

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v

TIMOTHY M. McGINN and
DAVID L. SMITH,
Defendants

1:12-CR-028-DNH

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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, GEOFFREY R. SMITH,
Individually and as Trustee of the David L. and
Lynn A. Smith Irrevocable Trust U/A 8/04/04,
LAUREN T. SMITH, and NANCY McGINN,

10 Civ. 457 GLS-DRH

Defendants, and

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants, and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law and the Declarations of Timothy M. McGinn and James C. Knox, Esq., and accompanying exhibits submitted in support thereof, Defendant Timothy McGinn will move this Court before the Honorable David R. Homer, at the United States Courthouse, 445 Broadway, Albany, New York, at a date and time to be determined by the Court, for an Order modifying the Court's July 22, 2010 Preliminary Order to permit the release of certain assets frozen thereby and described herein for payment of Mr. McGinn's attorney fees and costs in his parallel criminal case.

Dated: February 10, 2012
Albany, New York

E. STEWART JONES, PLLC



JAMES C. KNOX, ESQ.

Bar Roll No. 517109

Attorneys for Defendant

Timothy M. McGinn

28 Second Street

Troy, NY 12180

Telephone: 518-274-5820

Facsimile: 518-274-5875

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**MEMORANDUM OF LAW IN SUPPORT OF TIMOTHY M. McGINN'S MOTION TO
MODIFY THE JULY 22, 2010 PRELIMINARY INJUNCTION ORDER TO PERMIT
THE USE OF CERTAIN ASSETS TO PAY ATTORNEY FEES.**

PRELIMINARY STATEMENT

On July 22, 2010, the Court imposed a Preliminary Injunction Order freezing all assets controlled by Timothy McGinn. Deprived of those assets, Mr. McGinn finds himself unable to continue to pay his legal expenses. Upon his indictment in a parallel criminal case on January 26, 2012, Mr. McGinn is faced with massive impending legal fees to mount a defense in the parallel criminal case. In order to preserve his rights under the United States Constitution to the counsel of his choice in the criminal case, it is imperative that the Preliminary Order be modified to permit Mr. McGinn to use certain assets to pay for his criminal defense.

FACTS

For a statement of the relevant facts, please refer to the herewith submitted Declarations of James C. Knox, Esq., and defendant Timothy M. McGinn.

ARGUMENT

In Order to Preserve Mr. McGinn's Fifth and Sixth Amendment Rights, the Preliminary Order Must Be Modified to Permit Mr. McGinn to Utilize Certain Frozen Assets to Pay for His Criminal Defense.

From the outset, it is recognized that “[a] defendant is not entitled to foot his legal bill with funds that are tainted by” illegal conduct. SEC v. Coates, No. 94 Civ. 53661(KWM) 1994 WL 455558, at *3 (S.D.N.Y. Aug. 23, 1994). However, “[a]lthough a court may impose an asset freeze in a civil case, notwithstanding a companion criminal case, these circumstances dictate that the court pay particular attention to the defendant’s Fifth and Sixth Amendment rights.” Id. Here, Mr. McGinn finds himself under circumstances in which the full weight of the government has been brought to bear upon him in a two-fold capacity. Mr. McGinn remains innocent until

proven guilty, but he now finds not one but two armies of experienced government attorneys arrayed against him, and he is currently subject to an Order that leaves him bereft of the ability to pay to defend himself in the criminal case with the counsel of his choice. If this situation is allowed to continue without modification, Mr. McGinn will be deprived of his Due Process rights and his Sixth Amendment right to counsel of his choosing.

The cost of Mr. McGinn's criminal defense through the conclusion of his anticipated trial is expected to exceed \$300,000. Mr. McGinn has demonstrated in his herewith submitted Declaration that he is unable to pay the attorney fees and costs associated with what has been and will undoubtedly continue to be an expensive and complicated defense. As such, he has satisfied his threshold burden to show that without a release of the assets frozen in the Preliminary Order he will be unable to be defended by the counsel of his choice. See S.E.C. v FTC Capital Markets, Inc., No. 09 Civ. 4755(PGG), 2010 WL 2652405, at *9 (S.D.N.Y. June 30, 2010); Cobalt Multifamily Investors, I LLC, No. 06 Civ. 2360(KMW)(MHD), 2007 U.S. Dist. LEXIS 25872, at *10-*12 (S.D.N.Y. April 2, 2007); see generally United States v. Monsanto (Monsanto IV), 924 F.2d 1186 (2d Cir. 1991).

