzzetti's instruction?
 3 A. Exactly what it says there.
 4 Q. Was this an iteration of Mr. Smith's
 5 policy that we have been discussing?
 6 A. Yes.
 7 Q. Upon learning about Mr. Smith's policy
 8 that a replacement client must be found prior to
 9 redeeming an existing client on their matured note,
 10 did you think that that policy was consistent with
 11 the terms of the PPM when you learned about it?
 12 A. It was not.
 13 Q. Did you question that policy?
 14 A. I probably did.
 15 Q. Do you recall any discussions with
 16 Mr. Smith about it?
 17 A. I don't recall any specific discussions,
 18 no, but I remember being concerned about the new
 19 policy and, of course, shortly thereafter we had the
 20 meeting in January of 2008.
 21 Q. What concerned you about Mr. Smith's
 22 policy that we have been discussing in these
 23 exhibits?
 24 A. Clearly, there was a lack of liquidity
 25 to even redeem a very small amount of the one-year.

Redacted

[Redacted]

25

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Redacted

[Redacted text block]

Page 183

Redacted

[Redacted text block]

8 Q. I would like to move ahead to
9 January 2008.

10 You testified earlier that there was a
11 meeting with David Smith at which you learned about,
12 I think your words were started to learn about the
13 financial condition of McGinn, Smith & Company.
14 Would you please tell me about that
15 meeting.

16 A. Financial condition of the funds
17 specifically.

18 Q. Thank you.

19 Would you please tell me about that
20 meeting.

21 A. That meeting was up in the Albany
22 office, January 8, 2008. Dave called, as I
23 remember, myself, Ryan Rogers, Brian Mayer from New
24 York, Andy Guzzetti, Frank Chiappone, and possibly
25 Dick Feldmann, but I don't recall if Dick was there,

Redacted

[Redacted text block]

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1 in addition to Tim McGinn and Tom Livingston we had
2 a meeting. Where Dave -- sorry, Mr. Smith explained
3 the condition of the notes with the funds and some
4 of the impairments that had taken place.

5 Q. What did he tell you?

6 A. We, I think for the first time really
7 dove into the investments that made up the four
8 LLCs, went over kind of one by one, the largest of
9 the investments, and what the status of those
10 investments currently were and what the plan going
11 forward was going to have to be.

12 Q. You mentioned who was invited to that
13 meeting.

14 Do you know why only those people were
15 invited?

16 A. I think maybe those were the employees
17 that had the most clients invested in these notes.

18 Q. Was Mr. Lex invited or did he call in to
19 this meeting?

20 A. I don't recall Mr. Lex being there, but
21 it is possible he was.

22 Q. Do you know if Mr. Smith organized this
23 meeting?

24 A. He did.

25 Q. Do you know if Mr. McGinn had any role

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1 in organization?
 2 A. I don't know.
 3 Q. About how long did the meeting last?
 4 A. All day.
 5 Q. Did you receive any written material at
 6 this meeting?
 7 A. I don't recall any written material. I
 8 took notes.
 9 Q. How did Mr. Smith present the financial
 10 condition of the funds to you?
 11 A. He presented it, I guess, like I said,
 12 deal by deal, investment by investment, broadly.
 13 Q. Did he use slides, for example?
 14 A. I don't think so. No. I don't think he
 15 used slides.
 16 Q. Did he use any visual media?
 17 A. Not that I recall.
 18 Q. He just talked to you?
 19 A. Yes.
 20 Q. What did he tell you about the
 21 investments of the four funds' LLCs had made at the
 22 January 8, 2008 meeting?
 23 A. What did he tell us specifically about
 24 the investments?
 25 Q. Yes.

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1 prime exposure. The trust preferreds, the Deerfield
 2 Capital, GSC, some of these other companies that
 3 were either nonperforming or underperforming, as
 4 well as a number of other prior placements that he
 5 had made that either weren't performing or were in
 6 the process of restructuring.
 7 Q. You described the situation as quite
 8 precarious.
 9 Was this your first indication that the
 10 situation was quite precarious?
 11 A. Sort of on a macro basis. Yes. I mean,
 12 I knew there were some problems with maybe some
 13 individual positions like Deerfield Capital.
 14 Deerfield Capital traded publicly, so there was no
 15 hiding the fact that there was an investment there
 16 that had diminished in value.
 17 But my belief, my expectation was that
 18 the portfolio, the rest of the portfolio would have
 19 been in better shape and that was not, in fact, the
 20 case.
 21 Q. What was your reaction upon learning the
 22 portfolio was not in better shape?
 23 A. I was shocked.
 24 Q. Did you get an opportunity to observe
 25 the reaction of others at the meeting?

