

EXHIBIT EE

BEFORE FINRA

- - -

ORIGINAL

IN THE MATTER OF MATTHEW ROGERS

CASE NO. 20090179854

- - - - -

INVESTIGATIVE TESTIMONY

MATTHEW ROGERS

WOODBIDGE, NEW JERSEY

MARCH 18, 2010

ATKINSON-BAKER, INC.
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REPORTED BY: DEBRA JOHNSON-SPALLONE, CCR NO. NJ1182

FILE NO.: A401E33

BEFORE FINRA

-- --

IN THE MATTER OF MATTHEW ROGERS

CASE NO. 20090179845

INVESTIGATIVE TESTIMONY of MATTHEW ROGERS,
was taken of behalf of FINRA, at 581 Main Street,
Suite 710, Woodbridge, NJ 07095, commencing at
9:40 a.m., Thursday, March 18, 2010, before Debra G.
Johnson-Spallone, CCR No. NJ1182.

A P P E A R A N C E S:

FINRA

BY: CHRISTOPHER D. RATTINER, PRINCIPAL EXAMINER
141 Main Street
Suite 710
Woodbridge, NJ 07095
(732) 596-2043

FINRA

BY: ROBERT J. MCCARTHY, EXAMINATION MANAGER
141 Main Street
Suite 710
Woodbridge, NJ 07095
(732) 596-2043

FINRA

BY: STEVEN E. ROWEN, SENIOR EXAMINER
141 Main Street
Suite 710
Woodbridge, NJ 07095
(732) 596-2043

McGINN SMITH & COMPANY, INC.

BY: JOSEPH B. CARR, ESQUIRE
99 Pine Street
Albany, NY 12207
(518) 449-5131
Representing the Deponent

1 A. Yes.

2 Q. 500,000 outstanding interest?

3 A. Of PIK interest.

4 Q. What is the current status of that
5 loan?

6 A. It's not a loan.

7 Q. Well, the investment.

8 A. The current status is we -- the
9 company, I -- Verifier has made all its payments in a
10 timely manner.

11 Q. Okay.

12 What is the time frame for the --
13 the most recent loan in January of '09?

14 A. What do you mean, what is the time
15 frame?

16 Q. Was it a private placement?

17 It was an investment done by
18 McGinnSmith and Verifier.

19 A. It was an investment done by one of
20 McGinnSmith's affiliated entities. I think the
21 entity is called TDM Verifier, something or other --

22 Q. Right.

23 A. -- and --

24 Q. So, TDM Verifier Trust, did a raise
25 amongst the investors?

1 A. Its investors.

2 Q. Right.

3 Collected how many million?

4 A. The last one was about

5 \$1,000,000.00.

6 Q. Okay.

7 So, collected \$1,000,000.00.

8 Gave that money to Verifier.

9 A. Gave some of it to Verifier, 92
10 percent, I think.

11 Q. Okay.

12 And that money, that 92 percent, is
13 then due back at some point in time.

14 A. At some point in time.

15 Q. That point in time is?

16 A. Is indeterminable.

17 Q. Why is that?

18 A. Because that is the instrument that
19 we sold. So, we have a perpetual instrument.

20 Q. Okay.

21 A. We're incentivized to the repay it
22 about six years from the date of issue, because the
23 coupon, or the dividend on the instrument, increases
24 at year six.

25 Q. And what is the current interest?

1 A. We are paying 12 percent dividend,
2 and we are accruing four percent for a total of 16.

3 Q. And what happens after year six?

4 A. The accrual goes up to 17, and then
5 18 and then 19, and then tops out at 20.

6 Q. And is that the similar term for the
7 other investments?

8 A. They are all the same.

9 Q. Okay.

10 MR. ROWEN: Why raise funds through
11 TDM Verifier Trust?

12 Why not raise funds as Verifier
13 Capital through McGinnSmith or another broker dealer?

14 THE WITNESS: I -- we went to Tim.
15 We explained that we needed money. He seemed happy
16 to give it to us.

17 How he went about doing it was --
18 was certainly not our concern.

19 So, the answer to your question is,
20 I don't know.

21 - - -

22 CONTINUATION

23 BY MR. RATTINER:

24 Q. What role did you play within the
25 setup -- if we could, I guess, the Trust did the

1 raise, TDM Verifier?