The assets which Mr. McGinn seeks to unfreeze were either purchased long before the illegal conduct was alleged to have occurred or were purchased at the beginning of the alleged misconduct with funds acquired long before. As such, Mr. McGinn has a property interest in those assets with which the Government cannot interfere, even if the illegal conduct is ultimately proven. See United States v. Stein, 435 F. Supp. 2d 330, 367 (S.D.N.Y. 2006), aff'd, 541 F.3d at 155-156; see also Monsanto IV, 924 F.2d at 1203. The illiquid assets listed in Schedule A of the McGinn Declaration are not traceable to any fraud, and therefore, the continued imposition of the Preliminary Order—enforced even against assets acquired as long ago as the 1990s—is

unreasonable and continues without regard to the impact it has on Mr. McGinn's private interest in the protection and preservation of his own liberty. It is those interests that are in fact at stake in the criminal prosecution, which implicates concerns not present at the time the Preliminary Order was entered.

“Staging a defense against a complex criminal charge is not an easy, nor an inexpensive, matter. It requires counsel skilled in marshaling complicated facts as well as learned in legal principles.” United States v Moya Gomez, 860 F.2d 706, 726 (7th Cir. 1988). The Preliminary Order is merely “temporary”—effective during the pendency of the case but freezing all of the defendant's assets— but “the freeze operates as a permanent deprivation. The defendant needs an attorney now if the attorney is to do him any good.” Id. A view of the case which presumes Mr. McGinn to be unentitled to use his personal possessions to pay for his defense utterly deprives him of his right to due process without the proper consideration of the impact the freeze has upon his right to counsel of his choice, and, by possible extension, upon his liberty interest which is at stake in the criminal proceedings he now faces.

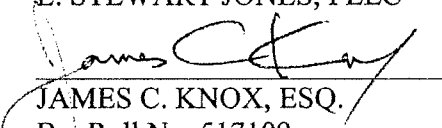
The proceedings heretofore had in this matter are insufficient to safeguard Mr. McGinn's Fifth and Sixth Amendment rights as they are impacted by the pending criminal case, because those proceedings were had in the context of the civil case and did not require the evidentiary showing necessary to preclude the use of the Schedule A assets in Mr. McGinn's criminal defense. Likewise, those proceedings were insufficient to meet the standard required to show that the Schedule A assets specifically are traceable to fraud. It is respectfully submitted that there can and will be no such showing. Absent any such showing, the only proper conclusion is that the assets should be released to permit Mr. McGinn to fund the defense necessary to meet the case brought by the U.S. Attorney's Office.

CONCLUSION

Based upon the foregoing and the accompanying Declarations of Timothy M. McGinn and James C. Knox, Esq., Mr. McGinn respectfully requests that his motion to modify the July 22, 2010 Order to release certain assets to pay attorney fees and costs be granted, along with such other and further relief as the court deems appropriate in the interest of justice.

Dated: February 10, 2012

E. STEWART JONES, PLLC



JAMES C. KNOX, ESQ.

Bar Roll No. 517109

Attorneys for Defendant

Timothy M. McGinn

28 Second Street

Troy, NY 12180

Telephone: 518-274-5820

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UNITED STATES OF AMERICA

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10 Civ. 457 GLS-DRH

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LAUREN T. SMITH, and NANCY McGINN,

Defendants. and

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants, and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor

DECLARATION OF TIMOTHY M. MCGINN

TIMOTHY M. MCGINN hereby declares under penalty of perjury:

1. I am a defendant in the above-captioned actions, and I currently reside at 126 Via Palma Lane in Boca Raton, Florida.
2. I make this declaration in support of my motion to modify the July 22, 2010 Preliminary Injunction Order (Case No. 10 Civ. 457 GLS-DRH) to release certain assets to pay attorneys' fees and costs.
3. I consented to the July 22, 2010 Preliminary Order, however, the Court reserved my right to seek a modification of the Order.
4. On January 26, 2012, I was indicted in the above-captioned parallel criminal case in the Northern District of New York (Case No. 1:12-CR-028-DNH).
5. I am currently self-employed as a sales representative for Total Merchant Services from which employment I receive an average monthly income of \$2,800.
6. I also receive \$1,876 in Social Security retirement benefits per month.
7. My wife is currently receiving \$375 per month in unemployment.
8. My monthly household living expenses are \$4,500, and, therefore, after paying those expenses I am left with only \$551 per month, including my wife's unemployment benefit, in order to pay for all additional expenses for my wife and myself, including attorney fees and the expense of travel from my home in Florida to New York to attend court.
9. I currently have no other sources of income or unrestrained assets.
10. Other than the aforementioned sources of income, all of my assets, including personal and real property owned by me, are frozen pursuant to orders by Judge David R. Homer in the civil action.