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1 A. He just updated us on the reasons behind
 2 some of the impairments, the problems with
 3 liquidity, the problems with the credit markets at
 4 the time that was precluding him from refinancing
 5 some of the investments, and that there was going to
 6 have to be a restructuring that was going to affect
 7 first the junior note holders and then likely the
 8 more senior tranches, as well.
 9 Q. Could you give me an example of an
 10 impairment that he discussed with you that you
 11 recall from that meeting?
 12 A. I think he opened up for the first time
 13 about some of the smaller investments that the fund
 14 had made, that the funds had made. Some loans that
 15 they had extended to some local retailers, local
 16 businesses. Some that had already filed for
 17 bankruptcy or that there was unlikely to be any
 18 recovery at all.
 19 We discussed elseT, which was the
 20 intellectual property royalty business that was sort
 21 of Tom Livingston's brain child, and Mr. Smith had
 22 funded, probably over funded by about \$70 million
 23 and the situation that was quite precarious at the
 24 time. We talked about a variety of the other
 25 investments. Certainly the investments that had sub

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1 A. Yes, we were all shell shocked.
 [REDACTED]

Page 229

Redacted

[Redacted]

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1 A. My opinion, it was clearly that there
2 wasn't enough due diligence done. Anytime you
3 acquire an asset and less than three months later it
4 is in bankruptcy, I mean, it speaks to a deficiency
5 in the due diligence process.
6 Q. Did you ever see First Line Security,
7 Inc.'s financial statements?
8 A. I don't recall seeing the financial
9 statements.

[Redacted]

Page 230

Redacted

[Redacted]

18 Q. After you found out in September 2009
19 about the First Line Security, Inc. bankruptcy
20 filing, did you form an opinion as to whether
21 potential conflicts of interest could have affected
22 the quality of due diligence that McGinn, Smith &
23 Company did on First Line Security, Inc.?
24 A. Of course.
25 Q. What was your opinion?

Redacted

[Redacted]

From: Chiappone, Frank
Sent: Thursday, November 15, 2007 6:53 PM (GMT)
To: Guzzetti, Andrew <guzzettia@mcginnsmith.com>
Subject: RE: FAIN redemptions

I might have some more to sell. Any Idea how much we might have available?

From: Guzzetti, Andrew
Sent: Thursday, November 15, 2007 8:51 AM
To: Chiappone, Frank
Cc: Nicolosi, Carmelo
Subject: FAIN redemptions

Frank

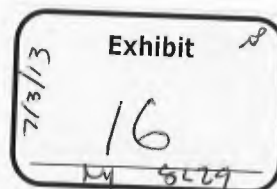
Your clients have redeemed \$45,000 of the 1yr FAIN. We have not received any replacement tickets. Please advise.

Andy

Andrew G.
Guzzetti

Managing Director
Private Client Group
McGinn Smith & Co.
45 Broadway
26th Flr.
NYC 10006
212 785 4377 x 242
212 202 6097 (fax)

" The highest compliment I can receive is a referral from a friend and client "



MS-E-0763412

Ex 4 - 1

From: "Andrew Guzzetti" <guzzettia@mcginnsmith.com>
To: "Frank Chiappone" <chiapponef@mcginnsmith.com>
Cc:
Bcc:
Date: Thu, 29 Sep 2005 04:00:17 PM
Subject: RE: Letter for prospective clients of FAIN's
Attachments:

FRANK
I DO NOT BELIEVE WE CAN USE THIS THIS LETTER. SEC SAYS WE CAN NOT PROSPECT WITH A PRIVATE PLACEMENT. WE HAVE TO KNOW THE CLIENT FOR AT LEAST 30 DAYS. THIS LETTER PUTS IT IN WRITING THAT WE ARE PROSPECTING WITH A PRIVATE PLACEMENT AND WE DO NOT KNOW THE CLIENT AND THE CLIENT DOESN'T KNOW US. CALL ME WHEN YOU GET A CHANCE.

Andy

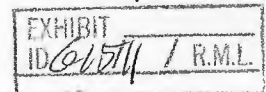
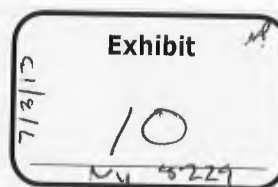
Andrew G. Guzzetti
Managing Director-Retail Sales
McGinnSmith & Co.
45 Broadway
26th floor
NYC 10006
212 785-4377x242
212 202-6097(fax)

"The highest compliment I can receive is a referral from a friend and client"

From: Frank Chiappone [mailto:chiapponef@mcginnsmith.com]
Sent: Wednesday, September 28, 2005 11:24 AM
To: 'Andrew Guzzetti'
Subject: Letter for prospective clients of FAIN's

Thanks for the time on the phone this morning. As I mentioned McGinn Smith is a full service brokerage firm. We handle all buy and sell orders on the listed exchanges as well as the OTC markets. We also have a division that acts as a finance company. Through this division we have been offering investors some very attractive alternatives to the stock and bond markets.

I have enclosed an outline on a new offering that we currently have available. Through this offering we will be raising capital for 4-6 different companies so the risk in the investment will be diversified. These notes are suitable for Retirement Accounts. I will touch base with you shortly to go over this idea in greater detail.



