

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

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,

**Case No.: 1:10-CV-457
(GLS/DRH)**

Defendants, and

LYNN A. SMITH,

Relief Defendant.

AFFIDAVIT OF LYNN A. SMITH

STATE OF NEW YORK)
)ss.:
COUNTY OF ALBANY)

LYNN A. SMITH, being duly sworn, deposes and says:

1. I am named as a Relief Defendant in this action. I make this affidavit at the request of proposed intervenor David M. Wojeski, CPA, with respect to his motion to intervene in this lawsuit to challenge the restraining order which froze the NFS/Fidelity brokerage account of the DAVID L. AND LYNN A. SMITH IRREVOCABLE TRUST U/A AUGUST 4, 2004, as listed on page 5 of Exhibit B to the Order to Show Cause,

Temporary Restraining Order, and Order Freezing Assets and Granting Other Relief, issued on April 20, 2010.

2. My father died in 1969, less than a year after my marriage to David Smith. My mother had died just months earlier and, being their only child, I was the sole heir of my father's estate. Part of my inheritance included my father's stock account, which I have continuously owned as my separate property since my father's death 41 years ago. After my husband became a stock broker in 1973, I moved the account from the brokerage firm used by my father, to my husband's employer at the time, Bache & Co. My husband has managed my account since that time.
3. In approximately April 1992, using assets in my stock account, I purchased 40,000 shares of Albank stock at \$10 per share at the initial public offering, when the bank was converted to Albany Savings Bank. I held this stock in my brokerage account for many years and, because of subsequent mergers and acquisitions involving Albany Savings Bank, Citizens Bank and Charter One Financial and the resulting stock splits and increases in value, my holdings in this banking institution increased to 110,735 shares of Charter One stock by 1999. Attached as Exhibit A to this affidavit is a copy of my brokerage statement for the period ending August 27, 1999, which is the oldest brokerage account statement I can presently locate. That statement shows my ownership of 110,735 shares of Charter One stock, valued at \$24.75 per share in August 1999.
4. By 2004, the stock account started by my father when I was a child had grown in value to more than \$6,500,000. I attribute the fact that I had accumulated these assets to the foresight of my father in creating and growing this account for my eventual benefit in the 1950's and 1960's. In keeping with his philosophy and in considering his untimely

death, I decided to take advantage of available estate planning laws to fund a trust for my children, from which they could benefit during my lifetime, instead of having these assets sit in a brokerage account until my death.

5. On August 4, 2004, my husband and I created the David L. and Lynn A. Smith Irrevocable Trust by signing a Declaration of Trust with the trustee. Although my husband and I were both designated as Donors of the trust, I provided the initial and, to date, only asset transferred to the trust. On September 1, 2004, I transferred 100,000 shares of Charter One stock, then valued at \$44.50 per share, to the trust. Attached hereto as Exhibit B is a copy of my September 2004 brokerage statement, which shows that stock transfer on page 5. To the best of my knowledge, there have not been any other contributions into the trust since its creation.
6. From the time the trust was created in August 2004, my husband and I have had no interest in or expectation of an interest in the David L. and Lynn A. Smith Irrevocable Trust. It exists solely, exclusively and permanently for the benefit of our children.

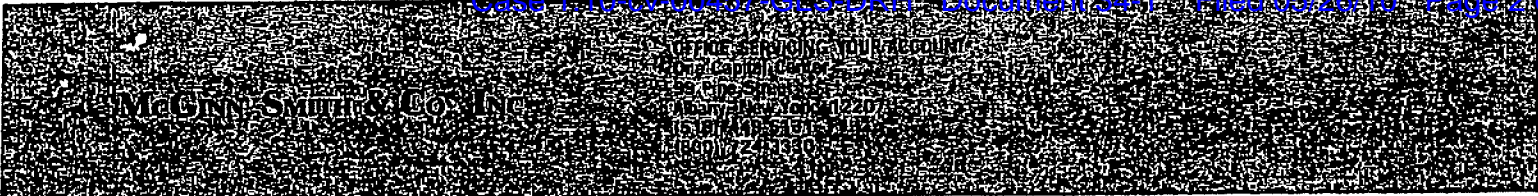

LYNN A. SMITH

Sworn to before me this
21st day of May, 2010.