11. Attached hereto and made part hereof as Exhibit "A" is Schedule A, a schedule of those assets which I seek to have released from the Preliminary Injunction.

12. Unless those assets listed in Schedule A are unfrozen and I am permitted to dispose of them through my attorneys, I will be unable to continue to retain counsel of my choice in my criminal case, in violation of my rights under the Fifth and Sixth Amendments.

13. My attorney, E. Stewart Jones, Esq., has informed me that E. STEWART JONES, PLLC, reasonably anticipates that it will incur over \$300,000 in future attorneys' fees and costs related to my defense prior to and in my upcoming criminal trial which will presumably begin in late 2012 or 2013.

14. Without a release of the asset freeze to enable me to pay my attorneys, they will be unable to continue to represent me in my criminal case.

15. Accordingly, I have moved this Court to authorize the release of my frozen assets listed in Schedule A for the payment of necessary and reasonable attorneys' fees and costs related to my criminal case.

Pursuant to 18 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Dated: February 10, 2012

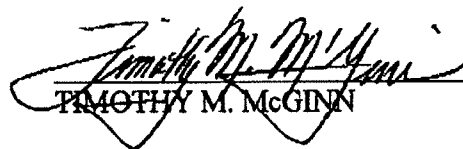

TIMOTHY M. MCGINN

EXHIBIT "A"

SCHEDULE A

1. Timeshare Unit in Beaver Creek, Colorado: Unit 317, week 3, St. James Place, Avon Colorado.
 - a. Purchased in 1991.
 - b. Estimated value: \$35,000
 - c. Likely proceeds: \$25,000

2. Antique Chinese War Lord Desk: Located in Clifton Park storage unit.
 - a. Purchased in 1995
 - b. Estimated value: \$15,000
 - c. Likely proceeds: \$5,000

3. Oriental Rugs (9): Various locations, including Clifton Park storage.
 - a. Purchased 1997 through 2007
 - b. Estimated value: \$64,000
 - c. Likely proceeds: \$25,000

4. Pine Tree Golf Club Membership Bond:
 - a. Purchased in 2000
 - b. Estimated value: \$10,000
 - c. Likely proceeds: \$7,000

5. Waterville Golf Links Membership Initiation Fee: Located in Ireland.
 - a. Purchased in 2003.
 - b. Estimated value: \$25,000
 - c. Likely proceeds: \$20,000

6. Watches and Jewelry: Breitling, serial No. A49350; Montblanc, model: Meisterstuck
 - a. Purchased 2002 through 2006
 - b. Estimated value: \$10,000
 - c. Likely proceeds: \$3,500

7. Boca Raton Residence, 126 Via Palma Lane, Boca Raton, FL 334787
 - a. Purchased in 2007
 - b. Estimated value: \$495,000
 - c. less Commissions (\$29,700)
 - d. less Debt and Taxes (\$425,000)
 - e. Net Equity: \$40,300

- f. Likely proceeds: \$20,000.

- 8. Furniture and personal property at Boca Raton Residence
 - a. Purchased in 2007
 - b. Estimated value: \$10,000
 - c. Likely proceeds: \$6,000

- 9. M & T Bank Account: Acct. No. 9849142675
 - a. Value: \$9,480

- 10. McGinn Smith Retirement Account: Acct. No. 6726005003
 - a. Value: \$7,350

TOTAL:

Estimated Value: \$231,130

Likely Proceeds: \$128,330

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Defendants, and

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants, and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor

10 Civ. 457 GLS-DRH

DECLARATION OF JAMES C. KNOX

JAMES C. KNOX, under penalty of perjury, affirms as follows:

1. I am an attorney at law duly licensed to practice in the State of New York, and I am an associate with the law firm of E. STEWART JONES, PLLC, the attorney for defendant TIMOTHY M. MCGINN, and as such I am fully familiar with all the facts and circumstances in this case.

