

EXHIBIT X

BEFORE THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY

ORIGINAL

In the Matter of
MCGINN SMITH & COMPANY
20090179845

VOLUME II
INVESTIGATIVE TESTIMONY OF
TIMOTHY MCGINN
WOODBIDGE, NEW JERSEY
FEBRUARY 4, 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.: A400C32

BEFORE THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY

In the Matter of
MCGINN SMITH & COMPANY
20090179845

Continued Investigative testimony of TIMOTHY
MCGINN, taken at FINRA, 581 Main Street, 7th Floor,
Woodbridge, New Jersey, on February 4, 2010, commencing at
9:30 a.m.

1 APPEARANCES:

2
3 BY - CHRISTOPHER RATTINER

4 BY - STEVEN ROWEN

5 BY - MICHAEL NEWMAN

6 BY - MICHAEL PAULSEN

7 BY - ROBERT MCCARTHY

8 FINRA

9 581 Main Street, 7th Floor

10 Woodbridge, New Jersey 07095

11 Representing FINRA.

12
13 BY - DAVID FRANCESKI, JR., ESQ.

14 STRADLEY, RONON, STEVENS & YOUNG LLP

15 2600 One Commerce Square

16 Philadelphia, Pennsylvania 19103

17 Tel: 215-564-8000

18 Representing Witness.

19
20 ALSO PRESENT:

21 JOSEPH CARR

TIMOTHY MCGINN

1 the aggregate totaled \$85 million were
2 in distinct businesses that had their
3 own set of circumstances. So I would
4 not accept that thesis.
5

6 BY MR. RATTINER:

7 Q What do you mean by "they didn't have
8 any fees"?

9 Did you say that the funds did not
10 have any fees?

11 MR. FRANCESKI: No. He said
12 "those fees," referencing Mr. McCarthy's
13 reference to 25 percent fees.

14 BY MR. RATTINER:

15 Q So, again, elaborate on how the
16 funds --

17 A Sure they had fees. But the fees
18 were reasonably nominal given the size of the funds
19 and -- and that really had nothing to do with the --
20 in my opinion, with the difficulties that the funds
21 ultimately got into.

22 EXAMINATION

23 BY MR. ROWEN:

24 Q What is RTC Trust?
25

TIMOTHY MCGINN

1
2 A RTC Trust was a trust created in
3 maybe 2002 which was designed to acquire a central
4 station at a place called Roseville, California. RTC
5 was -- stood for the Roseville Telephone Company.

6 There was also a component of that
7 trust that had some residential accounts, as I
8 recall.

9 Q You say "stands for telephone
10 company," what was purchased by RTC Trust?

11 A It was a central station, a
12 third-party monitoring central station.

13 Q What is your involvement with RTC
14 Trust?

15 A What is my involvement? Or what was
16 my involvement?

17 Q Start with "was."

18 A In 2002 I ran the investment banking
19 business of McGinn Smith & Company. It was a
20 transaction that was sourced by my -- by a partner of
21 ours in a different business, a fellow by the name of
22 Thomas Few, the father of Jeffrey Few.

23 Tom few was in the central station
24 alarm business. He owned 80 percent of a company
25 called King Acquisition Corp, which was in northern

TIMOTHY MCGINN

1
2 New Jersey. I owned 10 percent of that company and
3 David Smith owned 10 percent of the company.

4 Tom came to us and said that he
5 wanted to buy this particular asset from the
6 Roseville Telephone Company. We put together the
7 capital to affect that transaction.

8 Q Can you elaborate on putting together
9 the capital?

10 A We did a capital raise, which we
11 referred to as RTC Trust. I don't recall the amount.
12 I do recall it was in the spring sometime of 2002.
13 And I do recall that we completed the transaction.

14 MR. NEWMAN: Do you remember
15 approximately how much was raised?

16 THE WITNESS: I don't. But I
17 would -- I don't recall specifically how
18 much was raised, but I would guess it to
19 be -- I'd rather not even guess. I just
20 don't know.

21 BY MR. ROWEN:

22 Q Who are the owners of RTC Trust?

23 A Well, it is a grantor trust. And
24 the -- under the terms of the grantor trust, the
25 residual interest in the assets would revert to the

TIMOTHY MCGINN

grantor. And the grantor was a combination of King Acquisition Corp and a thing called IASI, Integrated Alarm Services Inc., which then became part of the public company.