2 A. If you say so.

3 Q. Well, TDM stands for what.

4 A. Tim David Matthew --

5 Q. Right.

6 A. -- is my understanding.

7 Q. So, what is your role as Matthew in
8 that Trust?

9 A. In that Trust, I have no role at
10 all. I -- I oversee -- introduced the deal to
11 McGinnSmith and Company by virtue of having a
12 shareholding in the company and working for
13 McGinnSmith.

14 I negotiated and agreed to the
15 terms of the transaction as related to Verifier,
16 and we took the money, and as I say, we made all our
17 payments in a timely manner when due.

18 Q. All right.

19 We'll come back to that.

20 When you started at McGinnSmith in
21 2007, what was your title?

22 A. I think it was what it is today,
23 which is Senior Managing Director.

24 Q. How did you come to know
25 McGinnSmith?

1 MEI?

2 A. Don't know.

3 Q. Verifier Capital, LLC, is the
4 entity. We spoke about the Fortress Trust.

5 A. An entity created to purchase --
6 sorry. To -- in whose proceeds were, ultimately,
7 used to invest in the purchase of a portfolio, Berger
8 Armstrong Fortress Investment Group.

9 Q. Full Circle Partners?

10 A. A hedge fund based in West Chester,
11 New York, that was a co-investor in the purchase of
12 the alarm contracts from Fortress Investment Group.

13 Q. Are there any other entities that I
14 did not name that would have the "M" in it?

15 A. Not so far as I am aware.

16 Q. Okay.

17 MR. ROWEN: I just want to touch
18 on Fortress Trust, you said, ultimately, bought
19 contracts.

20 Were there steps in between.

21 THE WITNESS: Well, my understanding

22 --

23 MR. ROWEN: If you could just let us
24 finish --

25 THE WITNESS: Yes.

1 MR. ROWEN: -- so she could record
2 it.

3 THE WITNESS: Yes.

4 MR. ROWEN: What were the steps in
5 between?

6 THE WITNESS: Well, the asset
7 purchase agreement with Fortress was by an entity
8 called, as I remember, MSFC McGinnSmith, Full Circle
9 Alarm Fund.

10 However, it would appear that that
11 entity was the beneficiary of the money that was
12 raised by this entity that you are talking about,
13 which is called --

14 MR. RATTINER: Full Circle Partners?

15 THE WITNESS: No.

16 Fortress something or other.

17 MR. RATTINER: Fortress Trust.

18 THE WITNESS: So, my understanding,
19 and it is very limited, because it was not what I
20 was involved in, is, it was a Trust set up that then
21 drives money to an affiliated entity of McGinnSmith,
22 which then drives money to buy the assets from
23 whoever they are being purchased from or to lend or
24 to invest or whatever the specific transaction is.

25 MR. ROWEN: Did the three steps make

1 sense to you?

2 THE WITNESS: Well, as I say, all I
3 saw, and all I worked with, was an asset purchase
4 agreement with -- between MSFC Alarm something or
5 other, and Fortress Investment Group.

6 So, the mechanics in Albany are
7 not -- were not part of my -- my role, and not
8 something that I investigated, or was aware or --
9 or was notified about or saw materials on.

10

- - -

11 CONTINUATION

12 BY MR. RATTINER:

13 Q. In addition to your per annum, did
14 you also receive loans from the entity?

15 A. Yes.

16 Q. What were those loans?

17 Who did you receive loans from?

18 A. From the entities, some of which you
19 have mentioned.

20 Q. Okay.

21 A. Primarily from TDM Cable Funding.

22 Q. And what were those loans for?

23 A. Those loans were, as I understood
24 them at the time, my compensation for having
25 originated these transactions.

1 structuring how the money came in, or which entities
2 it flowed through, or so on and so forth.

3 - - -

4 CONTINUATION

5 BY MR. RATTINER:

6 Q. Do you maintain any customers?

7 Do you have any customers?

8 A. What kind of customers?

9 Q. Retail customers.

10 A. No.

11 Q. Okay.

12 Did you recommend any of the private
13 placements to any customers?

14 A. No.

15 Q. Did you receive a copy of the
16 private placement memoranda that was prepared for
17 these deals?

18 A. In the ordinary course, subsequent
19 to your letter, I reviewed two or three of them.

20 Q. Do you recall which ones they were?

21 A. The more recent ones.

22 The TDM and TDMM Benchmark.

23 Q. And what did your review yield?

24 A. Well, it yielded that, as you say,
25 or as you have told me, there was this intermediate

1 step.