2. This declaration is being made upon information and belief, except as to those matters wherein it states that your declarant has actual knowledge thereof.

3. I make this declaration in support of defendant McGinn's application for an order modifying the Preliminary Injunction in Case No. 1:10-cv-00457-GLS-DRH to permit the release of certain assets in order to pay the attorney fees of Mr. McGinn in Case No. 1:12-CR-028-DNH .

4. On April 20, 2010, the Securities and Exchange Commission ("Commission") filed a Complaint (Case No. 1:10-cv-00457-GLS-DRH, Dkt. 1) naming, among others, Mr. McGinn as defendant.

5. An Order was entered by the Court dated April 20, 2010 granting a temporary restraining order which, among other things, froze assets owned by Mr. McGinn during the pendency of the case (Case No. 1:10-cv-00457-GLS-DRH, Dkt. 5).

6. On July 22, 2010, the Court granted the Commission's Motion for a Preliminary Injunction (Case No. 1:10-cv-00457-GLS-DRH, Dkt. 96), ordering, among other things, that Mr. McGinn hold and retain, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other

property of any kind whatsoever) of, held by or under the direct or indirect control of, among others, Mr. McGinn. Said Order is attached hereto as Exhibit A.

7. Mr. McGinn consented to the entry of said Order, and the Court reserved his right to request modification of that Order at any time. See Exhibit A.

8. On January 26, 2012, Mr. McGinn was indicted by a federal grand jury on 27 counts including mail, wire and securities fraud and filing false tax returns (Case No. 1:12-CR-028-DNH). A copy of the indictment is attached hereto as Exhibit B.

9. These charges are complex and varied, and the voluminous evidence in this case increases the complexity of the case by several magnitudes. Based upon the past experience of E. STEWART JONES, PLLC, handling the defense in white collar criminal trials having a similar level of complexity, I anticipate that the cost of Mr. McGinn's defense through the anticipated criminal trial, including legal fees and disbursements, will exceed \$300,000.

10. I have reviewed the allegations in the January 26, 2012 Indictment, examined the file to apprehend the large number of exhibits that will need to be reviewed, and estimated the number of witnesses expected to be called at trial.

11. I anticipate that, among those witnesses, it will be necessary to call two to three expert witnesses to testify regarding the tax and security counts against Mr. McGinn. These experts will be necessary to defend this case, as their expert opinions will be required to address the issues of the taxability of the loans in limited liability companies and disclosure requirements in private placement memoranda, among other things.

12. Due to the complexity of Mr. McGinn's criminal case, I anticipate that the criminal trial will take at least four weeks to complete and will require many months of trial preparation, the likely filing of motions, along with other pre-trial and trial related costs.

13. Additionally, as the trial is to take place in Utica, New York, some two hours driving time from the location of E. STEWART JONES, PLLC, in Troy, New York, trial costs will include the costs of living for counsel in Utica throughout the trial, as well as ordinary expenses for copying fees, transcripts, courtroom technology, and experts.

14. It will be impossible for E. STEWART JONES, PLLC, to continue to defend the case without the ability to recoup our disbursements, pay for expert witnesses and cover the attorney fees accruing in the defense of this case.

15. Out of the fees and disbursements have been billed in the defense of this case, \$26,760 presently remains unpaid and owing.

16. I anticipate that, even if the instant motion is granted, Mr. McGinn's unfrozen assets will fall far short of covering the estimated costs of his defense. However, they will cover a significant portion of those expenses and thereby permit Mr. McGinn to make a substantial down payment and permit E. STEWART JONES, PLLC—Mr. McGinn's counsel of choice—to continue that defense.

17. The assets which Mr. McGinn seeks to be permitted to utilize to finance his defense are listed in Schedule A, attached hereto as Exhibit "C." Of those assets, all but Nos. 9 and 10 are real or personal property which must first be sold in order to be used to fund Mr. McGinn's defense.

18. If the instant application is granted, E. STEWART JONES, PLLC, will undertake to oversee the disposal of those illiquid assets and will fully disclose and report to this Court the details of the sale of each item.

19. Due to the complex nature of Mr. Smith's criminal case and the extensive amount of documents and files that must be reviewed, we ask that the assets listed in Schedule A be

released to pay for the reasonable and necessary attorneys' fees that can be expected to be incurred in our continuing representation of Mr. Smith.

