EXHIBIT II

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, COMPLAINANT, V. MCGINN, SMITH & CO., INC. (BD NO. 8453), DAVID L. SMITH (CRD NO. 427284), AND TIMOTHY M. MCGINN (CRD NO. 813935), RESPONDENTS.	DISCIPLINARY PROCEEDING NO. 2009017984501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From in or about September 2003 through in or about November 2006 (the Offering Period), McGinn, Smith & Co., Inc. (the Firm), acting through David L. Smith (Smith), the President and an owner of the Firm, conducted four fraudulent unregistered securities offerings involving the sale of approximately $89 million in income notes. The notes were issued by four limited liability companies (hereafter Income Note LLCs) managed and controlled by Smith.

2. The income notes, which are securities, were not registered or eligible for an exemption from registration. In offering the notes, the Firm and Smith ostensibly relied upon the exemption provided by Rule 506 of the Securities Act of 1933 (Regulation D). That exemption, however, was not available because, among other things, the four income note offerings had, individually and collectively, in excess of 35 non-accredited investors.

3. Note investors were promised that their funds would be earmarked for a broad array of public and private investments. Instead, Smith, acting on behalf of the investment advisor for the Income Note LLCs, misused the majority of offering proceeds for his own needs and to benefit entities that he, Timothy M. McGinn (McGinn) and/or TL owned, controlled, and/or in which they maintained a financial interest (the Related Entities). Moreover, most of the Related Entities were illiquid and had little or no revenues, or were in poor financial condition, at the time they received the offering proceeds from the Income Note LLCs.

4. Smith misused approximately $51 million of investor funds, directing approximately $17 million to the Related Entities and approximately $34 million more to make loans to those companies. Smith and the Related Entities received a direct financial benefit from these transactions. For example, Smith received personal loans of approximately $590,000 from the Related Entities that were funded by investments made in the Income Note LLCs. Smith controlled, and had an ownership interest in, the investment advisor for the Income Notes LLCs. The Firm, acting through Smith, failed to disclose the related party transactions and lending activity to the income note investors.

5. During the Offering Period, the Firm and Smith also misrepresented to investors that the Firm would only receive a two percent underwriting/commission fee from the income note offerings. In fact, the Firm received recurring annual commissions from the inception of the offerings, totaling approximately $7.5 million (approximately eight percent of the offering proceeds).

6. The Income Note LLCs defaulted on the income notes. In 2008, Smith sent two letters to the income note holders misrepresenting that the Firm and two of the Related Entities, McGinn, Smith Advisors, LLC, and McGinn, Smith Capital Holdings Corp. (the McGinn Smith Affiliates), would waive or forgo further fees and commissions due to the poor financial condition of the income note issuers. Contrary to those representations, however, the Firm and the McGinn Smith Affiliates subsequently took approximately $6.7 million in fees and commissions.

7. Throughout the Offering Period, the Firm, acting through Smith, also failed to establish and maintain a supervisory system, and failed to establish, maintain and enforce written supervisory procedures that were reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA rules applicable to private securities offerings and related suitability, disclosure, verification of investor accreditation status and other sales practice-related issues.

8. Finally, in response to a FINRA request for information in September 2009, the Firm, acting through Smith and fellow owner McGinn, provided the staff with falsified documents, submitting copies of backdated promissory notes for personal loans they

(and others) received from two of the Related Entities from October 2006 through October 2009.

9. This conduct violated NASD Conduct Rules 2110, 2120, 2330 and 3010, IM-2310-2, and FINRA Rules 8210 and 2010, and willfully violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder.

RESPONDENTS AND JURISDICTION

10. The Firm has been a member of FINRA since January 9, 1981. It is based in Albany, New York and conducts a general securities business. The Firm derives most of it revenues from private offerings and investment advisory services. The Firm is owned by Smith (50%), McGinn (30%) and TL (20%).

11. Smith has been the President and part owner of the Firm since it became a FINRA member. On April 9, 1973, he first became registered with FINRA as a general securities representative. Smith was the Firm's President and Chief Compliance Officer during the time period of the violations alleged herein. On November 25, 1980, Smith also became registered with FINRA as a general securities principal. He holds several other securities licenses as well.