2 There was a Trust, which took in
3 money, which then lent it to an entity, which then
4 made the investment and, secondly, it reviewed that.

5 At least in those transactions, the
6 amount of money that actually got to the investee
7 company was very much less than 100 hundred percent
8 of that which was raised from the customer.

9 Q. Is that the first time you saw that
10 with regards to the payment to the institution versus
11 what was raised?

12 Had you known that previously?

13 A. Well, I knew from Verifier that we
14 didn't get 100 percent, because we got 92 percent.
15 So, I knew there were -- and I know in any financing
16 transaction, the agent -- the financing agent gets
17 a commission, and I know from bitter, personal
18 experience that they also charge borrower or the
19 investee company for their professional fees and
20 expenses.

21 So, the fact that 100 cents of the
22 investors' dollar did not get to the investee company
23 was not a surprise.

24 What was a surprise for most
25 transactions was the percentage.

1 A. Correct. Somewhere in that range,
2 yes.

3 Q. And what would Fortress be aware of
4 in terms of a raise?

5 How much would Fortress think, or be
6 told it was raised on their behalf?

7 A. Well, they would not care as long as
8 they got what was due to them at closing.

9 Q. Okay.

10 From the other perspective, what
11 about the investors that invested in the Trust, how
12 would -- would it be identified to them how much
13 was being raised and how much was being given to
14 Fortress?

15 A. It would have been in the offering
16 document --

17 Q. Okay.

18 A. -- which, again, is probably right
19 in front of you.

20 Q. The loan documents that you recently
21 signed in November, did you date those documents?

22 A. No.

23 Q. And why was that?

24 A. Because I was told to sign them
25 and put them in a FedEx package, and return them to

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(At which time Confidential Private
Placement Memorandum - \$3,060,000 -
Fortress Trust 08 was received and marked
as Deposition Exhibit 2 for identification
by the court reporter.)

- - -

CONTINUATION

BY MR. RATTINER:

Q. And Exhibit Number-2 is a private
placement memoranda for Fortress Trust 2008.

Have you seen this document before,
Mr. Rogers?

A. Not that I'm aware, no, but I have
seen many like it.

Q. Okay.

And were you involved in this raise
in this deal?

A. I originated, negotiated, executed
this transaction, and, no, I was not involved in this
raise.

I was involved in the negotiating
-- the -- well, doing the model, doing the due
diligence, and managing the due diligence, and
negotiating the terms, and the ultimate purchase

1 with Fortress Investment Group or -- excuse me.

2 With a subsidiary of Fortress Investment Group.

3 Q. And what was the subsidiary's name?

4 A. I think it was called Drawbridge.

5 Q. Okay.

6 How much did -- based on your
7 familiarity with the deal, what was Fortress' need,
8 and, you know, monetarily?

9 A. Well, it was as much as we were
10 prepared to give them was their need.

11 Q. How much were you prepared to give
12 them?

13 A. We agreed -- a price that I remember
14 -- I recall being something of the order of 1.8
15 million dollars.

16 Q. Okay.

17 What does this document say total
18 raise would be?

19 A. \$3.6 million would be 100 percent of
20 the offering.

21 Q. So, there we have, approximately, a
22 \$1.2 million or so difference between the --

23 A. Well --

24 Q. -- the potential maximum raise --

25 A. Well, we have \$1,000,000.00

1 little bit.

2 Turn to page four, and on page four,
3 approximately, three paragraphs down, starts with the
4 "sole business of this Trust."

5 Do you see that?

6 A. Yes.

7 Q. "The sole business of this Trust
8 will be to lend a minimum \$235,000.00 and maximum of
9 \$2,876,400 -- I'm sorry. \$2.8 million to NEI.

10 What is NEI Capital, LLC?

11 A. Well, it seems to be the entity that
12 transacted with the Fortress affiliates listed here
13 as NSFC Security Holdings.

14 Earlier you told me that this
15 Fortress Trust, and now there seems to be another
16 intermediary, which is NEI Capital.

17 What its role or purpose is, other
18 than as a conduit for proceeds from this Trust, I
19 don't know.

20 Q. Have you received any money from
21 NEI?

22 A. Not so far as I'm aware.

23 However, I did receive a loan
24 shortly following the closing of the transaction
25 with Fortress.

1 Q. Okay.

2 And it goes on to say that, "NEI
3 will acquire 48.98 percent interest in \$1,960,000.00
4 note from NSFC Security Holdings."

