

# **EXHIBIT NN**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

10 Civ. 00457 (GLS/DRH)

MCGINN, SMITH & CO., INC. :  
McGINN, SMITH ADVISORS, LLC, :  
McGINN, SMITH CAPITAL HOLDINGS CORP., :  
FIRST ADVISORY INCOME NOTES, LLC, :  
FIRST EXCELSIOR INCOME NOTES, LLC, :  
FIRST INDEPENDENT INCOME NOTES, LLC, :  
THIRD ALBANY INCOME NOTES, LLC, :  
TIMOTHY M. MCGINN, AND :  
DAVID L. SMITH, :

*Defendants, and* :

LYNN A. SMITH, :

*Relief Defendant.* :

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**FIRST SET OF INTERROGATORIES BY DEFENDANTS  
DAVID L. SMITH AND TIMOTHY M. MCGINN TO THE  
PLAINTIFF SECURITIES AND EXCHANGE COMMISSION**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendants, Timothy M. McGinn and David L. Smith (collectively, the "Defendants"), by and through their attorneys, Gusrae, Kaplan, Bruno & Nusbaum PLLC, request plaintiff Securities and Exchange Commission to produce verified answers to the following interrogatories on or before thirty (30) days of service of this First Set Of Interrogatories.

These requests are to be read, interpreted and answered in accordance with the instructions and definitions that are set forth herein and pursuant to Rule 33 of the Federal Rules of Civil Procedure.

### Definitions

- a. **Communication.** The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
- b. **Document.** The term "document" as used herein shall mean and include all true copies, all originals and all non-identical copies, whether different from the original by reason of alterations or notations made on such copies or otherwise, whether in draft or final form, including but not limited to: letters or other correspondence; memoranda; spread sheets; reports; notes; contracts; agreements; proposals; telegrams; telexes; faxes; electronic mail or e-mail; cables; mailgrams; messages; file folders; lists; schedules; tables; indices; transcripts; affidavits; tabulations; diaries; calendars; analyses; instant messages; comparisons; records; books; booklets; circulars; bulletins; notices; records or recordings of telephone or other conversations, conferences or meetings; photographs; film; brochures; catalogs; instructions; charts; graphs; video or audio tapes; computer tapes and disks and CD ROMs, DVDs or other electronic data compilations. The term "document" also means any other written, recorded, transcribed, punched, printed, typed, taped, filmed or graphic matter, however produced or reproduced. The term "document" further means any document that in whole or in part comprises, contains, mentions, reflects, refers to or relates to any document the production of which is sought hereunder. A draft or non-identical copy is a separate document within the meaning of this term.
- c. **Identify (with respect to persons).** When referring to a person, "to identify" means to

give, to the extent known, the person's full name, present or last known address and telephone number and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

- d. **Identify (with respect to documents).** When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), addressee(s) and recipient(s) and (v) custodian of the document.
- e. **Person.** The term "person" is defined as any natural person or any business, legal or governmental entity or association.
- f. **Concerning or Relating to.** The term "concerning" or "relating to" means pertaining to, referring to, describing, sharing, analyzing, reflecting, evidencing or constituting.
- g. **And/Or.** The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
- h. **Produce.** When referring to documents, "produce" means to make available for inspection and copying, or alternatively, to deliver legible copies to counsel propounding these requests, all responsive documents within your possession, custody or control. All documents to be produced must be produced within the time allocated to respond to these requests.
- i. **FINRA.** The term "FINRA" shall mean the Financial Industry Regulatory Authority.
- j. **McGinn Smith.** The term "McGinn Smith" shall mean McGinn, Smith & Co., Inc., its

officers, directors, employees, agents, affiliates, subsidiaries, related entities, successors, assigns, and representatives, including but not limited to Smith Advisors, LLC and McGinn, Smith Capital Holding Corp.