20. It is respectfully requested that the Court grant relief sought in this motion along with such other and further relief as the Court deems appropriate in the interest of justice.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 10, 2012

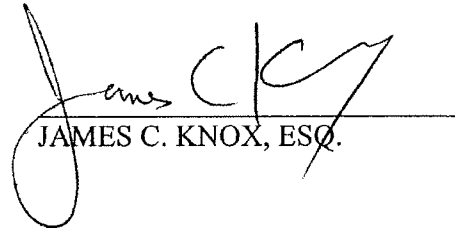

JAMES C. KNOX, ESQ.

EXHIBIT “A”

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

10 Civ. 457 (GLS) (DRH)

MCGINN, SMITH & CO., INC.;
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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.

PRELIMINARY INJUNCTION ORDER

The Securities and Exchange Commission ("Commission") having filed a Complaint on April 20, 2010; and the Commission that same day having filed an Order to Show Cause seeking emergency relief; and the Court having entered an Order dated April 20, 2010 granting a temporary restraining order; asset freeze and other relief against defendants McGinn, Smith & Co., Inc. ("MS & Co."); McGinn, Smith Advisors LLC ("MS Advisors"); McGinn, Smith Capital Holdings Corp. ("MS Capital"); First Advisory Income Notes, LLC ("FAIN"); First Excelsior Income Notes, LLC ("FEIN"); First Independent Income Notes, LLC ("FIIN"); Third Albany Income Notes, LLC ("TAIN"); Timothy M. McGinn ("McGinn"); David L. Smith ("Smith") (collectively, the "Defendants") and Lynn A. Smith ("Relief Defendant"); and

appointing a temporary Receiver over MS & Co., MS Advisors, MS Capital, FAIN, FEIN, FIIN and TAIN, and all other entities McGinn or Smith control or have an ownership interest in, including but not limited to the entities listed on Exhibit A (collectively, the "MS Entities").

Defendants and the Relief Defendant each having (1) entered a general appearance; (2) consented to the Court's jurisdiction over Defendants and Relief Defendant and the subject matter of this action; (3) consented to entry of this Preliminary Injunction Order (the "Order"), without admitting or denying the allegations of the Complaint, and reserving all rights to answer or otherwise respond to the Complaint; (4) waived findings of fact and conclusions of law for the purposes of this Order only; (5) waived any right to appeal from this Order; and (6) reserved their rights to apply to this Court at any time for a modification of this Order.

The Court has considered: (1) the Complaint filed by the Commission on April 20, 2010; (2) the Declaration of Israel Maya, executed on April 19, 2010; (3) the Declaration of Roseann Daniello, executed on April 19, 2010; (4) the Declaration of Lara Shalov Mehraban, executed on April 19, 2010; (5) the Appendix of Exhibits in Support of Emergency Application; and (6) the Memorandum of Law in support of the Commission's application, dated April 20, 2010.

Based on the foregoing, the Court finds that a proper showing, as required by Section 20(b) of the Securities Act of 1933 ("Securities Act"), Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 209(d) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 42(d) of the Investment Company Act of 1940 ("Company Act") has been made for the relief granted herein.

NOW, THEREFORE,

I.

IT IS HEREBY ORDERED that the Commission's Motion for a Preliminary Injunction is GRANTED.

II.

IT IS HEREBY ORDERED that, pending a final disposition of this action, MS & Co., MS Capital, FAIN, FEIN, FIIN, TAIN, McGinn and Smith, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from violating, directly or indirectly, Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77e(a) and 77e(c).

III.

IT IS FURTHER ORDERED that, pending a final disposition of this action, MS & Co., MS Advisors, MS Capital, McGinn and Smith, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a) and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

IV.

IT IS FURTHER ORDERED that, pending a final disposition of this action, MS & Co., MS Advisors, McGinn and Smith, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined

from violating, directly or indirectly, Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("the Advisers Act"), 15 U.S.C. §§ 80b-6(1) and (2), and Rule 206(4)-8 thereunder, 17 C.F.R. §275.206(4)-8.

V.

IT IS FURTHER ORDERED that, pending a final disposition of this action, MS & Co., each of its agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from violating, directly or indirectly, Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1), and Smith and McGinn, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from, directly or indirectly, aiding and abetting a violation of Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1).

VI.