Notary Public

JILL A. DUNN
Notary Public, State of New York
No. 02DU5024316
Qualified in Albany County
Commission Expires ~~March 7, 2014~~
April

EXHIBIT A



CLEARANCE AGENT
 Bear, Stearns Securities Corp.
 One Metrotech Center North
 Brooklyn, New York 11201-3859
 (212) 272-1000

LYNN A SMITH

ACCOUNT EXECUTIVE DAVID L. SMITH
 VISIT OUR WEBSITE www.mcginnsmith.com

STATEMENT PERIOD July 31, 1999
 THROUGH August 27, 1999

What's In This Statement

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 Your Portfolio Holdings 4
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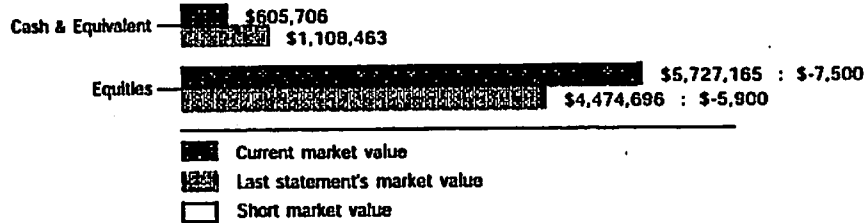
LYNN A SMITH
 8 BEECH RIDGE ROAD
 CLIFTON PARK NY 12065-2728

ACCOUNT NUMBER ██████████ 1 700
 TAXPAYER NUMBER ██████████ 8058
 LAST STATEMENT July 30, 1999

Your Portfolio at a Glance

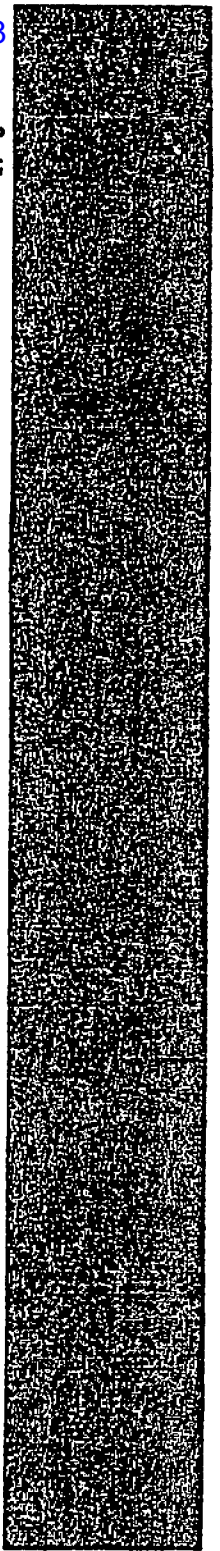
TOTAL VALUE OF SECURITIES THIS PERIOD	5,719,665
NET CREDIT BALANCE	605,706
.....
NET EQUITY THIS PERIOD	\$6,325,371
.....
NET EQUITY LAST STATEMENT	5,577,259
CHANGE SINCE LAST STATEMENT	748,113

Market Value of Your Portfolio



Important Notice
 All checks to be credited to your account should be made payable to "Bear Stearns Securities Corp" and mailed to McGinn, Smith & Co., Inc.

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CLEARANCE AGENT
Bar, Stearns Securities Corp.
One Metropolitan Center North
Brooklyn, New York 11201-3859
(212) 272-1000
LYNN A SMITH

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CLEARANCE AGENT

Bear, Stearns Securities Corp.
One Metrotech Center North
Brooklyn, New York 11201-3859
(212) 272-1000