5 That's the money that was contracted
6 with Fortress or NEI for?

7 A. I mean, not all of it, but, yes.

8 Q. What do you mean "not all of it"?

9 A. Well, you can see there's a Class B
10 capital contribution made by NEI, and lower down
11 it doesn't say here what that Class B capital
12 contribution was, but it, obviously, isn't zero.

13 Q. What was it?

14 A. I -- again, you are taking -- it was
15 -- I seem to remember it was the order of 150,000,
16 but I could be out by 100,000 either way.

17 Q. So, in this case, do you recall how
18 much NEI received?

19 A. I didn't know the existence of a
20 company called NEI until you showed me this document.

21 Q. How about Fortress?

22 A. They were -- they didn't know the
23 existence. Why would --

24 Q. No. No. No.

25 There was money given to the end --

1 at the end of the day somebody received funds on
2 behalf of --

3 A. Yes. Drawbridge. Sorry. Sorry.

4 Q. -- Fortress.

5 A. Sorry. Sorry. I --

6 Q. So, Drawbridge re --

7 A. Sorry.

8 Q. Okay.

9 A. I think we're at cross purposes.

10 Q. No problem.

11 A. Go back.

12 Q. This offering is looking to raise
13 \$3,000,000.00 for an entity called Fortress Trust.

14 A. Correct.

15 Q. Fortress Trust is then going to give
16 those funds to an entity who is contracted with
17 McGinnSmith or yourself to raise funds on their
18 behalf.

19 Is that correct?

20 A. You would be putting words in my
21 mouth.

22 Q. So, maybe you walk me through the
23 transaction.

24 A. All I know is that I negotiated a
25 transaction with the Fortress affiliate, which

1 involved giving Fortress something of the order of
2 1.8, 1.9 million, and required various other capital
3 contributions, and you can see lower down a debt
4 service reserve fund.

5 And I also know that on the required
6 date the money was distributed to the Fortress
7 affiliate and the transaction closed, and shortly
8 thereafter, I received a loan or variable
9 compensation. I received monies as a result of my
10 negotiating, executing, originating this transaction.

11 Q. Okay.

12 Trying to work through the paragraph
13 with all these different entities.

14 At the end of the day, Drawbridge
15 received money.

16 A. Yeah.

17 Q. Okay.

18 A. In other words, they wouldn't have
19 closed.

20 Q. How much did Drawbridge receive?

21 A. Again, I seem to remember it was
22 between 1.8 and 1.9 million dollars.

23 Q. Okay.

24 With that said, that is the money
25 they received. There is 1,000,000 or so left from

1 the --

2 A. Correct.

3 Q. -- from this document.

4 Okay.

5 A. No -- yes. The less -- there is
6 \$1,000,000.00 left, less the Class B capital
7 contribution, less the debt service reserve.

8 Q. Which is not identified here, which
9 --

10 A. Which is not funded out of here.

11 Q. I mean, down below, two paragraphs
12 below, we do see a debt service reserve fund of,
13 approximately, 185,000.

14 A. Correct. Correct.

15 Q. So, that is the number of,
16 approximately, 150 you were referring to earlier.

17 A. No.

18 Q. That is a different number.

19 A. That is in addition to.

20 Q. So, we have 1.8, 1.9 going to
21 Drawbridge. We have \$185,000.00 as the reserve
22 funding to NSFC.

23 A. Correct.

24 Q. We have another --

25 A. Capital contribution.

1 Q. Of how much?

2 A. It is not stated here.

3 Q. Okay.

4 And we have another \$150,000.00
5 going to a reserve.

6 A. No. That is the Class B capital
7 contribution, I remember, was the order of \$150,000.

8 So, what you have is, you have 2.8
9 -- let's call it 1.876. So, we have got
10 \$1,000,000.00 less. 150,000 less 185,000.

11 Q. Okay.

12 A. And I have not got my calculator in
13 front of me, because that is more than 600,000 less
14 than 800,000.

15 Q. So, we have, approximately,
16 \$700,000.00 that is not being utilized for this
17 transaction if \$3,000,000.00 is -- is raised.