12. Smith is the President and 50% owner of McGinn Smith Holdings, LLC, the holding company that owns McGinn Smith Capital Holdings Corp. and McGinn Smith Advisors, LLC.

13. McGinn Smith Advisors, LLC was the sole owner and investment advisor for the Income Note LLCs. Those entities paid an annual advisory fee of 1% to McGinn Smith Advisors, LLC. McGinn Smith Capital Holdings Corp. received a 0.25% annual "servicing fee" from the Income Note LLCs.

14. McGinn has been the Chairman of the Board and part owner of the Firm since it became a FINRA member. On October 18, 1975, he first became registered with FINRA as a general securities representative. On November 25, 1980, he also became registered as a general securities principal. McGinn is a 30% owner of McGinn Smith Holdings, LLC.

OVERVIEW OF FRAUDULENT OFFERINGS

15. The Firm, acting through Smith, sold approximately $89 million in income notes through four private offerings. In offering the notes, the Firm and Smith ostensibly relied upon the exemption provided by Regulation D. The issuers, First Independent Income Notes, LLC, First Excelsior Income Notes, LLC, Third Albany Income Notes, LLC and First Advisory Income Notes, LLC, were created and managed by Smith.

16. The four offerings occurred from on or about September 25, 2003 through on or about November 15, 2006 and raised the following amounts:

- *First Independent Income Notes, LLC (FINN)*
  Offering Period: Sept 2003 – December 2004
  Approximately $20 million

- *First Excelsior Income Notes, LLC (FEIN)*
  Offering Period: January 2004 - January 2005
  Approximately $21 million

- *Third Albany Income Notes, LLC (TAIN)*
  Offering Period: November 2004 - December 2005
  Approximately $30 million

- *First Advisory Income Notes, LLC (FAIN)*
  Offering Period: October 2005 – November 2006
  Approximately $18 million

17. Although the offerings commenced during different periods, they overlapped with each other insofar as, after the first of these offerings, there was always at least one or more of the other offerings ongoing at the time a new offering commenced.

18. All of the note offerings had the same structure and were sold pursuant to a "Confidential Private Placement Memorandum" (PPM) that contained virtually identical disclosures, terms and information. Each investor was also required to complete an Investor Questionnaire and Subscription Agreement.

19. A total of approximately 515 investors purchased notes in the four offerings.

20. The PPMs for all four offerings were prepared at Smith's direction and were reviewed by him for accuracy prior to commencement of each offering.

21. Each issuer offered the same security (and structure), providing for three classes or tranches of income notes with different maturity dates and interest payments. "Secured Senior Notes" typically were due within one year and offered interest payments of 5% to 6%, while "Secured Senior Subordinated Notes" and "Secured Junior Notes" matured within three to five years and paid the highest interest ranging from 7.5% to 10.25%. The Senior Subordinated Note holders' and Junior Note holders' rights to receive payments were subordinated in rights of payment to the Senior Note holders.

22. The PPMs promised investors that they would receive quarterly interest payments.

23. After raising approximately $89 million, the Income Note LLCs have defaulted on the notes. The vast majority of the investments held by the Income Note LLCs are illiquid and non-performing. In 2008, Smith, acting on behalf of the Income Note

LLCs, stopped all redemptions and has only made reduced quarterly interest payments to one of the three classes of income note holders.

FIRST CAUSE OF ACTION

MISUSE OF PROCEEDS
(NASD CONDUCT RULES 2330 AND 2110)

24. The Department realleges and incorporates by reference paragraphs 1-23 above.

25. The PPMs that the Firm distributed to purchasers of the Income Note LLCs' notes promised investors that their funds would be earmarked for a broad array of public and private investments. Instead, Smith, acting on behalf of the investment advisor for the Income Note LLCs, misused the majority of offering proceeds for his own needs and to benefit the Related Entities.

26. From in or about November 2003 through in or about October 2007, Smith, acting on behalf of the investment advisor for the Income Note LLCs, misused approximately $51 million of investor funds, directing approximately $17 million to 3 Related Entities and approximately $34 million more to make loans to 23 other Related Entities.

27. Most of the Related Entities were illiquid and had little or no revenues, or were in poor financial condition, at the time they received offering proceeds from the Income Note LLCs. Some of the Related Entities used those funds to make required payments to investors in earlier offerings involving the Firm, Smith and McGinn. Most of the Income Note LLCs' investments and loans in the Related Entities have not been profitable and have yielded limited or no returns.

