

# **EXHIBIT H**



Financial Industry Regulatory Authority

**Via Facsimile and First Class Mail**

May 13, 2009

Mr. David C. Franceski, Jr.  
Stradley Ronon Stevens & Young, LLP  
2600 One Commerce Square  
Philadelphia, PA 19103-7098

Re: FINRA Routine Examination #20080117152 of McGinn, Smith & Co., Inc

Dear Mr. Franceski:

In connection with the above examination, please have available copies of the following information for on-site staff review on Monday, June 1, 2009:

- (1) All firm emails in native format placed onto a CD in a searchable format, related to the offerings of Coventry CareLink Bridge Loan Notes ("Coventry") and CMS Financial Services Corporation ("CMS") for the period of January 1, 2006 through the present;
- (2) All sales and training materials, including but not limited to PowerPoint presentations, related to Coventry and CMS;
- (3) Any due diligence related to Coventry and CMS;
- (4) Subscription agreements and investor questionnaires related to Coventry and CMS;
- (5) The Letter of Intent provided by MS Financial Services Corp. to Coventry CareLink as referenced on page "x" of the Coventry Private Placement Memorandum;
- (6) Any communication(s) with investors regarding the most recent extension of Coventry;
- (7) Any documentation related to the status of the Connecticut Tax Program, referenced in the CMS Private Placement Memorandum;
- (8) All note agreements for any note issued by 107<sup>th</sup> Associates LLC;
- (9) For First Independent Income Notes, LLC; First Excelsior Income Notes, LLC; Third Albany Income Notes, LLC; First Advisory Income Notes, LLC; Coventry; CMS; and any private offering involving Coventry CareLink or Coventry Resources; please provide the following information:

- a. Private Placement Memoranda;
- b. Lists of investors including dates and amounts of investment;

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Suite 710    f 732 596 2001  
581 Main Street    www.finra.org  
Woodbridge, NJ  
07095

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Mr. David Franceski, Jr.  
Stradley Ronon Stevens & Young, LLP  
May 13, 2009  
Page 2 of 2

- c. Subscriptions agreements and investor questionnaires;
  - d. Escrow account statements;
  - e. Extension and/or conversion notifications;
  - f. A detailed statement as to how proceeds have been applied, including dates, amounts of investment, payees, and all supporting documentation;
  - g. A detailed list of monies paid/returned to investors to date, including dates, amounts, recipients and description of payment [i.e. interest, principal];
  - h. All balance sheets and income statements prepared from the offering date through the present; and
  - i. Correspondence or emails with actual or prospective investors;
- (10) For the entities listed in (9) above, 107<sup>th</sup> Associates LLC, and Mr. Cranbury, please provide a list of all financial accounts, including the name of the financial/banking institution, account number, all authorized signatories, and the date established;
- (11) For the accounts identified in response to (10) above, please provide account statements covering the period of December 2006 through April 2009;
- (12) A statement and supporting documentation detailing any compensation received by McGinn, Smith & Co., Inc. and all of its affiliated entities in connection with the following offerings: Coventry, CMS, and all offerings referenced in (9) above; and
- (13) All customer arbitrations, civil actions, complaints, and settlements related to the offerings referenced in (9) above.

If any of the information requested is being omitted because it was provided previously, please indicate.

This request is being made pursuant to FINRA Rule 8210 which requires a member firm and persons associated (or formerly associated) with a member firm to provide information with respect to any matter involved in an investigation, complaint or proceeding. If you have any questions, please contact the undersigned at (732) 596-2075 or Michael Paulsen, Examination Manager at (732) 596-2073.

Sincerely,



Steven E. Rowen  
Senior Examiner

Cc: McGinn, Smith & Co., Inc.  
Mr. David L. Smith, President  
99 Pine St.  
Albany, NY 12207

**Via Fax and Hand-Delivery**

June 3, 2009

Mr. David C. Franceski, Jr.  
Stradley Ronon Stevens & Young, LLP  
2600 One Commerce Square  
Philadelphia, PA 19103-7098

**Re: FINRA Routine Examination #20080117152 of McGinn, Smith & Co., Inc**

Dear Mr. Franceski:

In connection with the above examination, the staff hereby makes the following requests:

- (1) A copy [in electronic format] of complete Investor Lists for the following offerings:
  - a. First Independent Income Notes, LLC ("FIIN");
  - b. First Excelsior Income Notes, LLC ("FEIN");
  - c. Third Albany Income Notes, LLC ("TAIN");
  - d. First Advisory Income Notes, LLC ("FAIN");
  - e. Coventry CareLink Holding Corporation ("CCHC") - Series One Bonds (2003);
  - f. Coventry CareLink Bridge Loan Notes ("Coventry"); and
  - g. CMS Financial Services Corporation ("CMS").
- (2) A complete listing – to be provided in electronic format – of all offering programs in which McGinn, Smith or any affiliate entities were involved in from January 2003 through present. For each offering, please provide a product description [name/rate/series], date(s) of the offering, total offering amount and maturity date.

Additionally, the following items – identified by numeric reference to the staff's request letter dated May 13, 2009, remain outstanding:

- #1 - All firm emails in native format placed onto a CD in a searchable format, related to the offerings of Coventry CareLink Bridge Loan Notes ("Coventry") and CMS Financial Services Corporation ("CMS") for the period of January 1, 2006 through the present
- #6 - Any communication(s) with investors regarding the most recent extension of Coventry – staff's request was for correspondence sent to/received from all investors; not a single sample;
- #9 - All documentation related to FAIN;
- #9d, 9g, 9h -
- #9e - Extension and/or conversion notifications sent to/received from investors for FAIN, FEIN, FIIN, TAIN;
- 9f - Documentation related to CCHC, CMS, and Coventry;
- 9i - All requested documentation

Mr. David Franceski, Jr.  
Stradley Ronon Stevens & Young, LLP  
June 3, 2009  
Page 2 of 2

- #10 - A list of all financial accounts, including the name of the financial/banking institution, account number, all authorized signatories, and the date established. Banking, but not brokerage account information has been provided;
- #12 - Documentation for CCHC and Coventry;
- #13 - Documentation for CCHC, Coventry and CMS.

If any of the information requested is being omitted because it was provided previously, please indicate.

This request is being made pursuant to FINRA Rule 8210 which requires a member firm and persons associated (or formerly associated) with a member firm to provide information with respect to any matter involved in an investigation, complaint or proceeding. If you have any questions, please contact the undersigned at (732) 596-2075 or Michael Paulsen, Examination Manager at (732) 596-2073.

Sincerely,



Steven E. Rowen  
Senior Examiner

Cc: McGinn, Smith & Co., Inc.  
Mr. David L. Smith, President  
99 Pine St.  
Albany, NY 12207



Stradley Ronon Stevens & Young, LLP  
2600 One Commerce Square  
Philadelphia, PA 19103-7098  
Telephone 215.564.8000  
Fax 215.564.8120  
www.stradley.com

Christine M. Debevec  
CDebevec@stradley.com  
215.564.8156

June 10, 2009

Via Federal Express

Michael Newman, Esquire  
Senior Regional Counsel  
Financial Industry Regulatory Authority  
New Jersey District Office  
581 Main Street, Suite 710  
Woodbridge, NJ 07095

**RECEIVED**  
JUN 11 2009  
FINRA  
DISTRICT 9 NEW JERSEY

Re: FINRA Routine Examination #20080117152 of McGinn, Smith & Co., Inc.  
FOIA Confidential Treatment Requested


Dear Michael:

This letter will serve to supplement the response of McGinn, Smith & Co., Inc. ("MSC") to paragraph (1) of the May 13, 2009 letter of Steven E. Rowen, Senior Examiner. Enclosed herewith is a disk containing firm emails in native and searchable format related to Coventry Carelink and CMS Financial Services Corporation for the time period of January 1, 2006 through May 13, 2009. The search terms that we used to identify responsive emails are: "CMS Financial" or "Coventry Carelink."

After performing the keyword search above to identify the responsive documents, we applied certain electronic filters and performed text searches in an effort to identify and to remove privileged communications. However, as David Franceski indicated to you in previous discussions, in order to turn this production around more quickly we did not take the time to perform an extensive privilege review on each email communication being produced. Thus, to the extent that certain privileged communications were not identified in our electronic privilege searches, this production is being provided to FINRA with FINRA's agreement that MSC does not waive any attorney-client, attorney work product or related privileges applicable to the emails actually produced.

As we discussed last week, we anticipate producing emails in response to paragraph 9(i) of the May 13, 2009 letter later this week.