18 A. If -- if the alarm contracts perform
19 as we thought they would.

20 Q. Well, that has nothing to do with
21 the raise performance.

22 Contracts come after the raise.

23 A. Correct.

24 But, as I say, going into these
25 things, amazingly enough, bad things tend to happen

1 more than good things, and, therefore, in order to
2 meet your obligations to the holders of the Trust
3 certificates, it behoves you to have capital on hand
4 to get you over any time -- long differences between
5 the operating cash flow of the acquired assets and
6 the debt service obligations that you have originated
7 or entered into as a result of this private placement
8 or this or any other debt instrument.

9 Q. Okay.

10 We can go down a few more
11 paragraphs. It says, "Messrs. Timothy McGinn and
12 David Smith have agreed to purchase the remaining
13 qualifying recurring monthly revenue derived from
14 the NEI portion of the portfolio at a purchase
15 price multiple of 24 times during November, 2011,
16 December 2011 and January -- or January 2012."

17 Can you tell me what that is?

18 A. Well, that's effectively a guarantee
19 that -- that, on these dates, Messrs. McGinn and
20 Smith will pay 24 times recurring monthly revenue for
21 the remaining contracts to the -- to the -- to the
22 holders of the Trust certificates.

23 Q. And is --

24 A. At least that is how I read it.

25 Q. -- that 24 times -- based on your

1 industry knowledge, is that a reasonable number
2 multiple?

3 A. For these contracts, it is -- it is
4 more than reasonable.

5 I mean, the answer; on average in
6 the U.S. is 36. These contracts were not average.
7 They were very much below average.

8 So, it doesn't shock me that that
9 number is there, but I -- I had no idea that this
10 effectively is what amounts to a personal guarantee
11 behind this transaction.

12 Q. And that had not been disclosed to
13 you previously?

14 A. No.

15 Q. If you turn on to page five, you
16 will see compensation and fees.

17 A. Yeah.

18 Q. And we see "McGinnSmith Transaction
19 Funding, an affiliate of both McGinnSmith & Company,
20 the Sales Agent and McGinnSmith Capital Holdings,
21 the Trustee will be paid a brokerage fee in
22 connection with the acquisition of the portfolio.
23 The Trustee will not receive a fee for its service
24 from McGinnSmith Transaction Funding."

25 Do you believe that fee to be the

1 same fee identified on the first page of the six
2 percent underwriting discount?

3 A. No.

4 Q. What do you believe that fee to be?

5 A. I believe that to be a fee that
6 was charged to NSFC Security Holdings, LLC of
7 \$2,150,000.00.

8 Q. Where do you see that?

9 A. Well, I see NSFC, and I know that
10 we agreed with the participant in the note that
11 McGinnSmith, or an affiliate, would charge that
12 entity the quarter of a million dollars at closing,
13 and I presume, although it is not itemized
14 numerically, that that is what that disclosure
15 concerns.

16 Q. Turn to that page seven.

17 A. Yeah.

18 Q. You see business of the Trust fund?

19 A. Yeah.

20 Q. And according to this it says, "the
21 Trust fund has been formed solely for the purchase
22 of loaning up to \$2.876 million to NEI Capital, LLC,
23 secured by 48.98 percent of the senior financing of
24 the portfolio acquisition, 74.50 percent of the
25 equity of NSFC Security Holdings, LLC, and a

1 \$150,000, 15 percent payment in kind of the Class B
2 membership of NSFC Security Holdings."

3 A. Correct.

4 Q. Is that what you believed the
5 proceeds would be used for?

6 A. Yes.

7 Q. Okay.

8 And have you seen versions of this
9 document, but not this document?

10 Is that what you said?

11 A. I have not seen this document.

12 Q. Have you seen versions of this
13 document?

14 A. No. I -- I mean, they -- I think
15 he got me to write the first two paragraphs of the
16 next section in the security alarm industry.

17 Q. And have you seen anywhere in this
18 document upon your review where it would mention
19 loans made payable to either yourself, Mr. McGinn or
20 Mr. Smith?

21 A. Not in the use of funds section, no.

22 Q. If you look --

23 MR. CARR: I'm going to object.

24 He hasn't had an opportunity to
25 review the document. I don't know whether you want

1 Q. Okay.

2 And then the printing, who would get
3 the \$5,000.00 for printing?

4 A. I would assume the firm would get it
5 for consideration for the paper and binding and so
6 on. I don't know whether they used an outside firm
7 or not.