28. Approximately $22 million of the loans to the Related Entities have still not been repaid.

29. The PPMs for the Income Note LLCs failed to disclose that the LLCs would be making investments in any of the Related Entities.

30. The PPMs for the Income Note LLCs failed to disclose that the LLCs would be making loans to any of the Related Entities.

31. Smith and the Firm received financial benefits from the transactions involving the Related Entities. For example, Smith caused the Income Note LLCs to use the income note offering proceeds for some the following loans and investments:

- approximately $2 million in loans in October 2007 to 107A, an LLC solely owned by McGinn Smith Holdings, LLC. These funds were used to make an investment in another private offering involving one of the Related Entities. This investment allowed that entity to meet its minimum offering requirement and break escrow, thereby allowing the Firm to receive approximately $635,000 in underwriting fees. This loan remains outstanding;
- approximately $7 million in loans from in or about November 2004 through in or about January 2007 to CCL, an LLC in which Smith held an ownership interest and also served as director;
- approximately $1 million in loans from in or about May 2004 through in or about March 2007 to MSP, a general partnership that Smith co-owned with McGinn. Over $500,000 of this loan remains outstanding; and

- a total of approximately $875,000 used to purchase preferred stock in the Firm from in or about December 2004 through in or about May 2006.

32. From in or about September 2006 through in or about March 2007, Smith also received personal loans of approximately $590,000 from the Related Entities that were funded by investments made in the Income Note LLCs.

33. From in or about February 2007 through in or about March 2008, Smith also misused offering proceeds from the Income Note LLCs to make loans between the various LLCs totaling approximately $1.38 million. For example, on or about February 5, 2007, TAIN lent FEIN approximately $450,000 using funds received from the income note offerings. Approximately $355,000 of this loan is still outstanding.

34. The PPMs for the Income Note LLCs failed to disclose that the LLCs would be lending to, or borrowing from, each other.

35. By misusing offering funds, the Firm and Smith violated NASD Conduct Rules 2330 and 2110.

SECOND CAUSE OF ACTION

OFFERING FRAUD: MISREPRESENTATIONS/OMISSIONS (WILLFUL VIOLATIONS OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 THEREUNDER, NASD CONDUCT RULES 2120 AND 2110 AND IM-2310-2)

36. The Department realleges and incorporates by reference paragraphs 1-35 above.

37. The Firm and Smith failed to disclose the following material facts in connection with the four income note offerings:

- The Income Note LLCs would invest in Related Entities;
- The Income Note LLCs would be making loans to Related Entities;

- The majority of offering funds would be used for transactions involving Related Entities;
- The potential conflicts of interest associated with the transactions involving the Related Entities;
- The Income Note LLCs would be making loans to each other;
- The Income Note LLCs would be engaged in long-term lending activity; and
- The majority of offering funds would be invested in illiquid, non-public companies.

38. Smith also misrepresented in the PPMs and in the Subscription Agreements that investments would only be accepted from accredited investors. As alleged in the Third Cause of Action below, however, there were numerous non-accredited investors in each offering.

39. Smith also misrepresented in the PPMs and in the Subscription Agreements that the Firm would only receive a 2% commission/fee from income note offerings. In fact, the Firm received annual commissions from the inception of the offerings totaling approximately $7.5 million, approximately an 8.4% fee.

40. The Firm, acting through Smith, knew, or was reckless in not knowing, that the PPMs and Subscription Agreements contained these misrepresentations. Nevertheless, the Firm sold the income notes without corrective disclosure to potential investors.

41. As alleged above in paragraph 31, the Firm and Smith received a financial benefit from the transactions involving the Related Entities.

42. As part of the course of conduct described in paragraphs 36-41 above, the Firm and Smith, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of

any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes or artifices defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon nay person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

43. By misrepresenting and omitting material facts, the Firm and Smith willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and violated NASD Conduct Rules 2110 and 2120 and IM-2310-2.

THIRD CAUSE OF ACTION

Sale of Unregistered Securities
(NASD Conduct Rule 2110)

44. The Department realleges and incorporates by reference paragraphs 1-43 above.

45. During the Offering Period, the Firm, acting through Smith, sold securities in the form of income notes issued by FIIN, FEIN, TAIN and FAIN. Among other things, Smith directed the sales efforts relating to the notes.