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Michael Newman, Esquire  
June 10, 2009  
Page 2

On behalf of MSC, we request confidential treatment of the information here submitted. This letter has been marked "FOIA Confidential Treatment Requested," and the information accompanying it carries the same request.

Should you have any questions about the enclosed documents, please call me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Christine M. Debevec", with the initials "JBC" written in a smaller font to the right of the signature.

Christine M. Debevec

CMD/lm  
Enclosure

cc: David L. Smith (w/ encl.)  
David C. Franceski, Jr., Esq. (w/ encl.)

*McGinnSmith  
& Company, Inc.*

Investment Bankers • Investment Brokers

June 16, 2009

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

Mr. Steven Rowen, Senior Examiner  
Financial Industry Regulatory Authority  
New Jersey District Office  
581 Main Street, Suite 710  
Woodbridge, N.J. 07095

Dear Steve,

Pursuant to the FINRA Routine Examination of McGinn, Smith & Company, Inc., #20080117152, I am enclosing a schedule for delivery for the electronic document requests of May 13, 2009 and June 3, 2009 and a document Directory to facilitate access to the requested material. The physical documents remain on site at 99 Pine Street, available for your inspection. After you receive the electronic files, please notify me if we can re-file the physical documents.

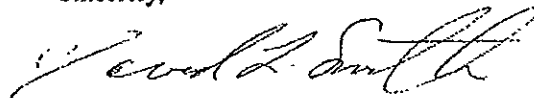
We have previously sent via electronic file all emails not protected by client attorney privilege for CMS, CCHC, Coventry, FIIN, FBIN, FAIN and TAIN. We have also sent electronically all investor lists for the aforementioned and in addition the list for TDM Cable Trust '06.

We are presently scanning and producing all requested documentation in electronic format to be sent to Ikon Office Solutions of Rochester, NY to be Bates numbered and available on disk form. This format was by way of agreement between Mike Paulsen and myself at a meeting on June 2, 2009 held in my office. Ikon Office Solutions, Inc. has opened a secure web site for the transmittal of the documents and we sent them Disk #1 today, June 16, 2009. They have assured us that they can provide us with a two day turn around, including overnight delivery of the disk. Assuming that the material is returned to us in good form, we will overnight Disk #1 to you on Thursday, June 18<sup>th</sup>. Once assured that the quality and integrity of the material is intact, we will begin to forward the remaining files for Bates numbering and disk production. Our anticipated schedule for the remaining documentation is as follows:

Disk #	Date sent to Ikon	Date sent to FINRA
2,7	June 19, 2009	June 23, 2009
3,4	June 22, 2009	June 24, 2009
5,6	June 23, 2009	June 25, 2009

If you have any questions regarding the transmittal of the document request, please do not hesitate to call me at 518-449-5131.

Sincerely,



David L. Smith  
President



**Rowen, Steven**

---

**From:** Smith, David [smithd@mcginnsmith.com]  
**Sent:** Tuesday, June 16, 2009 4:55 PM  
**To:** Rowen, Steven  
**Cc:** Debevec, Christine  
**Subject:** Document schedule

Steve,

My email to you this afternoon was not quite correct. I had understood from my attorney that the second production of emails had been sent to Mike Newman last Friday. Upon receiving a copy of my email to you, my attorney notified me that the production of emails relating to FIIN, FEIN, FAIN, TAIN and Coventry Resources for the broader period were taking additional time to process due to the extreme volume. She anticipates that they will be out by the end of the week. My apologies for the error.

Regards,  
Dave Smith

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JUN 19 2009

FINRA  
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*McGinnSmith  
& Company, Inc.*

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99 Pine Street  
Albany, NY 12207  
518-449-5131  
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June 18, 2009

Mr. Steven Rowen, Senior Examiner  
Financial Industry Regulatory Authority  
New Jersey District Office  
581 Main Street, Suite 710  
Woodbridge, New Jersey 07095

Dear Steve,

As a follow up to my letter and email of June 16, 2009 regarding the Routine Examination #20080117152 I am enclosing Disk #1 that contains the documents requested and as outlined in the Document Directory provided in my follow up email of June 17, 2009. The total number of pages in Disk #1 were in excess of 10,000.

We continue to believe that we will be able to adhere to the schedule outlined in the June 16, 2009 letter. Thus, we will be mailing you the disks containing the remaining requested documents next week.