From: "Smith, David" <smithd@mcginnsmith.com>
To: "Chiappone, Frank <chiapponef@mcginnsmith.com>
Cc:
Bcc:
Date: Tue, 30 Dec 2008 05:37:31 PM
Subject: RE: TAIN's
Attachments:

Frank,

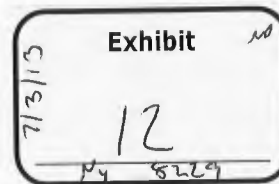
I have repeatedly told all those who have previously requested this information that it is confidential. Borrowers have a strong aversion to anyone outside knowing their business and we represent to them that it is confidential. In addition, this information in the hands of the wrong people will lead to second guessing at best and legal challenges at worst. I have stated several times that brokers need to point out the confidentiality if customers ask. Once you open the door to a single party you are subject to providing it to all. The only thing available to investors is a copy of the balance sheet. Who is requesting and for what purpose? By not responding initially as I have instructed, you open the door to criticism that we have something to hide. Is this coming from someone questioning the SAI investment? Andy said someone was challenging how SAI could be in our portfolio since TAIN was offered post the initial offering of SAI. This is a perfect example on how disclosure of individual investments will provide an excuse for a legal challenge to open the entire portfolio. Once that happens you might as well close up shop because borrowers will refuse to do business with you. This is long standing policy. I know of no hedge funds or private equity funds that open their books to clients or outsiders. Let me know who is requesting the information and I will see if we can comply on a limited basis. If the request is regarding SAI we can deal with that because they are in default and out of business.

From: Chiappone, Frank
Sent: Tue 12/30/2008 11:30 AM
To: Smithd@mcginnsmith.com
Subject: TAIN's

Dave, I am requesting a list of investments in the Third Albany Income Notes as well the dates the perspective investments were purchased by TAIN. Thanks you. Frank

Frank H. Chiappone
McGinn Smith & Co., Inc
6 Executive Park Dr.
Clifton Park, NY 12065
518-348-0060 ext 224

Confidentiality Note: The information transmitted is intended only for the person or entity to whom or which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please delete this material immediately.



From: Chiappone, Frank
Sent: Thursday, November 15, 2007 2:41 PM (GMT)
To: Guzzetti, Andrew <guzzettia@mcginnsmith.com>
Subject: RE: FAIN redemptions

I am working on it.

From: Guzzetti, Andrew
Sent: Thursday, November 15, 2007 8:51 AM
To: Chiappone, Frank
Cc: Nicolosi, Carmelo
Subject: FAIN redemptions

Frank

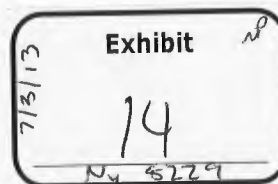
Your clients have redeemed \$45,000 of the 1yr FAIN. We have not received any replacement tickets. Please advise.

Andy

Andrew G.
Guzzetti

Managing Director
Private Client Group
McGinn Smith & Co.
45 Broadway
26th Flr.
NYC 10006
212 785 4377 x 242
212 202 6097 (fax)

" The highest compliment I can receive is a referral from a friend and client "



MS-E-0763427

Ex 7 - 1

From: Chiappone, Frank
Sent: Thursday, November 15, 2007 5:05 PM (GMT)
To: Guzzetti, Andrew <guzzettia@mcginnsmith.com>
Subject: RE: FAIN redemptions

I just placed \$25,000

From: Guzzetti, Andrew
Sent: Thursday, November 15, 2007 8:51 AM
To: Chiappone, Frank
Cc: Nicolosi, Carmelo
Subject: FAIN redemptions

Frank

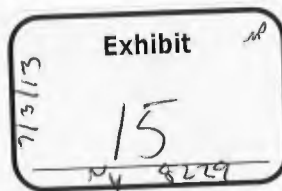
Your clients have redeemed \$45,000 of the 1yr FAIN. We have not received any replacement tickets. Please advise.

Andy

Andrew G.
Guzzetti

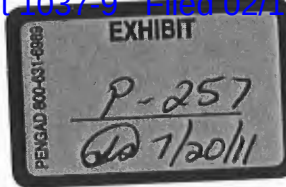
Managing Director
Private Client Group
McGinn Smith & Co.
45 Broadway
26th Flr.
NYC 10006
212 785 4377 x 242
212 202 6097 (fax)

" The highest compliment I can receive is a referral from a friend and client "



MS-E-0763421

Ex 8 - 1



Chiappone, Frank

To: Smithd@mcginnsmith.com

Subject: How about I don't even know how to start.

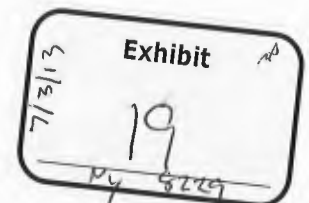
Dave,

As I sit frozen in place at my desk I am having trouble even finding the words to write. This is about the commissions due to us for the notes. The market meltdown has been a nice screen for the fact that you have mismanaged the assets that my clients and I entrusted in your care. The fact that the notes hold all the same investments including Coventry (CMS) is incomprehensible to me. The commissions due were dollars that I was relying on to supplement my income as I try to rebuild my business. This is due to the fact that after being here for twenty years just about every one of my clients has been effected by what has happened to the notes. I understand that the firm is not taking any fees from the notes but these commissions were McGinn Smith obligations to us not obligations of the notes. We as brokers raised the capital for you to invest. We deferred getting paid up front to help the portfolio's get off the ground as well as annuitize our business. It is not our fault that you mis-managed the investments.