Q Who is the trustee for RTC?

A I would -- I would think it was either McGinn Smith Holdings, McGinn Smith Capital Holdings or McGinn Smith and Co, Inc. I'm not sure.

Q What fees were raised during the offering in 2002?

A I don't know. I don't recall.

Q Were there underwriting fees?

A Of course.

Q Were there advisory fees?

A I don't know.

Q Did you take out any personal fees after the offering was completed?

A I don't recall.

Q Where would it be documented if you did?

A It may be documented at McGinn Smith & Company, Inc. It may have become part of the records of Integrated Alarm Services Group which is now owned by an entity called Protection One. I

TIMOTHY MCGINN

1 don't know whether it's at either of those places.

2 Q What is the status of RTC Trust
3 today?
4

5 A I don't know that either.

6 MR. RATTINER: What is your
7 current role? You mentioned what was
8 your role, but what is your role?

9 THE WITNESS: Relative to RTC
10 Trust?

11 MR. RATTINER: Right.

12 THE WITNESS: I don't have a
13 role.

14 MR. RATTINER: Does it still
15 exist, the trust?

16 THE WITNESS: I don't know.

17 MR. RATTINER: Did you a
18 abolish your interest?

19 THE WITNESS: No. The
20 ownership interest, I believe, that was
21 at ISAI was morphed into Integrated
22 Alarm Services Group.

23 MR. RATTINER: So once IASG
24 went public, you no longer held an
25 interest in the trust?

1 TIMOTHY MCGINN

2 THE WITNESS: That's correct.

3 MR. RATTINER: How about any
4 of the McGinn Smith entities, do they
5 still own an interest?

6 THE WITNESS: I don't believe
7 so.

8 MR. RATTINER: Are they still
9 deriving fees from the trust?

10 THE WITNESS: I don't think
11 so.

12 BY MR. ROWEN:

13 Q What was your involvement in the
14 management of the trust?

15 A My involvement was fairly de minimis
16 between the closing of the trust and the first
17 quarter -- I think it was the first quarter of '02;
18 and '03 when -- when ISG went public. The operations
19 of the trust were handled by a group of people who
20 worked for this entity, IASI, which became part of
21 IASG, under the direction, again, of Mr. Keenholts.

22 Q Starting in '03 what was your
23 involvement?

24 A Excuse me?

25 Q What was your involvement starting in

TIMOTHY MCGINN

1
2 '03 after IASI was rolled into IASG and you became
3 part of IASG?

4 A As I said, I was the chairman and CEO
5 of IASG. And my involvement there in that role was
6 basically to pursue large acquisitions, to pursue
7 incremental financing for the company, to supervise
8 and direct senior staff on things such as
9 Sarbanes-Oxley and other corporate matters.

10 Q How about specific to RTC?

11 A I had no specific function relative
12 to RTC.

13 Q Who was -- who was managing RTC after
14 you became part of Integrated Alarm?

15 THE WITNESS: To the extent
16 that there was a continuing involvement
17 on the residential portfolio side, that
18 business was -- the line manager was a
19 fellow by the name of Douglas Keenholts
20 who had worked for us since being a
21 co-op in college. And he, in turn,
22 reported to Brian Shea, who was the
23 President, Chief Operating Officer, of
24 IASI, which was a division of IASG.

25 MR. ROWEN: Let's mark this

TIMOTHY MCGINN

Exhibit 8.

(Whereupon Exhibit 8 is
marked.)

BY MR. ROWEN:

Q Mr. McGinn, you have been handed
Exhibit 8 in this matter.

A Hm-hm.

Q Exhibit 8 is a total of five pages.
These were provided to FINRA by the broker-dealer as
documentation of First Advisory's use of customer
proceeds. First two pages stamped MGS 0020096 and 97
are copy of a register report of transactions between
First Advisory and RTC.

The last three pages stamped MGS
0020098 through 0020100 are copies of a grid note
between First Advisory and RTC.

Please take a minute to review.

A (Reviewing).

Q Mr. McGinn, what was your involvement
with this grid note?

A None.

Q Are you familiar with it?

A No.

Q Were you aware that there was a note,

TIMOTHY MCGINN

1
2 grid note between First Advisory and RTC?