LYNN A SMITH

STATEMENT PERIOD July 31, 1999
THROUGH August 27, 1999

ACCOUNT NUMBER ██████████ 31 700
TAXPAYER NUMBER ██████████ 8058
LAST STATEMENT July 30, 1999

Cash Flow Analysis

	THIS PERIOD
Opening Balance	\$1,108,462.59
Securities Sold	505,983.12
Dividends/Interest	22,778.44
Amount Credited	\$528,761.56
Securities Bought	-996,500.00
Funds Withdrawn	-35,000.00
Dividends/Interest Charged	-18.05
Amount Debited	\$-1,031,518.05
Net Cash Activity	-502,756.49
Closing Balance	\$605,706.10

Income Summary

	THIS PERIOD	YEAR TO DATE
Dividends	18,377.60	53,836.60
Credit Balance Int.	4,400.84	47,448.88
Total	\$22,778.44	\$101,285.48
Margin Int. Paid	-18.05	-18.05

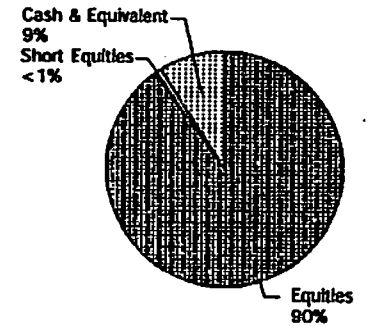
Portfolio Composition

	SHORT	LONG
Cash/Cash Equivalent		605,706
Equities	7,500	5,727,165
Total	\$7,500	\$6,332,871

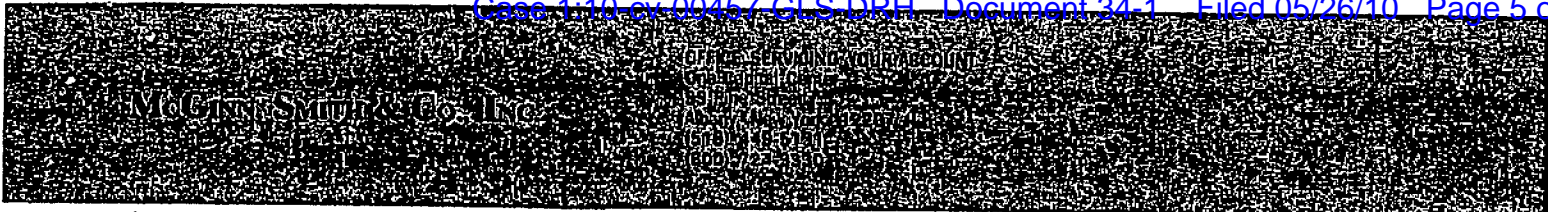
Cash Balance Summary

	OPENING	CLOSING
Cash	533,818.92	28,863.26
Margin	574,643.67	576,842.84
Net Cash Balance	\$1,108,462.59	\$605,706.10

Your Portfolio Allocation



Unshaded portions denote debit balance and/or short market values. The allocation percentage is derived from the absolute market value of your portfolio.



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LYNN A SMITH

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Your Portfolio Holdings

CASH & CASH EQUIVALENTS

STATEMENT PERIOD July 31, 1999
THROUGH August 27, 1999

ACCOUNT NUMBER ██████████ 700

TAXPAYER NUMBER ██████████ 8058

LAST STATEMENT July 30, 1999

DESCRIPTION	SYMBOL/CUSIP	QUANTITY	PRICE	MARKET VALUE	ESTIMATED ANNUAL INCOME
CASH BALANCE				605,706	
TOTAL CASH & CASH EQUIVALENTS				\$605,706	

EQUITIES

Equities & Options

DESCRIPTION	SYMBOL/CUSIP	ACCT TYPE	QUANTITY	PRICE	MARKET VALUE	ESTIMATED ANNUAL INCOME	CURRENT YIELD (%)
AMERICA ONLINE INC-DEL	AOL	MRGN	1,000	99.0630	99,063		
CALL AMER ONLINE SEP 095**** EXP 09/18/1999	AOEI95	MRGN	-10	7.5000	-7,500		
AT&T CORP	T	CASH	3,000	47.5000	142,500	2,640	1.8526
CHARTER ONE FINANCIAL INC WITH RIGHTS TO PURCHASE PREFRD STK UNDER CERTAIN CIRCUMSTANCE	COFI	MRGN	110,735	24.7500	2,740,691	70,870	2.5858
QWEST COMMUNICATIONS INTERNATIONAL INC	QWST	MRGN	40,000	28.6250	1,145,000		
POINTE FINANCIAL CORP-FLA	PNTE	CASH	370	10.6250	3,931	74	1.8825
WHITE PINE SOFTWARE INC	WPNE	CASH	25,000	5.1880	129,700		
Total Equities & Options					\$4,253,385	\$73,584	