Frank H. Chiappone
McGinn Smith & Co., Inc
6 Executive Park Dr.
Clifton Park, NY 12065
518-348-0060 ext 224

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8/22/08



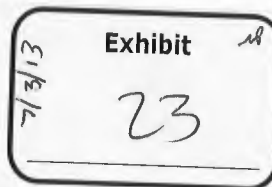
From: Carr, Joseph <00119408@exchorg.com>
Sent: Tuesday, September 8, 2009 8:23 PM (GMT)
To: Smith, David <smithd@mcginnsmith.com>
Subject: Firstline

I just got off of a long call with Frank Chiappone. He is not only distressed about Firstline but also is equally distressed about the lack of diversification on the investments made by the Funds. He has clients with Firstline, CMS and the Funds and they end up with duplicates of the same investments. He assured clients that their investments were okay even though we have known about Firstline for a lengthy period of time. If you have a few minutes it might be a good idea for you to call him and try to soothe him. I did the best that I could but it would be better coming from you.

Joseph B. Carr
McGinn Smith & Co., Inc.
(518) 449-5131 x 255

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MS-E-2225896

Ex 10 - 1

From: "Smith, David" <smithd@mcginnsmith.com>
To: "Lex, Bill" <lexb@mcginnsmith.com>
Cc: "McGinn, Timothy" <tmmcginn@mcginnsmith.com>, "Guzzetti, Andrew" <guzzettia@mcginnsmith.com>, "McGinn, Timothy" <tmmcginn@mcginnsmith.com>
Bcc:
Date: Tue, 17 Mar 2009 09:44:31 AM
Subject: RE: URGENT - TDM Verifier 07 Redemptions
Attachments:

Bill,
In case your clients missed it, the world has changed a bit in the last 20 months. The available lines of credit and refinancing alternatives are not as available as they were when we first syndicated this deal. Refinancing is not a Ponzi scheme, but rather how most of the world of commerce operates, particularly in difficult times. McGinn Smith does not have an available reserve similar to the U.S. Treasury Department to paper over current dislocations. We are doing our best to resolve the situation. One of the reasons securities salesmen are paid so generously is due to the fact that they often have to assist the client through difficult situations and maintain their trust and confidence. These days we all have to work a little harder.
Dave

From: Lex, Bill
Sent: Tuesday, March 17, 2009 9:19 AM
To: Smith, David
Cc: McGinn, Timothy; Guzzetti, Andrew; McGinn, Timothy
Subject: URGENT - TDM Verifier 07 Redemptions
Importance: High

When the TDM was given to the sales force to sell about 20 months ago, we were not told that investors could only redeem if a new client took them out. My clients continue to ask me if they've bought into a Ponzi Scheme and I've tried to reassure them that that is not the case. This current situation is not helping me to build confidence with clients who have hundreds of thousands of dollars in McGinn, Smith investments.

I NEED TO HEAR BEFORE NOON TODAY THAT THESE CLIENTS ARE GOING TO BE REDEEMED THIS WEEK.

From: Smith, David
Sent: Tue 3/17/2009 8:55 AM
To: Lex, Bill; McGinn, Timothy; Guzzetti, Andrew
Subject: RE: TDM Verifier 07 Redemptions

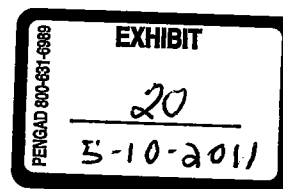
Bill,
It would be helpful if you could sell the \$125,000 worth of redemptions. We have not moved any of this product for weeks, which is causing the bottleneck. Do you have anything pending?

Dave

From: Lex, Bill
Sent: Monday, March 16, 2009 11:56 AM
To: Smith, David; McGinn, Timothy; Guzzetti, Andrew
Subject: TDM Verifier 07 Redemptions
Importance: High

Dear Gentlemen:

I believe if we don't get my clients redeemed immediately if not sooner, we could be facing regulatory complaints. I think



making the redemptions happen is cheaper than dealing with complaints. Please advise that my clients will be redeemed today so I can communicate that fact to my clients.