3 A No.

4 Q Were you made aware at any point of
5 all the investments of First Advisory?

6 A No -- repeat that question, please.

7 Q Were you made aware at any point of
8 all the investments of First Advisory Income Notes?

9 A Of all the investments; no.

10 Q Never provided a list?

11 A I was aware of the larger investments
12 made by the funds. And I may have testified to this
13 earlier, but there may have been four or five or six
14 names. This was not one of the names that I was
15 familiar with.

16 Q But you were familiar with RTC Trust
17 in itself?

18 A I was familiar with RTC Trust from
19 2002. The assets of the funds that I was familiar
20 with were larger assets, as I described earlier.
21 This is not something that I was familiar with.

22 Q Does it surprise you today to see
23 there was a grid note between First Advisory and RTC?

24 MR. FRANCESKI: Objection.

25 You may answer.

TIMOTHY MCGINN

1
2 THE WITNESS: Does it surprise
3 me? This is news to me. And this is
4 something I haven't seen before.

5 So under that definition of
6 "surprise," yes. Does it surprise me to
7 the extent that I am going to jump out
8 of my skin, no. I wasn't aware of this
9 until you handed it to me. I have no
10 knowledge of this. I did have knowledge
11 of 2002s acquisition of the Roseville
12 Telephone Company, as I testified ten
13 minutes ago.

14 MR. ROWEN: Were you aware
15 whether or not investors in that '02
16 offering were repaid their principal and
17 interest?

18 THE WITNESS: I was not.

19 MR. NEWMAN: Do you know what
20 a grid note is?

21 THE WITNESS: Sure.

22 MR. NEWMAN: Can you give us a
23 brief summary of what that's, a grid
24 note in general.

25 THE WITNESS: I'm sorry?

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

TIMOTHY MCGINN

MR. NEWMAN: Do you know what
a grid note is?

THE WITNESS: Yes.

MR. NEWMAN: Can you give us a
brief description of that.

THE WITNESS: Yes. A grid
note is merely an open commitment for
some level of capital, where that
capital can be drawn down over a certain
period of time and added to the
outstanding principal of the note. And
it basically is a convenient and
efficient way of handling a credit
facility which is expected to have a
drawdown schedule over time.

MR. NEWMAN: If I
understand -- and correct me if this
is -- my description as inaccurate, but
the trust itself owns the Alarm
Contracts, RTC Trust owns a pool of
Alarm Contracts?

THE WITNESS: That's correct.

MR. NEWMAN: Is that correct?
Is RTC Trust an operating company?

1 TIMOTHY MCGINN

2 THE WITNESS: No. No. The
3 operating elements of the business are
4 outsourced. In this instance they were
5 outsourced to Integrated Alarm Services.

6 MR. NEWMAN: So there's a
7 contract between RTC Trust and
8 Integrated Service contracts?

9 THE WITNESS: There is an
10 agreement between RTC Trust and its
11 outsource provider to service the
12 contract.

13 MR. NEWMAN: And the outsource
14 provider is paid a certain fee for
15 servicing a contract?

16 THE WITNESS: That's correct.

17 MR. NEWMAN: The terms of the
18 operational decisions made to buy or
19 sell contracts within the trust, who
20 makes that decision?

21 THE WITNESS: Well, that would
22 be made -- anything outside the four
23 corners of operating functions, major
24 capital events would be made by the
25 trustee.

1 TIMOTHY MCGINN

2 MR. NEWMAN: And the trustee
3 is paid a fee for that service?

4 THE WITNESS: I don't -- I
5 don't think in any of these instances
6 the trustee was paid a fee.

7 MR. NEWMAN: What is the
8 financial benefit to being a trustee in
9 these circumstances?

10 THE WITNESS: To facilitate
11 the transaction.

12 MR. NEWMAN: So is your
13 experience that the trustees in the
14 Alarm Contract structures did not
15 receive fees --

16 THE WITNESS: That's correct.

17 MR. NEWMAN: -- for that
18 particular function?

19 THE WITNESS: Yes.

20 MR. NEWMAN: The trustee for
21 the RTC was McGinn Smith Capital
22 Holdings?

23 THE WITNESS: Are you telling
24 me or asking?

25 MR. NEWMAN: I'm asking you.

1 TIMOTHY MCGINN

2 THE WITNESS: I don't know.

3 MR. NEWMAN: If you look at
4 the last page of the grid note, signed
5 by Mr. Smith, President, on behalf of
6 McGinn Smith Capital Holdings Corp.
7 Trustee --