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 (212) 272-1000

LYNN A SMITH

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Your Portfolio Holdings (continued)

Preferred Equities

DESCRIPTION	SYMBOL/CUSIP	ACCT TYPE	QUANTITY	PRICE	MARKET VALUE	ESTIMATED ANNUAL INCOME	CURRENT YIELD (%)
EIX TR I 7.875% CUM QTLY INCOME PFD SEC SER A DUE 7/26/29 B/E (QUIPS)	EIXPRA	CASH	60,000	24.4380	1,466,280		
Total Preferred Equities					\$1,466,280	\$0	
TOTAL EQUITIES					\$5,719,665	\$73,584	

YOUR TOTAL ESTIMATED ANNUAL INCOME	\$73,584
YOUR PRICED PORTFOLIO HOLDINGS	\$6,325,371

STATEMENT PERIOD July 31, 1999
 THROUGH August 27, 1999

ACCOUNT NUMBER ██████████ 01 700
 TAXPAYER NUMBER ██████████ -8058
 LAST STATEMENT July 30, 1999

Transaction Detail

INVESTMENT ACTIVITY

SETTLEMENT DATE	TRADE DATE	TRANSACTION	DESCRIPTION	SYMBOL/CUSIP	QUANTITY	PRICE	DEBIT AMOUNT	CREDIT AMOUNT
08/03/99		JOURNAL	TROY FINANCIAL CORPORATION	TRYF	513			
08/03/99		JOURNAL	TROY FINANCIAL CORP RSTD	9302132	-513			
08/10/99	08/09/99	SOLD	CALL AMER ONLINE AUG 090**** EXP 08/21/1999 OPEN CONTRACT	22799W9H3	-10	3.7500		3,749.87

CLEARANCE AGENT

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Brooklyn, New York 11201-3859
(212) 272-1000

LYNN A SMITH

STATEMENT PERIOD July 31, 1999
THROUGH August 27, 1999

ACCOUNT NUMBER ██████████ 1 700
TAXPAYER NUMBER ██████████ 8058
LAST STATEMENT July 30, 1999

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Transaction Detail (continued)

INVESTMENT ACTIVITY (continued)

SETTLEMENT DATE	TRADE DATE	TRANSACTION	DESCRIPTION	SYMBOL/CUSIP	QUANTITY	PRICE	DEBIT AMOUNT	CREDIT AMOUNT
08/19/99	08/19/99	BOUGHT	EIX TR I 7.875% CUM QTLY INCOME PFD SEC SER A DUE 7/26/29 B/E (QUIPS) PROSPECTUS UNDER SEPARATE MAIL	EIXPRA	40,000	24.7500	990,000.00	
08/23/99	08/20/99	SOLD	CALL AMER ONLINE SEP 095 **** EXP 09/18/1999 DISCRETIONARY ORDER OPEN CONTRACT	QAOE195	-10	7.2500		7,249.75
08/23/99	08/20/99	BOUGHT	CALL AMER ONLINE AUG 090 **** EXP 08/21/1999 DISCRETIONARY ORDER CLOSING CONTRACT	22799W9H3	10	6.5000	6,500.00	
08/25/99	08/20/99	SOLD	EIX TR I 7.875% CUM QTLY INCOME PFD SEC SER A DUE 7/26/29 B/E (QUIPS) AS OF 08/20/99	EIXPRA	-20,000	24.7500		494,983.50
TOTAL							\$-996,500.00	\$505,983.12

DEPOSITS AND WITHDRAWALS

DATE	TRANSACTION	DESCRIPTION	DEBIT AMOUNT	CREDIT AMOUNT
08/09/99	FND WIRED	MDA#MB660737FNDS WIRED TO MFRS AND TRADERS TR CO AC# ██████████ 9965 FD#02504	15,000.00	
08/20/99	FND WIRED	MDA#MB668741FNDS WIRED TO MFRS AND TRADERS TR CO AC# ██████████ 0805 FD#03146	15,000.00	
08/25/99	CHECK	#20121-08259@RAFT DEBIT	5,000.00	
TOTAL			\$-35,000.00	

MCGINN SMITH & Co. INC.