The clients are Joseph F. Stanzione - \$60,000, David & Kathleen Shannon - \$25,000, Charles & Patricia Trainor - \$30,000 and John & Nancy Morrison - \$10,000

Sincerely,
Bill Lex

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.0.237 / Virus Database: 270.11.15/2004 - Release Date: 03/16/09 07:04:00

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.0.237 / Virus Database: 270.11.16/2005 - Release Date: 03/16/09 19:01:00

From: "Lex, Bill" <lexb@mcginnsmith.com>
To: "Smith, David" <smithd@mcginnsmith.com>
Cc: "McGinn, Timothy" <tmmcginn@mcginnsmith.com>, "Guzzetti, Andrew" <guzzettia@mcginnsmith.com>, "Mayer, Brian" <mayerb2@mcginnsmith.com>
Bcc:
Date: Tue, 08 Sep 2009 03:02:20 PM
Subject: Firstline
Attachments:

Gentlemen:

I applaud the firm for working diligently to bring the Firstline debacle to a somewhat favorable conclusion for the investors. We can only pray that the offer is accepted and approved by the bankruptcy judge.

Dave, I've spoken to you about my 401(k) purchasing some quantity of junior Firstline. I have a strong suggestion on the restructuring of the notes:

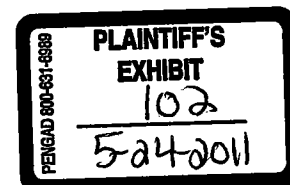
1. The junior noteholders should be paid 100% of their principal without consideration to past interest paid.
2. There should be a revenue sharing element in the junior notes whereby a formula is established that could provide the potential for a bonus at the maturity of their note.

I make these suggestions for a number of reasons:

1. Many investors are elderly, retirees or baby boomers approaching retirement.
2. Most, if not all, of my clients who purchased the Firstline also have the LLC notes and worry daily about not getting their principal returned from the LLC notes.

Another benefit of the formula I proposed is that it would provide legitimacy to my 401(k) or any other registered rep who wanted to purchase the Firstline juniors to have a clear economic benefit with purchasing the note rather than giving any impression that registered reps were trying to make up for client losses.

Thanks,
Bill Lex
Lex and Smith Associates, Ltd.
(610) 265-1565



From: Sicluna, Patricia <00080143@exchorg.com>
Sent: Wednesday, December 12, 2007 4:06 PM (GMT)
To: Smith, David <smithd@mcginnsmith.com>
Cc: Guzzetti, Andrew <guzzettia@mcginnsmith.com>; McGinn, Timothy <tmmcginn@mcginnsmith.com>
Subject: Bill Lex - TAIN & FIIN Redemptions

Dave,
 Bill Lex has stressed that some of his redemptions for TAIN and FIIN must be done on 12/15/07 and that others can wait until 1/1/08 or 1/15/08.

Total TAIN 7.75% redeeming is \$815,000. He wants \$225,000 to be redeemed on 12/15/07. He has sent in replacement tickets for \$360,000.

Total TAIN 7% redeeming is \$365,000. He wants \$40,000 to be redeemed on 12/15/07. He has sent in replacement tickets for \$85,000.

Total FIIN 7% redeeming is \$380,000. He wants \$215,000 to be redeemed on 12/15/07. I have not received any replacement tickets.

A break down follows of his redemptions by client and when he is expecting them to be redeemed:

TAIN 7.75% redemptions

<u>Name</u>	<u>Qty</u>	<u>time frame of redemption</u>
Heidel	\$ 30,000.00	1/1/2008
Mohr IRA	\$ 25,000.00	1/1/2008
Iannaccone	\$ 25,000.00	Immediately
Delaney	\$485,000.00	200,000 immediately 50,000 FirstInB 11% 235,000 Tim's new deal
Zuchero	\$250,000.00	125,000 FirstInB 11% 125,000- firstIn 11% secondary 1/1/08
\$815,000.00		Total lex

TAIN 7% redemptions

<u>Name</u>	<u>Qty</u>	<u>Time frame of redemption</u>
Schall	30000	1/1/2008

136
 EXHIBIT
 ID: 015711 / R.M.L.

Schall	25000	1/1/2008
Nixon, Audrey	40000	Immediately
Spurrier	20,000	1/1/2008
Lex Jt	150,000	1/15/08
Crist	100,000	1/1/08
	365000	Total Lex

FIIN 7% redemptions

<u>Name</u>	<u>Qty</u>	<u>Time frame of redemption</u>
Newcomb	40000	Immediately
Applestein	50,000	Immediately
Nixon, M IRA - redeem 65 roll 20	65,000	Immediately
Iannaccone	60,000	Immediately
Lex Jt	165,000	1/15/2008
	380000	Total Lex

Patricia Sicluna
 McGinn, Smith & Co., Inc.
 6 Executive Park Drive
 Clifton Park, NY 12065
 Phone: 518-348-0060 ext. 273
 Fax#: 518-348-0107

From: "William Lex" <wlex@lexandsmith.com>
To: "McGinn, Timothy" <tmmcginn@mcginnsmith.com>
Cc: "Smith, David" <smithd@mcginnsmith.com>, "Guzzetti, Andrew" <guzzettia@mcginnsmith.com>
Bcc:
Date: Tue, 06 Jan 2009 10:45:56 AM
Subject: RE: Client Relations and Credibility
Attachments:

Thank you for the response.

It is disturbing that it will be January 6th before people receive their money. I had three calls Monday and expect more calls today. It is tough making excuses for the inexcusable! It is getting harder to make repeat sales to clients that are skeptical and unnerved.