8 THE WITNESS: Yes. That's --

9 MR. NEWMAN: Does that refresh
10 your recollection?

11 THE WITNESS: Sure.

12 MR. NEWMAN: And as of April
13 2006, what was your involvement with
14 McGinn Smith Capital Holdings
15 Corporation?

16 THE WITNESS: I had no
17 involvement with McGinn Smith Capital
18 Holdings Corporation. I was a
19 30 percent shareholder at that point. I
20 was an employee of a public company. I
21 did not work for McGinn Smith; McGinn
22 Smith Capital Holdings; McGinn Smith
23 Holdings. I was not involved.

24 MR. NEWMAN: You had an
25 ownership interest. It was passive.

TIMOTHY MCGINN

You weren't actively involved in the
operations of the corporation?

THE WITNESS: That's correct.

MR. FRANCESKI: Wait a minute.
What corporation are we talking about?

MR. NEWMAN: McGinn Smith
Capital Holdings Corp.

MR. FRANCESKI: Well, no. If
I understand, correct me if I am wrong.
I don't mean to mess up the record here,
but I thought that your ownership was in
-- Mr. McGinn's ownership was in McGinn
Smith Holdings, which then is
100 percent owner of the McGinn Smith
Capital Holdings. Is that right?

THE WITNESS: I think that's
correct.

MR. NEWMAN: So you had an
interest in the parent company of McGinn
Smith Capital Holdings Corp.? You had
an ownership interest in that
corporation?

THE WITNESS: Yes.

MR. NEWMAN: 30 percent

TIMOTHY MCGINN

interest in the parent company?

THE WITNESS: Yes.

MR. NEWMAN: There's a holding
company?

THE WITNESS: Yes.

MR. NEWMAN: This was one of
the companies within the holding
company?

THE WITNESS: Yes.

MR. NEWMAN: But your
testimony is you had no involvement in
the operations of McGinn Smith Capital
Holdings Corp.?

THE WITNESS: Yes.

MR. FRANCESKI: Yes, you had
no involvement?

THE WITNESS: My testimony --
I think the question was: Your
testimony was that you had no
involvement?

My answer to that question is
yes.

MR. NEWMAN: Okay. So this
appears -- this grid note appears to be

TIMOTHY MCGINN

1
2 an agreement between a borrower and a
3 lender. The borrower is RTC Trust 02.
4 And the lender is First Advisory Income
5 Notes. Correct?

6 THE WITNESS: Correct.

7 MR. NEWMAN: And Mr. Smith was
8 the investment advisor for First
9 Advisory Income Notes, correct?

10 THE WITNESS: Yes.

11 MR. NEWMAN: And Mr. Smith was
12 the president of McGinn Smith Capital
13 Holdings Corporation?

14 THE WITNESS: Yes.

15 MR. NEWMAN: This is an
16 agreement between Mr. Smith wearing one
17 hat and Mr. Smith wearing another hat?

18 MR. FRANCESKI: Objection.

19 MR. NEWMAN: He's negotiating
20 the agreement between himself; is that
21 what is happened here?

22 MR. FRANCESKI: Objection. I
23 think the borrower is RTC trust, isn't
24 it?

25 MR. NEWMAN: Who is acting on

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

TIMOTHY MCGINN

behalf of the trust? Who signs on
behalf of the trust? Mr. Smith,
correct?

THE WITNESS: That's correct.

MR. NEWMAN: This is an
agreement between Mr. Smith and
Mr. Smith in different capacities?

THE WITNESS: Yes.

MR. NEWMAN: Do you know why
your name appears on the first page of
the grid note under the Advances
Authorized Representative paragraph,
fourth line.

THE WITNESS: I don't know.

MR. NEWMAN: It's your
testimony you had no involvement with
RTC Trust on April 2006?

THE WITNESS: That's my
testimony.

MR. NEWMAN: So you had no
idea why your name would appear on this
document?

THE WITNESS: I have no idea
other than to say that I was a

TIMOTHY MCGINN

A Yes.