Sincerely,



David L. Smith  
President

DLS/gbg  
Enclosures

CC: Christine Debevec

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JUN 24 2009

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99 Pine Street  
Albany, NY 12207  
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June 22, 2009

Mr. Steven Rowen, Senior Examiner  
Financial Industry Regulatory Authority  
New Jersey District Office  
581 Main Street, Suite 710  
Woodbridge, New Jersey 07095

Dear Steve,

As a follow up to my letter and email of June 16, 2009 regarding the Routine Examination #20080117152 I am enclosing Disks #2 and #7 that contains the documents requested and as outlined in the Document Directory provided in my follow up email of June 17, 2009. The total number of pages in Disks #2 and #7 were approximately 10,000.

We continue to believe that we will be able to adhere to the schedule outlined in the June 16, 2009 letter. Thus, we will be mailing you the disks containing the remaining requested documents later this week.

Sincerely,



David L. Smith  
President

DLS/gbg  
Enclosures

CC: Christine Debevec

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Stradley Ronon Stevens & Young, LLP  
2600 One Commerce Square  
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**FOIA CONFIDENTIAL TREATMENT REQUESTED**

Christine M. Debevec  
CDebevec@stradley.com  
215.564.8156

June 22, 2009

**Via Federal Express**

Michael Newman, Esquire  
Senior Regional Counsel  
Financial Industry Regulatory Authority  
New Jersey District Office  
581 Main Street, Suite 710  
Woodbridge, NJ 07095

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JUN 23 2009

**FINRA  
DISTRICT 9 NEW JERSEY**

**Re: FINRA Routine Examination #20080117152 of McGinn, Smith & Co., Inc.  
FOIA Confidential Treatment Requested**

Dear Michael:

This letter will serve to supplement the response of McGinn, Smith & Co., Inc. ("MSC") to paragraph 9(i) of the May 13, 2009 letter of Steven E. Rowen, Senior Examiner. Enclosed herewith is a disk containing firm emails in native and searchable format related to First Independent Income Notes, First Excelsior Income Notes, Third Albany Income Notes, First Advisory Income Notes, and Coventry Resources for the time period July 1, 2002 through May 13, 2009. Also enclosed are firm emails related to Coventry Carelink and CMS Financial Services Corporation for the time period of July 1, 2002 through December 31, 2005. The search terms that we used to identify responsive emails are: "First Independent Income Notes;" "FIIN;" "First Excelsior Income Notes;" "FEIN;" "Third Albany Income Notes;" "TAIN;" "First Advisory Income Notes;" "FAIN;" "Coventry Resources;" "CMS Financial;" and "Coventry Carelink." As we discussed, MSC has agreed to produce all non-privileged emails responsive to this keyword search, even though the search is broader than that requested in paragraph 9(i) – which limited the request to emails with actual or prospective investors.

After performing the keyword search above to identify the responsive documents, we applied certain electronic filters and performed text searches in an effort to identify and to remove privileged communications. However, as we have previously indicated to you, in order to turn this production around more quickly we did not take the time to perform an extensive privilege review on each email communication being produced. Thus, to the extent that certain privileged communications were not identified in our electronic privilege searches, this production is being provided to FINRA with FINRA's agreement that MSC does not waive any

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Michael Newman, Esquire  
June 22, 2009  
Page 2

**FOIA CONFIDENTIAL TREATMENT REQUESTED**

attorney-client, attorney work product or related privileges applicable to the emails actually produced.

On behalf of MSC, we request confidential treatment of the information here submitted. This letter has been marked "FOIA Confidential Treatment Requested," and the information accompanying it carries the same request.

Should you have any questions about the enclosed documents, please call me.

Sincerely yours,

  
Christine M. Debevec

CMD/lm  
Enclosure

cc: David L. Smith (w/ encl.)  
David C. Franceski, Jr., Esq. (w/ encl.)