IT IS FURTHER ORDERED that, pending a final disposition of this action, FAIN, FEIN, FIIN and TAIN, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from violating, directly or indirectly, Section 7(a) of the Company Act, 15 U.S.C. § 80a-7.

VII.

IT IS FURTHER ORDERED that, pending a final disposition of this action, the Defendants and the Relief Defendant, and each of their financial and brokerage institutions,

officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants and Relief Defendant, including but not limited to, the MS Entities, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of the Defendants and Relief Defendant to hold or retain within its, his or her control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties including but not limited to, all assets, funds, or other properties held in the accounts listed on Exhibit B, as well as all real property owned directly or indirectly by the MS Entities.

VIII.

IT IS FURTHER ORDERED that, pending final disposition of this action, William J. Brown, Esq., who was appointed Temporary Receiver by the Court's order dated April 20, 2010, shall serve as Receiver over the MS Entities, pending the final disposition of this action to (i) preserve the *status quo*, (ii) ascertain the extent of commingling of funds among the MS Entities; (iii) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the MS Entities and all

entities they control or have an ownership interest in; (v) prevent the encumbrance or disposal of property or assets of the MS Entities and the investors; (vi) preserve the books, records and documents of the MS Entities; (vii) be available to respond to investor inquiries; and (viii) determine whether the MS Entities should undertake bankruptcy filings.

To effectuate the foregoing, the Receiver is empowered to:

- (a) Take and retain immediate possession and control of all of the assets, including but not limited to all books, records and documents, of the MS Entities, and assume all the rights and powers of these assets with respect thereto including the powers set forth in the applicable management agreements, by-laws, LLC agreements or any other controlling agreements;
- (b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of the MS Entities;
- (c) Pay from available funds of any MS Entity the necessary expenses required to preserve the assets and property of the MS Entities, including the books, records, and documents of the MS Entities and all entities they control or have an ownership interest in, notwithstanding the asset freeze imposed by paragraph VII, above. This subparagraph does not, and is not intended to, effectuate or permit a substantive consolidation of the estates except for the payment of expenses as expressly set forth in this subparagraph;
- (d) Succeed to all rights to manage all properties owned or controlled, directly or indirectly, by the MS Entities, pursuant to applicable management agreements, by-laws, LLC agreements, or other controlling agreements relating to each entity;

- (e) Take steps to locate assets that may have been conveyed to third parties or otherwise concealed;
- (f) Take steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued by MS Entities;
- (g) Engage and employ persons, including accountants, attorneys and experts, to assist in the carrying out of the Receiver's duties and responsibilities hereunder;
- (h) Establish a cash management system by closing, transferring, consolidating and opening bank accounts and securities accounts, so long as records are kept of the sources and uses of all funds;
- (i) Invest all cash of the MS Entities in U.S. government securities or U.S. government guaranteed securities having remaining maturities of up to two years and in money market accounts maintained by financial institutions having net worths of no less than \$50 billion;
- (j) Discharge his duties as Receiver by making and authorizing in the ordinary course payments and disbursements from the funds and assets under his control, incurring expenses, and entering into agreements, including loan agreements and credit facilities, all as reasonably necessary or advisable under the circumstances;
- (k) Investigate, prosecute, defend, intervene in, and otherwise participate in, compromise and adjust actions in any state, federal, administrative, or foreign tribunal of any kind, or any potential actions or claims, as the Receiver believes in his sole discretion advisable or proper to collect, conserve, or otherwise recover the assets of the MS Entities, or entities they own or control;
- (l) Notwithstanding the terms of this Order, borrow monies and encumber assets of

the MS Entities, or the entities they own or control, to the extent such actions are deemed necessary by the Receiver based on his own experience and input from his advisors to be most beneficial to preserving enterprise value for one or more of the MS Entities and those entitled to proceeds; provided that encumbrances in excess of \$100,000 shall first require at least four (4) business days' written notice (unless shortened by court order) to the Commission, McGinn and Smith (such notice to be given to McGinn and Smith via ECF, facsimile, e-mail, and/or hand delivery to their respective counsel of record), and such other MS Entity investors having filed notices of appearance in the above-captioned case; provided further that the Receiver may apply for an order under seal or a hearing *in camera*, as circumstances require;