- k. **McGinn.** The term “McGinn” shall mean Timothy M. McGinn, his affiliates, employees, associates, agents and representatives.
- l. **Smith.** The term “Smith” shall mean David L. Smith, his affiliates, employees, associates, agents and representatives.
- m. **Investor.** The term “Investor” shall mean any person, his or her affiliates, employees, associates, agents and representatives, or any entity, its officers, directors, employees, partners, agents, affiliates, subsidiaries, related entities, successors, assigns, and representatives who made investments or purchased products, services, or securities, including but without limitation, an interest in FAIN, FEIN, FIIN, TAIN, or the Trusts, through McGinn Smith.
- n. **FAIN.** The term “FAIN” shall mean First Advisory Income Notes, LLC, its members, employees, agents, affiliates, subsidiaries, related entities, successors, assigns, and representatives.
- o. **FEIN.** The term “FEIN” shall mean First Excelsior Income Notes, LLC, its members, employees, agents, affiliates, subsidiaries, related entities, successors, assigns, and representatives.
- p. **FIIN.** The term “FIIN” shall mean First Independent Income Notes, LLC, its members, employees, agents, affiliates, subsidiaries, related entities, successors, assigns, and representatives.
- q. **TAIN.** The term “TAIN” shall mean Third Albany Income Notes, LLC, its members,

employees, agents, affiliates, subsidiaries, related entities, successors, assigns, and representatives.

- r. **Trusts.** The term “Trusts” shall mean the Firstline Jr. and Sr. Trusts 07 offerings, TDM Cable Trust 06, TDM Luxury Cruise Trust 07, TDM Verifier Trust 07, TDM Verifier Trust 08, Cruise Charter Venture Trust 08, Fortress Trust 08, Integrated Excellence Jr. and Sr. Trusts 08, TDM Cable Trust 08, TDM Verifier Trust 09, TDMM Benchmark Trust 09, TDMM Cable Jr. and Sr. Trusts 09, TDM Verifier Trust 07R, or TDM Verifier Trust 08R.
- s. **SEC.** The term “SEC” shall mean the United States Securities and Exchange Commission.
- t. **FBI.** The term “FBI” shall mean the Federal Bureau of Investigations.
- u. **PPM.** The term “PPM” shall mean Private Placement Memoranda.

#### **Instructions**

- v. If any information or document requested herein is withheld from production for any reason, state the reason, and identify the information or document.
- w. Where an objection is made to any Interrogatory, the objection shall state with specificity all grounds for the objection.
- x. Where a defense or claim of privilege is asserted in objection to any Interrogatory, you are directed to provide a complete statement of the factual and legal basis of the claim of privilege.
- y. If any information or document requested, or any portion thereof, is not known to you or is not in your possession, custody or control, but is known or believed by you to be known by or in the possession or control of another person or entity, identify the person

or entity known or believed by you to know the information or have possession, custody or control of the information or document.

- z. These Interrogatories shall be deemed continuing and shall require further and supplemental response by you in the event that you discover or obtain additional responsive information or documents between the time of the initial response and the time the action is concluded.

### **Interrogatories**

1. Identify each FINRA employee with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.
2. Identify each person associated with the Department of Justice, including but not limited to persons associated with United States Attorneys' Office for the Northern District of New York with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.
3. Identify each person associated with the Federal Bureau of Investigations with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.
4. Identify each Investor with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

5. Identify any person who was a customer of McGinn Smith with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.
6. Identify any person who is not an Investor in FAIN, FEIN, FIIN, TAIN or the Trusts with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.
7. Identify each person who has ever been employed by McGinn Smith with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.
8. Identify each person who has ever been employed by FAIN with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.
9. Identify each person who has ever been employed by FEIN with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.
10. Identify each person who has ever been employed by FIIN with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN,



or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

11. Identify each person who has ever been employed by TAIN with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

12. Identify each person who has ever been employed by any of the Trusts with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

13. Identify each and every person who has possession, custody, or control of documents relating to McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Dated: New York, New York  
September 17, 2010

**GUSRAE, KAPLAN, BRUNO &  
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By: /s/Alison B. Cohen

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McGinn and David L. Smith

**CERTIFICATE OF SERVICE**

I, Martin P. Russo, hereby certify that on this 17<sup>th</sup> day of September 2010, I served a copy of this First Set of Interrogatories of Defendants Timothy M. McGinn and David L. Smith by electronic mail and United States mail upon the following:

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