**VIA E-mail and First Class**

June 24, 2009

Mr. Stephen Smith, CCO  
McGinn, Smith & Co., Inc.  
99 Pine St  
Albany, New York 12207

Re: Routine Examination #20080117152

Dear Mr. Smith:

In connection with the above examination, please provide FINRA with the following information:

1. Who was the individual(s) responsible for overseeing the Firm's compliance with e-mail retention?
2. Did the Firm require all associates to utilize a Firm provided e-mail address to communicate with customers and Firm employees?
3. Who was responsible for determining all associates had a Firm provided e-mail address?
4. What types of reviews were performed to ensure that associates utilized Firm provided e-mail addresses?
5. A detailed explanation as to how the Firm retained emails sent from or received by the King of Prussia, PA (CRD# 292388), Pavlet, VT (CRD# 317225) and Allentown, PA office personnel that were not copied or otherwise sent to McGinn, Smith & Co. Including, but not limited to the following email addresses: wlex@lexandsmith.com; wmllex@aol.com; george@georgelex.com; kmlex@aol.com; and dondc@vermontel.net. Additionally, please provide the date such retention began. Also, provide the names of any systems that were used to retain those electronic communications; the date the systems were implemented; and any vendor or third party agreements related thereto.
6. Did the Firm require associates to periodically attest that all e-mail communications were done via the Firm provided e-mail address?
7. Please provide documentation that shows the implementation of the Firm's e-mail correspondence procedures, including but not limited to supervisory reviews, internal inspections, training documents and employee attestations for the associates employed at the locations identified in item #5 above.

This request is being made pursuant to FINRA Procedural Rule 8210 which requires a member firm and persons associated (or formerly associated) with a member firm to provide information with respect to any matter involved in an investigation, complaint or proceeding. Your response must be received in this office no later than Monday, July 6, 2009. If you have any questions, please contact the undersigned at (732) 596-2080 or Examination Manager Michael Paulsen at (732) 596-2073.

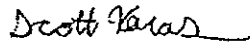
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Suite 710 f 732 596 2001  
Woodbridge, NJ www.finra.org  
07095-1164

F027139

Mr. Stephen Smith, CCO  
McGinn, Smith & Co. Inc  
June 24, 2009

Sincerely,



Scott Karas  
Associate Principal Examiner

cc: David C. Franceski, Jr  
Stradley Ronon Stevens & Young, LLP  
2600 One Commerce Square  
Philadelphia, PA 19103-7098

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JUN 29 2009

FINRA  
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*McGinnSmith  
& Company, Inc.*

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99 Pine Street  
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518-449-5131  
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June 24, 2009

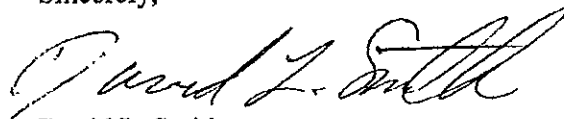
Mr. Steven Rowen, Senior Examiner  
Financial Industry Regulatory Authority  
New Jersey District Office  
581 Main Street, Suite 710  
Woodbridge, New Jersey 07095

Dear Steve,

As a follow up to my letter and email of June 16, 2009 regarding the Routine Examination #20080117152 I am enclosing Disks #3 and #4 that contain the documents requested and as outlined in the Document Directory provided in my follow up email of June 17, 2009. The total number of pages in Disks #3 and #4 were approximately 1,000.

Disks #5 and #6 are in the process of being scanned and numbered and will be mailed to you early next week.

Sincerely,



David L. Smith  
President

DLS/gbg  
Enclosures

CC: Christine Debevec

F000049



*McGinnSmith  
& Company, Inc.*

Investment Bankers • Investment Brokers

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Albany, NY 12207  
518-449-5131  
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July 1, 2009

Mr. Steven Rowen, Senior Examiner  
Financial Industry Regulatory Authority  
New Jersey District Office  
581 Main Street, Suite 710  
Woodbridge, New Jersey 07095

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JUL 06 2009

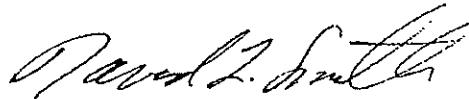
FINRA  
DISTRICT 9 NEW JERSEY

Dear Steve,

As a follow up to my letter and email of June 16, 2009 regarding the Routine Examination #20080117152 I am enclosing Disks #5 and #6 that contain the documents requested and as outlined in the Document Directory provided in my follow up email of June 17, 2009. The total number of pages in Disks #5 and #6 were approximately 1,000.

This completes forwarding all of the information you have requested to date on disk form, with sequential numbering via the Bates system.

Sincerely,



David L. Smith  
President

DLS/gbg  
Enclosures

CC: Christine Debevec