8 Q. How much did you receive in loans
9 from TDM --

10 A. Zero.

11 Q. -- from this transaction?

12 A. Zero.

13 Q. How about from TDMM Cable Funding,
14 LLC?

15 A. My recollection is \$25,000.00.

16 Q. Was that not related to this deal?

17 A. No.

18 Q. And why is that?

19 A. What do you mean, "why is that"?

20 Q. Hold on a second.

21 If we turn to page four --

22 A. Yeah.

23 Q. -- we will see here, third paragraph
24 down underneath the Trust; "the Trust will make a
25 loan to TDMM."

1 Which entity is that that you are
2 familiar with?

3 A. TDMM Cable Funding --

4 Q. Okay.

5 A. -- as distinct from TDM Cable
6 Funding.

7 Q. Right.

8 So -- so, the Trust will make a loan
9 to TDMM Cable Funding?

10 A. Yeah.

11 Q. "TDMM Cable Funding will purchase
12 the operating asset of Benchmark, as well the
13 contracts for total consideration of, approximately,
14 1.95 million, and will spend, approximately, 600,000
15 in related acquisition costs utilizing the loan from
16 the Trust."

17 Did you say you did not receive a
18 loan as per this transaction?

19 A. I did. That's what I did say.

20 Q. And was that the loan that you
21 received from TDMM Cable Funding on June 10th, 2009?

22 A. That did not relate to this
23 transaction.

24 Q. What did that relate to?

25 A. Related to the transaction we closed

1 in June, which was their purchase of Broadband
2 Solutions.

3 Q. How much was that for?

4 A. 25,000. That is my memory, but you
5 probably have it written in front of you.

6 Q. Where is the difference here?

7 So, we have 1.95 million being sent
8 to the entity.

9 Then it references 600,000 related
10 costs.

11 Where is the additional 450,000?
12 Some of that would be due to the 240?

13 A. Well, it's on the -- I mean, that's
14 why this one is good, because it has the numbers.

15 I mean, that is what you need.

16 Q. But those numbers don't correspond
17 to this paragraph, is what I'm saying, or this
18 paragraph only references about 22 and a half million
19 dollars, a little over.

20 A. Well, 1950, plus 600 is 2.55 million
21 and there is 3,000,000 being raised. So, there is
22 \$450,000 missing --

23 Q. Right.

24 A. -- which is disclosed here.

25 So, obviously, there is internal

1 inconsistencies in this document that you
2 highlight --

3 Q. Okay.

4 A. -- but given it says on the front,
5 3,000,000, and it says here, 3,000,000, I would
6 imagine that the table on page eight has precedence.

7 Q. And page six, do you know what was
8 pledged as collateral?

9 Towards the middle of the paragraph
10 they have the use of proceeds. It says, "TDMM will
11 pledge as collateral for the loan all assets and
12 contracts being acquired."

13 A. Well, what was pledged was what it
14 said. I mean, which is all of the assets that that
15 company held, which includes the important ones being
16 the contracts with the communities that are listed on
17 page four.

18 Q. Okay.

19 And page eight of the document, you
20 have referred to the sources and uses of fees.

21 Have you seen this in the other
22 documents you reviewed -- you have reviewed?

23 A. Sorry. You need to be more clear.

24 Q. The -- the private placement
25 memorandums that you have reviewed, or received

1 during your tenure at McGinnSmith, have you seen a
2 chart similar to this one on page eight?

3 A. Well, we reviewed the Fortress
4 Trust, and it was done in words. The documents that
5 I reviewed -- this stands out as having the numbers.

6 Most of the time, or preceding this
7 document, the use of funds was spelled out in words,
8 as opposed to in a table.

9 MR. RATTINER: Okay.

10 Do you have anything?

11 I'm going to introduce one more
12 document here.

13 - - -

14 (At which time Confidential Private
15 Placement Memorandum - \$3,550,000 TDM Cable
16 Trust 06 was received and marked as
17 Deposition Exhibit 4 for identification
18 by the court reporter.)

19 - - -

20 THE WITNESS: Could I use the
21 restroom please?

22 MR. RATTINER: Sure.

23 We will take a ten minute break.

24 THE WITNESS: Thank you.

25 - - -

1 (Recess was taken at this time.)

