

# **EXHIBIT MM**



## U.S. Securities and Exchange Commission

### SEC Files Emergency Action to Halt Fraudulent Scheme at Albany-Based Firm

**FOR IMMEDIATE RELEASE**  
**2010-62**

*Washington, D.C., April 20, 2010* — The Securities and Exchange Commission today filed an emergency enforcement action to halt a fraudulent scheme being orchestrated by two co-owners of an Albany, N.Y.-based firm who misused investor money to fund their struggling business operations and meet ever-increasing liquidity needs. The SEC has obtained a court order to freeze their assets.

#### **Additional Materials**

► [SEC Complaint](#)

According to the SEC's complaint, filed in U.S. District Court for the Northern District of New York, Timothy M. McGinn and David L. Smith — through their firm McGinn, Smith & Co., Inc. (MS & Co.) and affiliated entities — raised approximately \$120 million from investors in more than 25 debt offerings that were not registered with the SEC under the securities laws. They misrepresented that the investments would generate sufficient income to support the promoted interest rates and the return of principal at the end of the notes' terms.

The SEC alleges that McGinn and Smith knew that it would never be possible to repay investors their principal, let alone the quarterly interest payments promised. McGinn and Smith instead misused offering proceeds to support their financially troubled or bankrupt entities, to make payroll for MS & Co., and even for their own personal activities such as procuring strippers for a "sexually themed" cruise. Although the full extent of the fraud is not yet known, it appears that investors are currently owed at least \$80 million.

"McGinn and Smith deceived investors about the true purpose behind these offerings," said Andrew M. Calamari, Associate Director of the SEC's New York Regional Office. "They falsely promised investors a profitable payday but secretly siphoned off money for their own payroll."

According to the SEC's complaint, the debt offerings have been sold to hundreds of investors through four funds and at least 18 trusts created by MS & Co. affiliates. They made a host of representations about the extent of due diligence they had performed, among other things. Contrary to their representations to investors, McGinn and Smith used much of the money raised in these offerings to make prohibited investments in their other businesses or make unsecured loans to financially support them. They also misused investor funds to pay exorbitant commission and transaction fees to their affiliated entities and make interest payments to investors in the other entities.

The Commission would like to thank the Financial Industry Regulatory

Authority (FINRA) for its assistance in this matter. The SEC's investigation is continuing.

# # #

For more information about this enforcement action, contact:

Andrew M. Calamari  
Associate Director, SEC's New York Regional Office  
(212) 336-0042

<http://www.sec.gov/news/press/2010/2010-62.htm>

---

[Home](#) | [Previous Page](#)

Modified: 04/20/2010