- (m) Use, lease, sell, and convert into money all assets of the MS Entities, either in public or private sales or other transactions on terms the Receiver reasonably believes based on his own experience and input from his advisors to be most beneficial to the MS Entities and those entitled to the proceeds; provided, however, all leases and sales of property appraised for or having a cost basis of \$100,000 or more shall only be consummated with prior court approval on at least four (4) business days' written notice (unless shortened by court order) to the Commission, McGinn and Smith (such notice to be given to McGinn and Smith via ECF, facsimile, e-mail, and/or hand delivery to their respective counsel of record), and creditors or MS Entity investors who have filed notices of appearance in the appearance in the above-captioned case; provided further that the Receiver may apply for an order under seal or *in camera*, as circumstances

require;

- (n) Take all necessary steps to gain control of the Defendants' interests in assets in foreign jurisdictions, including but not limited to taking steps necessary to repatriate foreign assets; and
- (n) Take such further action as the Court shall deem equitable, just, and appropriate under the circumstances upon proper application of the Receiver.

IX.

IT IS FURTHER ORDERED that the Receiver and all persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder, or any of their partners, officers, directors, members, employees, or agents, shall be immune from liability for all actions or omissions within the scope of the Receiver's authority. This provision shall apply to claims based on conduct during the term of any agreement entered into between the Receiver and any other person who may be engaged or employed by the Receiver hereunder, even if such claims are filed after the termination of any such agreement.

X.

IT IS FURTHER ORDERED that if in accordance with this order the Receiver determines that any of the MS Entities, should undertake a bankruptcy filing, the Receiver be, and hereby is, authorized to commence cases under title 11 of the United States Code for such entities in this district, and in such cases the Receiver shall prosecute the bankruptcy petitions in accordance with title 11 subject to the same parameters and objectives as a chapter 11 trustee and shall remain in possession, custody, and control of the title 11 estates subject to the rights of any party in interest to challenge such possession, custody, and control under 11 U.S.C. § 543 or to request a determination by this Court as to whether the Receiver should be deemed a debtor in

possession or trustee, at a hearing, on due notice to all parties in interest, before the undersigned. Before taking action under this paragraph, however, at least two (2) business days' written notice (unless shortened by court order) stating that the Receiver is contemplating action under title 11 must be provided to the Commission, McGinn and Smith (such notice to be given to the McGinn and Smith via ECF, facsimile, e-mail, and/or hand delivery to their respective counsel of record), and such other MS Entity investors who request such notice; provided further that the Receiver may apply for an order under seal or a hearing *in camera* as circumstances require.

XI.

IT IS FURTHER ORDERED that to facilitate efficient coordination in one district of all bankruptcies of MS Entities and the entities they own or control, the Northern District of New York shall be the Receiver's principal place of business for making decisions in respect of operating and disposing of each of the MS Entities and entities they own or control, and their respective assets.

XII.

IT IS FURTHER ORDERED that in lieu of providing retainers to the Receiver and his advisors, all payments made pursuant to the foregoing procedures prior to the initiation of any voluntary or involuntary petition for relief under the United States Bankruptcy Code, or foreign insolvency proceeding, shall be deemed payments made according to ordinary business terms and incurred in the ordinary course of business or financial affairs of the transferees and the MS Entities and not subject to avoidance as a preferential payment.

XIII.

IT IS FURTHER ORDERED that no person or entity, including any creditor or claimant against any of the Defendants or the Relief Defendant, or any person acting on behalf of

such creditor or claimant, shall take any action without further order of the Court to interfere with the taking control, possession or management of the assets, including but not limited to the filing of any lawsuits, liens or encumbrances or bankruptcy cases to impact the property and assets subject to this order.

XIV.

IT IS FURTHER ORDERED that the Defendants and the MS Entities are jointly and severally liable for the the reasonable costs, fees and expenses of the Receiver incurred in connection with the performance of his duties as described herein, including but not limited to, the reasonable costs, fees and expenses of all person who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses of the Receiver and those employed by him shall be made by application to the Court setting forth in reasonable detail the nature of such costs, fees and expenses, with notice to all parties and an opportunity to be heard.

XV.