Can you assure the FC that their clients will start receiving interest payments on time? January 15th and January 30th are the next quarterly due dates for the notes. HELP!

Bill Lex

From: McGinn, Timothy [mailto:tmmcginn@mcginnsmith.com]
Sent: Monday, January 05, 2009 3:48 PM
To: William Lex
Subject: Re: Client Relations and Credibility

Tomorrow. Holiday vacation issues.

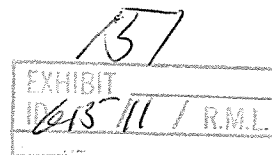
From: Deb Adkins
To: McGinn, Timothy
Cc: Smith, David; Guzzetti, Andrew
Sent: Mon Jan 05 13:46:32 2009
Subject: Client Relations and Credibility
Dear Tim:

As of 10:45 January 5, 2009, my NFS account for the William F. Lex 401(k) Profit Sharing Plan does not show the January 1 interest and principal for Firstline Senior Trust 07 9¼%.

I don't recall ever getting the interest and principal on the due date. I'm not concerned with my own account, but this raises a credibility problem with our clients and raises doubts about the efficiency of our operation. Also, it creates needless client calls that become a distraction and take time away from new sales.

Please let me know if we can start making prompt deposits to client accounts on the due date. Dividends on common stocks seem to be posted to my NFS account on weekends. Thank you for your attention to this matter. Please advise.

Thank you,
Bill Lex
Lex and Smith Associates, Ltd.
(610) 265-1565



Ex 14 - 1

From: "Sicluna, Patricia" <siclunap@mcginnsmith.com>
To: "Smith, David" <smithd@mcginnsmith.com>
Cc:
Bcc:
Date: Mon, 04 Jun 2007 09:15:32 AM
Subject: Bill Lex
Attachments:

Dave,
This is what Bill committed to and what has left to sell or collect.

FEIN 7% due 1/30/08

Redemptions: \$425,000
Amt. Ticketed: \$335,000
Amt. Collected: \$295,000
Amt. Un-collected: \$40,000 (ticket date 5/8/07 - sub agreements and loa's in just waiting for acct. to be funded via transfer from other firm)
Amt. Left to sell: \$90,000

TAIN 7% due 12/15/07

Redemptions: \$600,000
Amt. Ticketed: \$430,000
Amt. Collected: \$275,000
Amt. Un-collected: \$155,000 (ticket dates 4/9/07 - \$45,000 -sub agree and loa in waiting for trans to be completed and 5/8/07 - \$110,000 waiting for everything)
Amt. Left to sell: \$170,000

FEIN 7.75% due 1/30/07

Redemptions: \$550,000
Amt. Ticketed: \$550,000
Amt. Collected: \$550,000
Amt. left to sell: \$0

Patricia Sicluna
McGinn, Smith & Co., Inc.
6 Executive Park Drive
Clifton Park, NY 12065
Phone: 518-348-0060 ext. 273
Fax#: 518-348-0107



From: "Guzzetti, Andrew" <guzzettia@mcginnsmith.com>
To: "Smith, David" <smithd@mcginnsmith.com>
Cc: "Sicluna, Patricia" <siclunap@mcginnsmith.com>, "Rees, David" <reesd@mcginnsmith.com>
Bcc:
Date: Wed, 19 Dec 2007 10:53:23 AM
Subject: Bill Lex Note redemptions
Attachments:

Dave
Bill Lex is very concerned and upset about clients not being paid upon redemption of notes. He is adamant that something must be done for a few priority clients or he will lose business. Patti has names and particulars below is a summary.

TAIN 7%

**: BILL HAS \$865,000 IN REDEMPTIONS HAS TICKETED \$390,000 IN REPLACEMENTS (\$185,000 COLLECTED)
WANTS \$225,000 REDEEMED TODAY**

**FIIN 7%: BILL HAS \$385,000 IN REDEMPTIONS HAS NOT TICKETED ANY REPLACEMENTS WANTS \$215,000
REDEEMED TODAY**

BILL CLAIMS HE CAN WAIT ON OTHER CLIENTS THE INVESTORS HE IS

WE HAVE TO ADDRESS BILL'S CONCERNS.

Andy

**Andrew G. Guzzetti
Managing Director
Private Client Group
McGinn Smith & Co.
45 Broadway
26th Fl.
NYC 10006
212 785 4377 x 242
212 202 6097 (fax)**

" The highest compliment I can receive is a referral from a friend and client "



From: Deb Adkins <dadkins@lexandsmith.com>
Sent: Friday, January 25, 2008 5:38 PM (GMT)
To: Smith, David <smithd@mcginnsmith.com>
Cc: Guzzetti, Andrew <guzzettia@mcginnsmith.com>; Sicluna, Patricia <siclunap@mcginnsmith.com>
Subject: From Bill Lex - The cancelling of Alarm Notes for my clients Delaney, Mohr, Zuchero and Barabas

I strongly object to the cancellation of the alarm notes and request you do whatever has to be done to get the clients into the investments they were promised.