Q What bank was that?

A Pointe Bank, P-O-I-N-T-E.

Headquartered in Boca Raton, Florida.

EXAMINATION

BY MR. ROWEN:

Q What is SAI?

A SAI was another public company that was in the monitoring space, and we did an -- we did a financing for SAI.

MR. FRANCESKI: "We"?

THE WITNESS: McGinn Smith &

Company. I'm sorry.

When? Maybe 1999.

BY MR. ROWEN:

Q Is that SAI Trust or is that a different entity?

A SAI was the name of the public company, Securities Associates International. SAI Trust was the name of the vehicle that we used to raise the capital for SAI.

Q How much money was raised?

A Roughly \$23 million.

TIMOTHY MCGINN

Q What fees were collected for that raise.

A I think we earned a fee of a million and a half dollars.

Q And what was that fee classified as?

A Fee income.

Q Underwriting, advisory?

A Loan placement fee.

Q Do you know who the trustee of SAI Trust is?

A I don't.

Q And have investors been paid back in full for SAI Trust?

A No.

Q Is it in default?

A Yes.

Q How much in default?

A I'm sorry?

Q How much is in default?

A I would say that there's probably an outstanding balance of 3 or 4 million dollars.

MR. RATTINER: When did it go into default?

THE WITNESS: Sometime in '08,

TIMOTHY MCGINN

maybe the middle or latter part of '08.

MR. NEWMAN: What happened?

THE WITNESS: SAI had quality problems with their services. They lost a lot of business. They had previously done a number of residential alarm acquisitions where they ended up paying too much. Those accounts performed poorly and they couldn't any longer continue to stay in business.

MR. NEWMAN: When did it first begin experiencing what we'll call financial hardship?

THE WITNESS: I don't know when they first began to experience hardship.

MR. NEWMAN: What involvement did you have in the operations of SAI Trust once the money was raised?

THE WITNESS: None.

MR. NEWMAN: What involvement did Mr. Smith have either individually or through another entity in the operations of SAI Trust?

1 TIMOTHY MCGINN

2 THE WITNESS: Mr. Smith was
3 involved in, I think, a round of
4 negotiation modification of the
5 agreement, sometime in the 2004-2005
6 time frame.

7 MR. NEWMAN: Tell us about
8 that.

9 THE WITNESS: SAI had been
10 having difficulties. They came to us to
11 McGinn Smith & Company and said, "We
12 would like to revisit the terms of our
13 relationship."

14 MR. FRANCESKI: This is SAI,
15 the public company.

16 THE WITNESS: SAI, the public
17 company. We -- "we," David, from McGinn
18 Smith & Company, negotiated with a
19 fellow by the name of Tom Salvatore who
20 was the Chairman and CEO of SAI. And
21 they came to an agreement whereby SAI
22 would have the benefit of some reduction
23 in coupon if they would make some
24 principal payments. They agreed to do
25 that. They did that for a number of

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

TIMOTHY MCGINN.

years, until they hit a brick wall. And
by that time there were lenders to SAI
who were senior to our position. And
those senior lenders basically
foreclosed on the collateral.

MR. NEWMAN: So the
relationship between McGinn Smith and
SAI was a lending relationship?

THE WITNESS: The relationship
between McGinn Smith and SAI began as an
advisory cum loan procurement
facilitator.

MR. NEWMAN: You are going to
have to explain that one.

MR. FRANCESKI: Objection.
Asked and answered.

THE WITNESS: What would you
like to be explained?

MR. NEWMAN: You will have to
provide some more details on what you
mean by that.

MR. FRANCESKI: He already
explained the financing side of that.

Do you need him to explain

TIMOTHY MCGINN

that again, too?

MR. NEWMAN: Yes.

THE WITNESS: Okay.

MR. FRANCESKI: Go ahead.

Objection; asked and answered.

THE WITNESS: SAI was a public company. They had debt that was owed to a lender who wanted to get repaid, they wanted some incremental capital to expand their operations. They were headquartered in Arlington, Illinois, outside of Chicago. They came to McGinn Smith & Company. McGinn Smith & Company was known at that time as a major player in the financing of that particular sector. They came to me and said "Here is our -- here is our -- here is our problem. What can you do? We'd like to get a -- we'd like to take out the existing lender and we'd like some incremental capital.