46. At no time was there a registration statement in effect for the income notes. Furthermore, these notes were not eligible for exemption from registration. Each of these offerings claimed an exemption from Registration pursuant to Rule 506 of Regulation D.

47. There were more than 35 non-accredited investors in each of the offerings, making them ineligible for the claimed Rule 506 exemption.

48. Furthermore, the four note offerings were not separate and distinct, and were, therefore, subject to integration because, among other things: (1) each successive note offering was issued prior to the previous note offerings reaching its maximum offering amount; (2) the terms and structure of each of the four note offerings were virtually identical; and (3) for at least a portion of the Offering Period, investor funds were raised concurrently for all four offerings.

49. The four integrated offerings had a total of approximately 250 non-accredited investors, which also made them ineligible for the Rule 506 exemption.

50. By selling unregistered securities, the Firm and Smith contravened Section 5 of the Securities Act and thereby violated NASD Conduct Rule 2110.

FOURTH CAUSE OF ACTION

Misrepresentations/Omissions
(NASD Conduct Rule 2110)

51. The Department realleges and incorporates by reference paragraphs 1-50 above.

52. On or around January 25, 2008, Smith sent to the Junior Note holders of all four Income Note LLCs a letter informing them that their annual interest rate would be reduced from 10.25% to 5% due to the effects that market conditions and the credit crisis were purportedly having on the LLCs.

53. In this letter, Smith misrepresented that the Firm and the McGinn Smith Affiliates, which had been receiving fees/commissions from the Income Note LLCs, would

"suspend" collection of further fees and commissions to assist the financial condition of the LLCs.

54. In fact, the Firm and the McGinn Smith Affiliates continued to take fees and commissions, collecting approximately $6.7 million from 2008 to 2010.

55. In 2008, the Firm stopped redemptions for all note holders of the Income Note LLCs. On October 22, 2008, Smith wrote a letter to all of the note holders advising them, among other things, that the Income Note LLCs would be unable to redeem notes on November 15, 2008, due to the illiquidity of the investments made by the LLCs. Smith again blamed this development on, among other things, the "current condition in financial credit markets" and the "liquidity crises."

56. In this letter, Smith represented that the financial condition of the Income Note LLCs, and their ability to repay investors would be re-evaluated the following year. The letter also announced a restructuring of the notes that substantially extended the maturity dates on all classes of the income notes. For example, the maturity dates for the Junior Subordinated Notes, typically five years from purchase, were extended until August 2023.

57. This letter also outlined a restructuring plan for each of the income notes that substantially extended the maturity dates for several years for each of the classes of the notes and unilaterally lowered the interest payments for each.

58. In the January 25, 2008 letter to Junior Note holders and the October 22, 2008 letter to all note holders, Smith failed to disclose that the basis for the Income Note LLCs' poor financial condition was due, at least in part, to his decision to lend/invest the

majority of investor funds in one of the illiquid Related Entities that had limited or no revenues or were in financial distress.

59. In his October 22, 2008 letter to note holders, Smith also misrepresented that the Firm and the McGinn Smith Affiliates would be making their own "sacrifices" and would "forfeit" all annual fees and commissions as part of the proposed note restructuring to "improve liquidity." As noted above, this was a false statement; the Firm received approximately $6.7 million in fees and commission after this letter was sent to investors.

60. By making misrepresenting and omitting facts in communications with investors, Smith violated NASD Conduct Rule 2110.

FIFTH CAUSE OF ACTION

Supervisory Violations
(NASD Conduct Rules 3010 and 2110)

61. The Department realleges and incorporates by reference paragraphs 1-60 above.

62. From in or about 2003 through in or about 2008, the Firm's primary revenues were derived from private placements, including the four income note offerings.

63. During this period, the Firm, acting through Smith, failed to establish and maintain a supervisory system, and failed to establish, maintain and enforce written supervisory procedures, that were reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA rules applicable to private securities offerings and related suitability, disclosure, verification of investor accreditation status and other sales practice-related issues.