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CLEARANCE AGENT

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Brooklyn, New York 11201-3859
(212) 272-1000

LYNN A SMITH

STATEMENT PERIOD July 31, 1999
THROUGH August 27, 1999

ACCOUNT NUMBER ██████████ 1 700
TAXPAYER NUMBER ██████████ 8058
LAST STATEMENT July 30, 1999

Transaction Detail (continued)

DIVIDENDS

DATE	DESCRIPTION	SYMBOL/CUSIP	QUANTITY	RATE (\$)	DEBIT AMOUNT	CREDIT AMOUNT
08/02/99	AT&T CORP REC 06/30/99 PAY 08/02/99	T	3,000	0.2200		660.00
08/20/99	CHARTER ONE FINANCIAL INC REC 08/06/99 PAY 08/20/99	COFI	110,735	0.1600		17,717.60
TOTAL						\$18,377.60

INTEREST

DATE	DESCRIPTION	SYMBOL/CUSIP	QUANTITY	RATE (%)	DEBIT AMOUNT	CREDIT AMOUNT
08/23/99	INTEREST ON CREDIT BALANCE AT 4 1/2% 07/21 THRU 08/20			4.5000		4,400.84
08/23/99	FROM 07/21 THRU 08/20 @ 7 % BAL 581,111- AVBAL 2,994			7.0000	18.05	
TOTAL					\$-18.05	\$4,400.84



***** End of Statement*****

EXHIBIT B

McGINN, SMITH & Co., Inc.

OFFICE SERVICING YOUR ACCOUNT
 One Capital Center
 99 Pine Street, 5th Floor
 Albany, NY 12207
 Tel: (518) 449-5131
 Fax: (518) 449-4894

CLERK
 Bear, Stearns Securities Corp.
 One Metrotech Center North
 Brooklyn, New York 11201-3859
 (212) 272-1000

LYNN A SMITH

ACCOUNT EXECUTIVE DAVID L SMITH
 VISIT OUR WEBSITE www.mcginnsmith.com

STATEMENT PERIOD September 1, 2004
 THROUGH September 30, 2004

ACCOUNT NUMBER [REDACTED] 1 800
 TAXPAYER NUMBER On File
 LAST STATEMENT August 31, 2004

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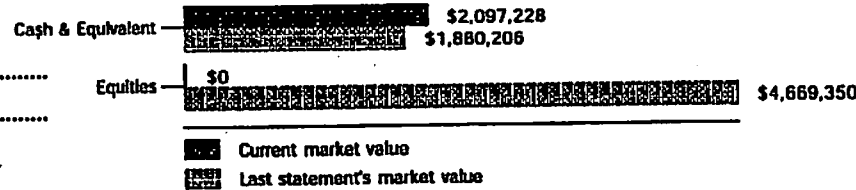
LYNN A SMITH
 2 ROLLING BROOK DRIVE
 SARATOGA SPRINGS NY 12866

Your Portfolio at a Glance

NET CREDIT BALANCE	2,097,228
.....	
NET EQUITY THIS PERIOD	\$2,097,228
.....	
NET EQUITY LAST STATEMENT	6,549,556
CHANGE SINCE LAST STATEMENT	-4,452,328

*This portfolio includes one or more unpriced securities that are not reflected in the Total Value of Securities and the Net Equity This Period.

Market Value of Your Portfolio



SIPC This summary is for informational purposes only. It is not intended as a tax document. This statement should be retained for your records. See reverse side for important information.

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One Keanotach Center North
Brooklyn, New York 11201-3859
(212) 272-1000

LYNN A SMITH

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McGINN, SMITH & Co., INC.