I spent a fair amount of time with their operating people in terms of due diligence. Came to the conclusion

TIMOTHY MCGINN

it was something that could be financed.
And put together a two-tranche
financing.

That two-tranche financing
consisted of a senior tranche, which I
think was something in the 17,
18 million dollar range. And a
subordinate tranche which became the SAI
trust, which was in the 5 or 6 million
dollar range. The senior tranche was
placed 80 percent with Key Bank out of
Cleveland Ohio, and 20 percent with
Pointe Bank in Boca Raton, Florida.
They were on the same level.

The Junior tranche was raised
by way of a trust offering by McGinn
Smith & Company. And that's how the
financing came together.

MR. NEWMAN: Pointe Bank, was
that the bank you testified earlier that
you had some involvement with?

THE WITNESS: Yes.

MR. NEWMAN: What was your
involvement with Pointe Bank at the time

TIMOTHY MCGINN

of that transaction?

THE WITNESS: I was a director. I don't know if I was chairman at that time, but I was a director. I obviously recused myself from any deliberations relative to that particular asset.

MR. NEWMAN: Did you have an ownership interest in Pointe Bank?

THE WITNESS: Yes.

MR. NEWMAN: What was your ownership interest?

THE WITNESS: Pointe Bank was a public company. It went public in June 1998, and I owned stock in the company.

MR. NEWMAN: What was your ownership interest?

THE WITNESS: Oh, I probably owned a couple, \$300,000 worth of stock.

MR. NEWMAN: Do you know what percentage of the overall outstanding shares that represented?

THE WITNESS: 2.

1 TIMOTHY MCGINN

2 MR. PAULSEN: Were you
3 associated with another broker-dealer at
4 that point in time besides McGinn &
5 Smith?

6 THE WITNESS: No.

7 MR. PAULSEN: Have you ever
8 heard of a firm known as Point Capital?

9 THE WITNESS: Oh, yes, I was.
10 Pointe Capital was a -- I'm not sure it
11 was that time. I don't know if the time
12 lines were coincident. But Point
13 Financial Corp. Was the holding company,
14 was the public company of Pointe Bank.
15 And Pointe Bank at that time was roughly
16 a \$250 million institution. And the
17 board of directors of Pointe Financial
18 wanted to have some direct involvement
19 with the capital markets, and so we
20 created -- "we," meaning Pointe
21 Financial Corp., created a broker-dealer
22 by the name of Pointe Capital. We
23 staffed it with a fellow who had come
24 out of Nomura and Key Bank. And he came
25 to Florida and ran that. I was -- I was

1 TIMOTHY MCGINN

2 probably a principal -- you can look on
3 the records to make sure, but there was
4 virtually no revenue that came out of
5 Pointe Capital to speak of. And Pointe
6 Capital was closed some number of years
7 later.

8 MR. PAULSEN: You were just a
9 principal, not an owner?

10 THE WITNESS: No. The owner
11 was -- the owner of Pointe Capital was
12 Pointe Financial as well as another
13 company called First Integrated Capital
14 Corp. And I was a shareholder of First
15 Integrated Capital Corp.

16 MR. PAULSEN: What was your
17 role in Pointe Financial again; what
18 capacity?

19 THE WITNESS: Pointe Financial
20 was the public company. I was a board
21 member. I believe I was also vice
22 chairman of that board. And I later
23 became chairman of its primary
24 subsidiary, which was Pointe Bank.

25 MR. PAULSEN: So was there an

TIMOTHY MCGINN

indirect ownership, Pointe Financial
through to Pointe Capital, by yourself?

THE WITNESS: As I said, I own
stock in Pointe Financial, roughly
2 percent. Pointe Financial owned, I
think, 50 percent of Pointe Capital.
So, yes, there was an indirect ownership
interest.

By the way, there's another
company which also had a dismal history
called on line Capital Corp. And it too
was a broker-dealer. I had a
broker-dealer license but did no
business. And I'm pretty sure I was a
principal of on line Capital Corp.

MR. PAULSEN: Thank you.

BY MR. ROWEN:

Q Are you aware of any of the four
funds we've discussed loaning money to SAI Trust?

A No.

Q Would you be surprised to hear that
those -- any of the four note entities loaned money
to?

A No.