64. As the Firm's Chief Compliance Officer and a supervisory principal, Smith reviewed and accepted the individual investments for the income note offerings. In doing so, Smith relied almost exclusively on the information provided in the Subscription Agreements and Purchaser Questionnaires submitted by each investor. There was no information in those documents relating to the investor's liquid net worth or other investments; therefore, Smith had insufficient information to assess the suitability of the investment.

65. Many of the investor documents that Smith approved were deficient. They were incomplete or missing financial information necessary to ascertain whether the investor was "accredited" under Regulation D or whether the investment was suitable. After the investor submitted the questionnaires to the Firm, many of them were altered to increase the person's reported net worth and/or income to qualify them as accredited.

66. Smith knew, or should have known, that the documents had been altered. At the very least, the obvious alterations should have caused Smith to question the accuracy of the documentation and whether the investor was accredited.

67. Smith failed to ensure that the forms were complete and accurate and to otherwise respond reasonably under the circumstances. Instead, Smith continued to approve the income note investments notwithstanding these deficiencies.

68. As alleged above, the PPMs and Subscription Agreements for the income notes represented that investments would only be accepted from accredited investors. Nevertheless, Smith approved and accepted approximately 250 investments by non-accredited investors.

69. By failing to establish, maintain and/or enforce a supervisory system and written supervisory procedures that were reasonably designed to achieve compliance with all applicable regulatory requirements with respect to the note offerings, the Firm and Smith violated NASD Conduct Rules 3010 and 2110.

SIXTH CAUSE OF ACTION

Providing False Documents to FINRA
(FINRA Rules 8210 and 2010)

70. The Department realleges and incorporates by reference paragraphs 1-69 above.

71. On or about September 30, 2009, the staff sent a letter to the Firm requesting, pursuant to FINRA Rule 8210, all documentation concerning loans received by Smith, McGinn and other Firm employees from certain Related Entities, including TDMCF, and CCV, two LLCs controlled by McGinn and Smith.

72. On or about November 16, 2009, the Firm, acting through Smith and McGinn, submitted to FINRA staff copies of 23 promissory notes relating to loans that Smith and McGinn received from TDMCF and CCV.

73. Six of the notes were signed by Smith as the borrower and related to loans that he had received from TDMCF and CCV.

74. Fourteen of the notes were signed by McGinn and related to loans that he had received from TDMCF and CCV. The remaining notes were signed by MR, a Firm registered representative.

75. Each of the promissory notes signed by the Firm, Smith and MR included a signature date that was during the time period from in or about October 2006 through in or about October 2009.

76. Each note contained information regarding the specifics of the notes, such as the amount of the loan, interest rate, maturity date (in all cases the maturity date is six years from the date of the original loan). The final page on each promissory note stated "IN WITNESS WHEREOF, this Note has been executed and delivered on the date specified above by the duly authorized representative of the Maker."

77. This certification was false. In fact, the subject promissory notes that the Firm provided were actually prepared, dated and signed by McGinn, Smith and MR from in or about November 2, 2009 through in or about November 15, 2009.

78. The Firm, Smith and McGinn provided the subject promissory notes to FINRA staff knowing that the dates reflected thereon were false. Nevertheless, the Firm, Smith and McGinn did not advise the FINRA staff that the copies of the promissory notes they produced to FINRA staff had been backdated.

79. By providing false documents to FINRA staff, the Firm, Smith, and McGinn violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

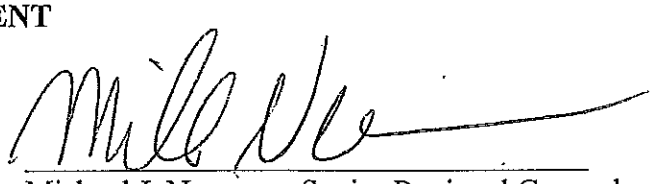
A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondents McGinn, Smith & Co., Inc. and David L. Smith be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

B. order that the Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and

C. make specific findings that Respondents McGinn, Smith & Co., Inc. and David L. Smith willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: April 5, 2010



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Department of Enforcement v. McGinn, Smith & Co., Inc, et al.
Case No. 20090179845
Initials Key

TL = Thomas Livingston

107A = 107th Associates, LLC

CCL = Coventry CareLink Holding Corp.

CCV = Cruise Charter Ventures, LLC

MSP = M & S Partners

TDMCF = TDM Cable Funding, LLC

MR = Matthew Rogers