OFFICE SERVICING YOUR ACCOUNT
 One Capital Center
 99 Pine Street, 5th Floor
 Albany, NY 12207
 Tel: (518) 449-5131
 Fax: (518) 449-4894

CLEARANCE AGENT

Bear, Stearns Securities Corp.
 One Metrotech Center North
 Brooklyn, New York 11201-3859
 (212) 272-1000

LYNN A SMITH

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STATEMENT PERIOD September 1, 2004
 THROUGH September 30, 2004

ACCOUNT NUMBER ██████████ 1 800
 TAXPAYER NUMBER On File
 LAST STATEMENT August 31, 2004

Cash Flow Analysis

	THIS PERIOD
Opening Balance	\$1,880,206.18
Securities Sold	222,500.00
Dividends/Interest	1,521.98
Amount Credited	\$224,021.98
Funds Withdrawn	-7,000.00
Amount Debited	\$-7,000.00
Net Cash Activity	217,021.98
Closing Balance	\$2,097,228.16

Same day transfers of cash between account types are not included in this section; such transfers, as well as details for all other transactions this period, appear in Transaction Detail.

Cash Balance Summary

	OPENING	CLOSING
Cash	2,407,232.65	2,097,228.16
Margin	-527,026.47	0.00
Net Cash Balance	\$1,880,206.18	\$2,097,228.16

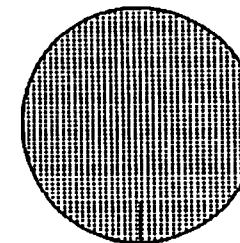
Income Summary

	THIS PERIOD	YEAR TO DATE
Dividends	0.00	88,200.00
Credit Balance Int.	1,521.98	8,450.09
Total	\$1,521.98	\$96,650.09

Portfolio Composition

Cash/Cash Equivalent	2,097,228
Total	\$2,097,228

Your Portfolio Allocation



Cash & Equivalent
 100%

Unshaded portions denote debit balance and/or short market values. The allocation percentage is derived from the absolute market value of your portfolio.

McGINN, SMITH & Co., Inc.

OFFICE SERVICING YOUR ACCOUNT
 One Capital Center
 99 Pine Street, 5th Floor
 Albany, NY 12207
 Tel: (518) 449-5131
 Fax: (518) 449-4894

DISBURSANCE AGENT

Bear, Stearns Securities Corp.
 One Metrotech Center North
 Brooklyn, New York 11201-3859
 (212) 272-1000

LYNN A SMITH

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Your Portfolio Holdings

CASH & CASH EQUIVALENTS

DESCRIPTION	SYMBOL/CUSIP	QUANTITY	PRICE	MARKET VALUE	ESTIMATED ANNUAL INCOME	CURRENT YIELD (%)
CASH BALANCE				2,097,228		
TOTAL CASH & CASH EQUIVALENTS				\$2,097,228		

STATEMENT PERIOD September 1, 2004
 THROUGH September 30, 2004

ACCOUNT NUMBER ██████████ 1 800
 TAXPAYER NUMBER On File
 LAST STATEMENT August 31, 2004

EQUITIES

Equities & Options

DESCRIPTION	SYMBOL/CUSIP	ACCT TYPE	QUANTITY	PRICE	MARKET VALUE	ESTIMATED ANNUAL INCOME	CURRENT YIELD (%)
CMET FIN HLDGS INC ACCREDITED INVS	189758204	CASH	15,000	Unpriced			
Total Equities & Options					\$0	\$0	
TOTAL EQUITIES					\$0	\$0	

YOUR PRICED PORTFOLIO HOLDINGS **\$2,097,228**

CLEARANCE AGENT

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 One Capital Center
 99 Pine Street, 5th Floor
 Albany, NY 12207
 Tel: (518) 449-5131
 Fax: (518) 449-4894

Bear, Stearns Securities Corp.
 One Metrotech Center North
 Brooklyn, New York 11201-3859
 (212) 272-1000

LYNN A SMITH

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STATEMENT PERIOD September 1, 2004
 THROUGH September 30, 2004