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

TIMOTHY MCGINN

There's not a lot that can surprise me anymore, as I sit here today.

MR. RATTINER: You said -- is the public company bankrupt, SAI?

THE WITNESS: SAI, yeah.

MR. RATTINER: So why has -- has SAI, the trust, been written off on the books of McGinn Smith?

THE WITNESS: Why has it?

MR. RATTINER: Well, has it, number one?

THE WITNESS: Has it?

MR. RATTINER: Has it.

THE WITNESS: I don't know.

It was not an asset that was owned by McGinn Smith & Company. So I am not sure that it would appear on our balance sheet as an asset, which wouldn't require any write-downs per se.

MR. RATTINER: So it would appear on the LLCs books?

THE WITNESS: To the extent that there are loans to SAI, yes.

MR. RATTINER: Okay. As far

1 TIMOTHY MCGINN

2 as you know, those have not been written
3 down off the LLC books?

4 THE WITNESS: I don't even
5 know that they are there.

6 MR. RATTINER: All right.
7 Let's take a break.

8 (Whereupon a recess is taken.)

9 MR. RATTINER: Back on the
10 record.

11 EXAMINATION

12 BY MR. ROWEN:

13 Q We were talking about SAI Trust and
14 its status over time.

15 Were you aware of the status of SAI
16 Trust in early 2006?

17 A I don't have any specific awareness
18 of the trust in early 2006. I would guess it was
19 performing at that time.

20 Q Do you know when it became
21 nonperforming?

22 A Not specifically. But I would have
23 thought it would have been much later than early
24 2006.
25

1 TIMOTHY MCGINN

2 Q I guess at what point were they a
3 creditable entity, one that you would be comfortable,
4 one of the four funds, loaning a million dollars to?

5 A I was not involved in the SAI Trust
6 from January of 2003 on, so I have no particular
7 knowledge of what that curve looks like in terms of
8 their credit worthiness and where the inflection
9 point on that curve would be. I can't help you with
10 that.

11 MR. RATTINER: From 2003 to
12 2006 when you were not there, who
13 performed the daily duties that you
14 performed prior to 2003, prior to
15 leaving?

16 THE WITNESS: The business
17 model at McGinn Smith & Company changed
18 after I left. And the business model
19 was previously that I would, you know,
20 run around and source transactions. And
21 we would execute those transactions.

22 When I left in January 2003
23 followed by the successful IPO in July,
24 a number of clients of McGinn Smith &
25 Company received vast amounts of capital

1 TIMOTHY MCGINN

2 THE WITNESS: I believe so,

3 yes.

4 MR. NEWMAN: That would be on
5 behalf of McGinn Smith and all of its
6 affiliates or just certain companies?

7 THE WITNESS: Correct.

8 MR. NEWMAN: All its
9 companies?

10 THE WITNESS: I think so, yes.

11 MR. NEWMAN: Is he involved
12 with any of your personal accounts or
13 finances?

14 THE WITNESS: No.

15 MR. NEWMAN: Does he have any
16 involvement with Mr. Smith's personal
17 accounts or finances?

18 THE WITNESS: I doubt it.

19 MR. NEWMAN: Does Mr. Shea
20 have any involvement with your personal
21 accounts or finances?

22 THE WITNESS: No.

23 MR. NEWMAN: How about
24 Mr. Smith's?

25 THE WITNESS: No.

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

TIMOTHY MCGINN

MR. NEWMAN: Is that -- is there anybody within McGinn Smith who has that function for you?

THE WITNESS: No.

MR. NEWMAN: How about Mr. Smith?

THE WITNESS: I doubt it.

MR. NEWMAN: Does McGinn Smith have an outside accounting firm?

THE WITNESS: Yes.

MR. NEWMAN: Who is that accounting firm?

THE WITNESS: The name of the firm is Piaker Lyons. They are domiciled in Binghamton, New York.

MR. NEWMAN: Who is the accountant or auditor who has the McGinn Smith account?

THE WITNESS: I think the engagement partner is a fellow by the name of Ron Simons.

MR. NEWMAN: What interaction have you had with Mr. Simons over the last three or four years?

