

EXHIBIT V

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY

ORIGINAL

In the Matter of
MCGINN SMITH & COMPANY
20090179845

VOLUME III
INVESTIGATIVE TESTIMONY OF
DAVID SMITH
WOODBIDGE, NEW JERSEY
FEBRUARY 3, 2010

ATKINSON-BAKER, INC.
COURT REPORTERS
Telephone: 1-800-288-3376
Website: www.depo.com
REPORTED BY: S. ARIELLE SANTOS, RPR, CSR, CLR
FILE NO.: A400C31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY

In the Matter of
MCGINN SMITH & COMPANY
20090179845

Continued Investigative testimony of DAVID SMITH,
taken at FINRA, 581 Main Street, 7th Floor, Woodbridge, New
Jersey, on February 3, 2010, commencing at 9:30 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

BY - CHRISTOPHER RATTINER

BY - STEVEN ROWEN

BY - MICHAEL NEWMAN

BY - GARY JAGGS

BY - MICHAEL PAULSEN

BY - REBECCA SMITH

BY - ROBERT MCCARTHY

FINRA

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

BY - DAVID FRANCESKI, JR., ESQ.

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

ALSO PRESENT:

JOSEPH CARR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID SMITH

eight arbitrations out there. And I think they have scheduled maybe three or four.

Q Are those the arbitrations that you referred to on Monday that have been filed by the attorney in Albany?

A Yes.

Q Tim O'Connor?

A Tim O'Connor, yes.

Q Your personal bank accounts -- you said M&T Bank is where you maintain your personal account?

A That is correct.

Q How long have you maintained an account at M&T?

A M&T and its predecessor, which was Union National Bank, I think as long as I've been downtown with McGinn Smith, which would probably be, you know, 29 years.

Q Is it an account in your name or is it a joint account?

A It's in my name.

Q Other than that account, have you held any other bank accounts over the last seven years?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID SMITH

A Just in my name?

Q Yes.

A I don't think so.

Q How about in joint name with your wife?

A Yeah, I think I've, at some time, had a joint account with her. I don't know when or where. I think generally her account is used to pay bills. I think it was joint, maybe it's not -- it's not joint now. It's just in her name.

Q So her bank account is used to pay your family expenses?

A Right.

Q Personal expenses?

A Right.

Q Is that account at M&T Bank too?

A No. I think it's Bank of America.

Q How long has it been at Bank of America?

A Probably since we have been in Saratoga, which is six years.

Q Is that your primary family bank account?

A Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID SMITH

Q And you use that account to pay your own personal expenses?

A Yes.

Q Do you have any investment accounts in your name?

A I don't think so. I did years ago. It was small. May still be existing. There's no meaningful investments in it or dollars.

Q Does your wife have any investment or brokerage accounts in which you have a beneficial interest or control?

A No.

Q That would apply for the last seven years?

A Yes.

Q I want to ask a couple more questions about the LLC offerings. The First Independent Income Notes LLC Private Placement is dated September 15, 2003.

Do you know when in reference to that date the concept -- let me rephrase that.

When in reference to September 15, 2003 you determined to raise funds for that entity; when you first decided to create that entity?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID SMITH

A No. There might have been secondary sales, but not at the original subscription.

MR. MCCARTHY: I just want to make sure I understand a couple of questions.

We are going to go back to where Mike just started. Mike was asking about your personal bank accounts, yourself and your wife. I want to clarify: Any other bank accounts, including trusts, where you're the trustee or the beneficiary or have a beneficial interest?

THE WITNESS: There is -- there's an irrevocable trust. I believe the trustee is Thomas Urbelis. Beneficiaries, I believe, are my children.

MR. MCCARTHY: Where is that trust held?

THE WITNESS: "Held" meaning, the account?

MR. MCCARTHY: The account's held.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID SMITH

THE WITNESS: The account is held at NFS.

MR. MCCARTHY: Any others?

THE WITNESS: There was a QTIP Trust that was formed through some estate planning a few years ago. It turned out it was not funded properly. I don't -- I am not that familiar with exactly the tax laws, but ultimately we had to unfund it, unwind it. I don't think it exists anymore. But maybe QTIP trusts don't have a way of dying. There's no funds in it, but it may still exist.

There's a life insurance trust, and I think that's in the name of my wife. I don't -- I think the kids are beneficiaries. I possibly would be the beneficiary.

MR. MCCARTHY: What firm is that held with?

THE WITNESS: I don't think it's any firm. I think it's just -- I think it's a life insurance trust, you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID SMITH

know, for life insurance policies, stuff like that.

MR. MCCARTHY: There would be a company that issued the policy.

THE WITNESS: Oh, yeah. I think it is Lutheran Brotherhood, something like that.

MR. MCCARTHY: Any others?

THE WITNESS: That's all I can think of at the moment.

MR. MCCARTHY: What about offshore?

THE WITNESS: No offshore accounts.

MR. MCCARTHY: There are no --

THE WITNESS: No.

MR. MCCARTHY: -- offshore?

THE WITNESS: No.

MR. MCCARTHY: What about bank accounts for corporations that you are a -- have a substantial interest in, outside of the McGinn Smith entities?

THE WITNESS: Outside the McGinn Smith entities, referring, Bob,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID SMITH

to the four that we have been talking about?

MR. MCCARTHY: Talking affiliated companies with McGinn Smith, personally affiliated, outside the brokerage business.

THE WITNESS: Well, I guess there's a long list. There's things like M&S Partners. That is a bank account at M&T. There is -- McGinn Smith Capital Holdings has a bank account. I suspect M&S -- M&S Holdings has a bank account. TDM, which we've talked about over the last couple of days, has an operating account. I am not sure where that is. It may be North Carolina for a bank that we used to do business with. Or maybe at M&T.

You know, I have -- there's a list, to make life easy for both of us, that Brian Cooper produces every day that has all the operating accounts. Some of them are that I have involvement in, and some of them are entities that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID SMITH

have been formed and continue to
operate.

If I had access to that, it
would make both of our lives easier. If
you would like to get that, I would do
that for you.

MR. MCCARTHY: Okay. Let's do
that.

But aside from that, outside
that list that you're going to produce.

THE WITNESS: No. I've given
you all that I can think of.

MR. NEWMAN: Are there any
accounts which you have signatory
authority that would not be included on
that list in terms of an entity or
corporate account?

THE WITNESS: No.

MR. MCCARTHY: Would the same
hold true for any non-bank accounts,
brokerage accounts, any types of
accounts?

THE WITNESS: That would, yes.

MR. FRANCESKI: Let me say