Transaction Detail

ACCOUNT NUMBER ██████████ 1 800
 TAXPAYER NUMBER On File
 LAST STATEMENT August 31, 2004

INVESTMENT ACTIVITY

SETTLEMENT DATE	TRADE DATE	TRANSACTION	DESCRIPTION	SYMBOL/CUSIP	QUANTITY	PRICE	DEBIT AMOUNT	CREDIT AMOUNT
09/01/04		JOURNAL	CHARTER ONE FINANCIAL INC TO ██████████ 6967	160903100	-100,000			
09/01/04		MERGER	CHARTER ONE FINANCIAL INC C343676 TO C343676 CASH MERGER @ \$44.50 PS	160903100	-5,000			222,500.00
TOTAL								\$222,500.00

DEPOSITS AND WITHDRAWALS

DATE	TRANSACTION	DESCRIPTION	DEBIT AMOUNT	CREDIT AMOUNT
09/03/04	FND WIRED	MDA#IT378482FNDS WIRED TO MFRS AND TRADERS TR CO ██████████ 965 F#404215 FTS0409031728900	5,000.00	
09/07/04	CHECK	#26467-09070 DRAFT DEBIT	2,000.00	
TOTAL			\$-7,000.00	

INTEREST

DATE	DESCRIPTION	SYMBOL/CUSIP	QUANTITY	RATE (%)	DEBIT AMOUNT	CREDIT AMOUNT
09/21/04	INTEREST ON CREDIT BALANCE ACCT ██████████ 4091 AT 00.87500% 08/21 - 08/20					1,521.98
TOTAL						\$1,521.98

McGINN, SMITH & Co., Inc.

OFFICE SERVICING YOUR ACCOUNT
 One Capital Center
 89 Pine Street, 5th Floor
 Albany, NY 12207
 Tel: (518) 449-5131
 Fax: (518) 449-4894

CLEARANCE AGENT

Boer, Stearns Securities Corp.
 One Mastrotech Center North
 Brooklyn, New York 11201-3859
 (212) 272-1000

LYNN A SMITH

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STATEMENT PERIOD September 1, 2004
 THROUGH September 30, 2004

ACCOUNT NUMBER ██████████ 1 800
 TAXPAYER NUMBER On File
 LAST STATEMENT August 31, 2004

Transaction Detail (continued)

MISCELLANEOUS

DATE MO/DAY	TRANSACTION	DESCRIPTION	DEBIT AMOUNT	CREDIT AMOUNT
09/02/04	JOURNAL	JOURNAL FROM TYPE 1 TO 2	304,526.47	
09/02/04	JOURNAL	JOURNAL FROM TYPE 1 TO 2		304,526.47
TOTAL			\$-304,526.47	\$304,526.47

McGINN, SMITH & Co., INC.

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 One Metrotech Center North
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 (212) 272-1000

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STATEMENT PERIOD September 1, 2004
 THROUGH September 30, 2004

ACCOUNT NUMBER ██████████ 1 800
 TAXPAYER NUMBER On File
 LAST STATEMENT August 31, 2004


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Your messages

 **Bear, Stearns Securities Corp. Net Capital and Net Capital Requirements:**

At May 31, 2004 and July 31, 2004, the Company's net capital of approximately \$3.6 billion and \$3.6 billion was approximately 6.8% and 6.5% of aggregate debit items and exceeded the minimum regulatory net capital requirement of approximately \$1.1 billion and \$1.1 billion by approximately \$2.5 billion and \$2.5 billion, all respectively.

A complete copy of the Bear, Stearns Securities Corp. Statement of Financial Condition is available on the web site www.bsscfinancialstatement.com. Alternatively, to request a free printed copy please call - toll free 1-866-299-9331.

 Securities and other assets in your account are the firm's collateral for any margin loan made to you. If the securities and other assets in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account. It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- * You can lose more funds than you deposit in the margin account.
- * The firm can force the sale of securities or other assets in your account(s).
- * The firm can sell your securities or other assets without contacting you.
- * You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.
- * The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.
- * You are not entitled to an extension of time on a margin call.



***** End of Statement*****