I think the fiduciary responsibility to the clients has been breached since none of these clients were aware of the pending problems in the Third Albany Income Notes.

I have been talking to clients about the liquidity problems of the notes and clients have expressed concern that they were misled about material characteristics of these investments. I was not aware that the same investments were put in each note. I went out of my way to make sure clients were spread amongst the various notes so that they would have DIVERSIFICATION.

I strongly request that a game plan be mapped out to correct the problem and, again, strongly request that these clients be redeemed and put in the alarm notes that they were promised.

Sincerely,
Bill Lex



MS-E-1545698

From: Deb Adkins
Sent: Monday, January 28, 2008 04:57 PM
To: Smith, David
Subject: From Bill Lex - Notes: FIIN, FEIN, TAIN and FAIN

Dear Dave:

Thanks for your acknowledgement of my e-mails.

I am not looking for blame but only a solution to the liquidity problem that has been created for my clients. I have approximately \$24,000,000 of client money in the referenced notes; the majority of which are in the 1-yr. notes. As formerly stated, I went out of my way to have clients spread amongst the various notes to provide diversification. What I am looking for is a game plan to be established in the next several weeks that we can lay out and move forward with in order to give clients the option of liquidating on their next renewal or renewing with some sort of an incentive. One idea would be to give the 1-yr. clients a 7 $\frac{1}{4}$ % renewal and the 2-yr. clients an 8% renewal. These are just ideas off the top of my head. I welcome any alternatives.

There should be some incentive for the clients to renew, therefore, the majority of people should renew with no problem. However, a provision should be made that clients needing to renew for personal or business reasons should be accommodated. Let me know your thoughts.

Sincerely,
Bill Lex



From: Deb Adkins <dadkins@lexandsmith.com> on behalf of
William Lex <wlex@lexandsmith.com>
Sent: Monday, May 5, 2008 7:36 PM (GMT)
To: Guzzetti, Andrew <guzzettia@mcginnsmith.com>
Subject: FIIN & TAIN

Dear Andy:

With the money that has come in, will I be redeemed for any of my 1-Yr. FIIN and/or TAIN?

Sincerely,
Bill Lex
Lex and Smith Associates, Ltd.
(610) 265-1565



MS-E-1535042

From: "William Lex" <wlex@lexandsmith.com>
To: "Smith, David" <smithd@mcginnsmith.com>
Cc:
Bcc:
Date: Tue, 23 Sep 2008 01:56:29 PM
Subject: John and Eleanor Delaney
Attachments: Financial Register Delaney, John P. & Eleanor F..xlsx

Dear Dave:

I am forwarding summaries of the Delaney's holdings with McGinn, Smith & Co., Inc. As you can see, the bulk of their investments are in the various notes. I attempted to spread them amongst a number of notes rather than being in just one offering. They also have the \$200,000 Junior Firstline Trust Series B. The Delaney's live off of the income from the notes. Their only other regular income is modest Social Security. Without the interest, the Delaney's are in a cash crunch, but the more important issue is whether they'll get return of principal. I indicated to the Delaney's that return of principal was the highest priority of McGinn, Smith. With the severity of the situation, I suggested John Delaney call you so he can hear, firsthand, your commitment to return principal and at what rate. John is to call this afternoon and if you are not available, he will leave a message as to his availability for the next couple of days.

Thank you for your help with the Delaney's.

Sincerely,
Bill Lex
Lex and Smith Associates, Ltd.
(610) 265-1565



From: "Smith, David" <smithd@mcginnsmith.com>
To: "Lex, Bill" <lexb@mcginnsmith.com>
Cc:
Bcc:
Date: Tue, 07 Apr 2009 06:57:18 PM
Subject: RE: TDM '07 Redemptions
Attachments:

Bill
Send me the complete list of your redemptions and the priority of each. If I find a way to take them out, please remove them from your customer list.

From: Lex, Bill
Sent: Tuesday, April 07, 2009 3:41 PM
To: McGinn, Timothy; Smith, David; Guzzetti, Andrew
Subject: TDM '07 Redemptions
Importance: High

Gentlemen:

I just got off the phone with David Shannon who has been calling for almost two months to get his TDM redemption. He is one of many people who refer to our deals as a Ponzi Scheme. I try to reassure my clients that McGinn, Smith & Co., Inc. does not run Ponzi Schemes but the uproar is getting louder and louder from clients whose patience is worn thin by having their money tied up in these TDM notes. Most of the people whose money is tied up in TDM are still upset about what happened with the David Smith notes.

This is just another cry from the wilderness to try to get this log jam broken so we can move forward with new business. I've even taken Dave's prior suggestion and bought some of it myself to help with the log jam, but I am having a hard time putting off a client who agreed to a two week extension when we are now almost 8 weeks out.