1 TIMOTHY MCGINN

2 THE WITNESS: Mr. Simons does
3 our personal taxes. He has been the
4 engagement partner for the audit of
5 McGinn Smith & Company since the late
6 '80s -- he may not have been the
7 engagement partner, but he's been
8 involved in the accounts since then.
9 He's had a long history of involvement
10 with, not only the firm, but the
11 principal of the firm.

12 MR. NEWMAN: When you say "he
13 does our personal taxes," are you
14 referring to yourself and Mr. Smith?

15 THE WITNESS: Yes, I am.

16 MR. NEWMAN: Does Mr. Simons
17 also prepare the tax returns for the
18 McGinn companies or entities or
19 affiliates?

20 THE WITNESS: Yes.

21 MR. NEWMAN: You said he's
22 audited McGinn Smith & Company since the
23 late '80s; is that what you said?

24 THE WITNESS: Yes.

25 MR. NEWMAN: Has he audited

1 TIMOTHY MCGINN

2 any other of the McGinn Smith companies,
3 entities or affiliates?

4 THE WITNESS: First of all, I
5 don't think it was he who performed the
6 audit on McGinn Smith & Company. He may
7 be the engagement partner, but he did
8 not do the audit work.

9 MR. NEWMAN: His firm?

10 THE WITNESS: I believe McGinn
11 Smith and Co., Inc. is the only entity
12 where we do a full-blown audit. And we
13 do that for regulatory purposes, as you
14 know.

15 MR. FRANCESKI: How do you
16 spell Piaker?

17 THE WITNESS: Piaker,
18 P-I-A-K-E-R, Lyons, L-Y-O-N-S.

19 MR. NEWMAN: What is your
20 involvement in the filing of tax returns
21 for any of the McGinn Smith companies or
22 affiliates?

23 THE WITNESS: I sign them.

24 MR. NEWMAN: Can you tell us
25 what tax returns you signed?

1 TIMOTHY MCGINN

2 THE WITNESS: I sign numerous
3 tax returns. I signed a bunch of them
4 last week. I don't sign for the funds
5 for the FIIN, FEIN, TAIN and FAIN.

6 MR. NEWMAN: Who signs those
7 returns?

8 THE WITNESS: Mr. Smith.

9 MR. NEWMAN: Are you given a
10 copy of those returns?

11 THE WITNESS: No.

12 MR. NEWMAN: Tell us what
13 returns you sign.

14 THE WITNESS: I sign MS
15 Partners. I may sign McGinn Smith &
16 Company; McGinn Smith Holdings; M&S
17 Finance, M&S Financing LLC; McGinn Smith
18 Transaction Funding; Three Rock
19 Partners; McGinn Smith Acceptance Corp.;
20 Seton Hall Associates; JV Associates;
21 Upstate Imaging Associates; TNA
22 Associates. There may be more.

23 MR. NEWMAN: Do you want to
24 think about it for a second?

25 THE WITNESS: I am not going

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

TIMOTHY MCGINN

to come up -- I mean, that's -- that's
about what I can recall. There may be
more. I'm just not sure.

MR. NEWMAN: Are all the tax
returns for these entities current?

THE WITNESS: Yes.

MR. RATTINER: Did you say you
signed for MS Holdings?

MR. FRANCESKI: He did say.

THE WITNESS: I did say.

MR. RATTINER: Is MS Holdings
current?

THE WITNESS: I don't know. I
don't know. I signed a bunch of these
things last week, maybe ten of them, and
that could have been one of them.

MR. RATTINER: Signing that
last week, were those the ones that were
due September 15th -- or I forget the
tax deadline, but I think it's
September 15, 2009 for 2008?

THE WITNESS: No. They were
more recent than that. They were not
delinquent tax returns.

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

TIMOTHY MCGINN

MR. RATTINER: So what are
they for, what year?

THE WITNESS: Probably 2009.

MR. RATTINER: So you think
the ones you signed within the last week
or so are for 2009?

THE WITNESS: Correct.

MR. RATTINER: Do you know
what entities you signed? Are those the
ones that you just discussed?

THE WITNESS: I don't. But I
can certainly get you a list.

MR. MCCARTHY: Okay. A couple
of times during the course of your
testimony, I sense something in your
voice when you speak about these four
funds, kind of distancing.

Do you have some problem with
the way these four funds were run?

MR. FRANCESKI: Objection.

You may answer.

THE WITNESS: I think that
these funds were run professionally. I
think that they were run with thought