2 - - -

3 MR. RATTINER: Okay.

4 We are back on the record.

5 - - -

6 CONTINUATION

7 BY MR. RATTINER:

8 Q. In front of you Mr. Rogers, you
9 have exhibit number four, and exhibit number four --
10 exhibit number four is a private placement memoranda
11 for TDM Cable Trust 06.

12 Have you seen this document before?

13 A. No, I don't think so, not this one.
14 It is one of the earlier ones, as it says.

15 Q. And in total how much did you
16 receive in loans from TDM Cable Trust?

17 A. I think the answer is on exhibit
18 number one. I think it is \$350,000.00.

19 Q. Okay.

20 And what about the other 86,000 and
21 30,000 behind it?

22 There is actually three notes in
23 exhibit number one.

24 A. That I couldn't -- but this -- this
25 Trust related to this transaction.

1 Q. And what did this generally --

2 A. This January, '07, that would be the
3 raise that we did for Verifier.

4 And July, 2007, will be the cruise
5 transaction, the Luxury Cruise Center.

6 Q. But all payments received from TDM
7 Cable Funding?

8 A. Well, that's what these notes say.

9 Q. And how about reality?

10 A. I don't know. I would have to look
11 in my bank statements and see what the -- they were
12 in.

13 Q. Okay.

14 So, for this deal, according to your
15 testimony, you received \$350,000.00 --

16 A. Correct.

17 Q. -- as exhibited in Exhibit 1?

18 A. Correct.

19 Q. And we have already discussed what
20 you did for that previously. So, we won't do that
21 again.

22 On the front of this document we see
23 the underwriting discount is three percent.

24 Do you see that?

25 A. Yes.

1 and given the use of proceeds paragraph, it is not
2 disclosed in this document.

3 Q. Is this the first you are learning
4 of that?

5 MR. CARR: Well, first of all, he
6 hasn't reviewed the whole document. So, let's limit
7 it to that paragraph.

8 MR. RATTINER: If you want to take a
9 moment --

10 THE WITNESS: No, but that paragraph
11 does not disclose that -- that there will be loans
12 made to anyone, other than to TDM Cable Funding, LLC.

13 MR. RATTINER: Okay.

14 I just wanted to defer to counsel.

15 That's all.

16 - - -

17 CONTINUATION

18 BY MR. RATTINER:

19 Q. If we turn to page six --

20 A. Yes.

21 Q. -- the use of proceeds, again, you
22 will see in the second paragraph, "the Trust fund
23 intends to use all of the net proceeds of the
24 offering to purchase approximately 14 percent of
25 the described assets."

1 Did that occur?

2 (Pause)

3 A. I don't know what that means.

4 Q. Okay.

5 A. I know that money went to Prime
6 Vision, but at closing and subsequently -- I know
7 money went to ADT at closing, and not subsequently.

8 So, I know that the assets were
9 purchased, or we advanced against them, but
10 14 percent of what, I have no idea.

11 Q. Okay.

12 - - -

13 CONTINUATION

14 BY MR. McCARTHY:

15 Q. I just want to make sure that I
16 understand this, and I will refer back to this page
17 six, the second paragraph under use of proceeds.

18 A. Sorry. Page -- oh, sorry, yes.

19 Got it.

20 Q. Second paragraph you say proceeds?

21 A. Yes.

22 Q. The last sentence of that says, "the
23 Trust fund intends to use all of the net proceeds of
24 the offering to purchase approximately 14 percent of
25 the described assets."

1 Now, I understand that you testified
2 that you are not quite sure what the 14 percent part
3 of that is.

4 Is that correct?

5 A. Well, I don't -- it's -- I don't
6 know what the described assets are, and I don't know
7 where 14 percent comes from.

8 Q. Would it be reasonable to state that
9 all of the net proceeds couldn't possibly be used to
10 purchase anything?

11 A. Sorry. Restate please.

12 Q. Well, the net -- and let's go to the
13 first sentence there, and I will read it.

14 "The net proceeds to the Trust fund
15 from the sale of the certificates offered hereby
16 after deducting the underwriting discount will be
17 approximately 485,000, 97 percent of gross proceeds
18 if the minimum offering for a certificate is
19 achieved."

20 The next para -- the next sentence
21 we said, the net proceeds. Now, again, I'm not going
22 to go back and forth with you.

23 Gross minus whatever expense equals
24 net?

25 A. Right.