Sincerely,
Bill Lex
Lex and Smith Associates, Ltd.
(610) 265-1565

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.0.238 / Virus Database: 270.11.29/2024 - Release Date: 04/07/09 06:41:00



From: "Lex, Bill" <lexb@mcginnsmith.com>
To: "Guzzetti, Andrew" <guzzettia@mcginnsmith.com>
Cc: "Smith, David" <smithd@mcginnsmith.com>, "McGinn, Timothy" <tmmcginn@mcginnsmith.com>
Bcc:
Date: Wed, 15 Jul 2009 10:19:35 AM
Subject: TDM Verifier redemption for Borel
Attachments:

Gentlemen:

When will you be redeeming the \$25,000 TDM Verifier note for Paige, Garth and Brynne Borel? Garth Borel renewed his \$75,000 note and I don't want to be embarrassed and have him lose confidence in the McGinn Smith deals. He is a candidate for more investments unless he loses confidence. He invested in this alarm deal and renewed this investment despite having \$300,000 tied up in FIIN, TAIN and FAIN (\$100,000 in each).

LETS NOT BLOW IT. WE NEED TO MAINTAIN INVESTOR CONFIDENCE IN MCGINN SMITH DEALS!!!!!!!!!!!!!!

Thanks,
Bill Lex
Lex and Smith Associates, Ltd.
(610) 265-1565



From: "Guzzetti, Andrew" <guzzettia@mcginnsmith.com>
To: all-brokers <all-brokers@mcginnsmith.com>
Cc:
Bcc:
Date: Mon, 04 Feb 2008 10:01:37 AM
Subject: DEAL AVAILABILITY & MARKET COMMENTS
Attachments: DC Year End Rankings 2007.pdf

GOOD MORNING.....LIGHT SNOW, CLOUDY DAY, BUT IT FEELS LIKE THE SUN IS SHINING FOR SOME IN NYC.....**NY GIANTS ARE NFL CHAMPIONS**ATTACHED YOU WILL FIND THE DIRECTORS COUNCIL RANKINGS FOR 2007.....**2007 DIRECTORS COUNCIL MEMBERS ARE:**

**BILL LEX
PHIL RABINOVICH
FRANK CHIAPPONE
RYAN ROGERS
BRIAN MAYER
BILL GAMELO
DICK FELDMANN**

**CONGRATULATIONS TO EVERYONE FOR A GREAT 2007 UNDER SOME "TRYING TIMES"
REMEMBER.....JUST LIKE THE PATRIOTS.....YOU ARE ONLY AS GOOD AS YOUR LAST GAME(CALL)
.....MAKE THE CALLS**

TDM VERIFIER 07 8.25% IS MATURING 2/15/08. YOUR CLIENTS WILL HAVE THE OPTION OF REDEEMING OR ROLLING INTO THE SAME INVESTMENT WITH A INFORMATION TO FOLLOW. THE NEW DEAL WILL BE LABELED TDM VERIFIRER 07R. SC 2.5%(75%) THESE ARE COMMERCIAL CONTRACTS IN SOUTHEAST(FL,SC,NC,AL, GA)

**245,000 FIIN 7% MAT: 12/15/08
\$120,000 TAIN 7% MAT: 12/15/08**

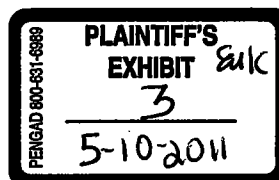
**NEW DEAL
TDM VERIFIER TRUST '08
LONDON & HAWAII COMMERCIAL ALARM CONTRACTS
\$3,850,000 TOTAL DEAL
\$ 360,000 3 YRS 10 % INTEREST ONLY PAID QTRLY.....SC 4.5%(75%)**

**CHRISTIAN VALUE NETWORKEQUITY DEAL 10%(60%)
BOOKS ARE IN THE OFFICES.....CALL ME IF YOU NEED TO DISCUSS OR WANT TO SEND A BOOK**

Andy

**Andrew G. Guzzetti
Managing Director
Private Client Group
McGinn Smith & Co.
45 Broadway
26th Flr.
NYC 10006
212 785 4377 x 242
212 202 6097 (fax)**

" The highest compliment I can receive is a referral from a friend and client "



MCGINN SMITH
DIRECTORS COUNCIL RANKINGS
YEAR-END 2007

LEX (1)**	144
RABINOVICH (2)	139
CHIAPPONE (5)	139
ROGERS (3)	132
MAYER(7)	132
GAMELLO (9)	119
FELDMANN (8)	116
NICOLOSI (14)	100
ANTHONY (6)	96
BOYLAN (12)	96
RUTHERFORD (16)	94
LEO (25)	91
SANCHIRICO (11)	89
SCUTT (17)	89
FLETCHER (4)	85
VANDERZEE (13)	75
MIGDALE (19)	74
MCCARTHY (27)	70
IZZO (18)	68
SCHIRO (20)	66
DAVIS (10)	61
STIRE (15)	60
RYCKMAN (21)	49
LEVY (22)	49
KELLER (24)	45
DELGIANNIS (23)	40
LUCANDER (26)	37
FURNO (31)	34
DICHARA (29)	33
BOZIGIAN (30)	24
WIKERT (28)	22
(**) GROSS RANKING	