IT IS FURTHER ORDERED that, pending final disposition of this action, the Defendants, the Relief Defendant, and any person or entity acting at their direction or on their behalf, or any other person, including but not limited to any investor, who receives actual notice of this Order by personal service or otherwise, are (1) restrained and enjoined from destroying, altering, concealing or otherwise interfering with the access of Commission and the Receiver to any and all documents, books and records, that are in the possession, custody or control of the Defendants, the Relief Defendant, and each of their officers, agents, employees, servants, accountants, financial or brokerage institutions, attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, including but not limited to, the MS Entities, that

refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books, and records referring, reflecting or relating to the Defendants' and the Relief Defendant's finances or business operations; and (2) ordered to provide all reasonable cooperation to the Receiver in carrying out his duties set forth herein.

XVI.

IT IS FURTHER ORDERED that this Order shall be, and is, binding upon the Defendants and Relief Defendant and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise.

Dated: July 22, 2010
Albany, New York


UNITED STATES MAGISTRATE JUDGE

Exhibit A

List of Known Entities Controlled By McGinn and/or Smith

107th Associates LLC Trust 07
107th Associates LLC
74 State Street Capital LP
Acquisition Trust 03
Capital Center Credit Corporation
CMS Financial Services
Cruise Charter Ventures LLC dba YOLO Cruises
Cruise Charter Ventures Trust 08
First Advisory Income Notes LLC
First Commercial Capital Corp.
First Excelsior Income Notes LLC
First Independent Income Notes LLC
FirstLine Junior Trust 07
FirstLine Senior Trust 07
FirstLine Trust 07
Fortress Trust 08
Integrated Excellence Junior Trust
Integrated Excellence Junior Trust 08
Integrated Excellence Senior Trust
Integrated Excellence Senior Trust 08
IP Investors
James J. Carroll Charitable Fund
JGC Trust 00
KC Acquisition Corp.
KMB Cable Holdings LLC
Luxury Cruise Center, Inc.
Luxury Cruise Holdings, LLC
Luxury Cruise Receivables, LLC
M & S Partners
McGinn, Smith & Co.
McGinn, Smith Acceptance Corp.
McGinn, Smith Advisors
McGinn, Smith Alarm Trading
McGinn, Smith Asset Management Corp.
McGinn, Smith Capital Holdings
McGinn, Smith Capital Management LLC
McGinn, Smith Financial Services Corp.
McGinn, Smith FirstLine Funding LLC
McGinn, Smith Funding LLC
McGinn, Smith Group LLC
McGinn, Smith Holdings LLC
McGinn, Smith Independent Services Corp.
McGinn, Smith Licensing Co.

McGinn, Smith Transaction Funding Corp.
Mr. Cranberry LLC
MS Partners
MSFC Security Holdings LLC
NEI Capital LLC
Pacific Trust 02
Point Capital LLC
Prime Vision Communications LLC
Prime Vision Communication Management Keys Cove LLC
Prime Vision Communications of Cutler Cay LLC
Prime Vision Funding of Cutler Cove LLC
Prime Vision Funding of Key Cove LLC
RTC Trust 02
SAI Trust 00
SAI Trust 03
Security Participation Trust I
Security Participation Trust II
Security Participation Trust III
Security Participation Trust IV
Seton Hall Associates
TDM Cable Funding LLC
TDM Cable Trust 06
TDM Luxury Cruise Trust 07
TDM Verifier Trust 07
TDM Verifier Trust 07R
TDM Verifier Trust 08
TDM Verifier Trust 08R
TDM Verifier Trust 09
TDM Verifier Trust 11
TDMM Benchmark Trust 09
TDMM Cable Funding LLC
TDMM Cable Jr Trust 09
TDMM Cable Sr Trust 09
Third Albany Income Notes LLC
Travel Liquidators, LLC
White Glove Cruises LLC
White Glove LLC

Exhibit B
Known Bank Accounts

Institution	Account Number	Name of Account Holder	Account Name 2
Mercantile Bank	██████████1998	107th Assoc. LLC Trust 07	
Mercantile Bank	██████████1947	107th Associates LLC	
M&T Bank	██████████6850	107th Associates LLC	
M&T Bank	██████████8478	74 State Street Capital LP	Operating
M&T Bank	██████████062	74 State Street Capital LP	
M&T Bank	██████████5288	Acquisition Trust 03	Operating Account
Whitney National Bank	██████████9335	Benchmark Communication LLC	
M&T Bank	██████████0805	Capital Center Credit Corp	Operating
M&T Bank	██████████2250	Capital Center Credit Corp	Club Depository, 99 Pine St Special Account Michael Lewy Attn: David Rees
JPMorganChase	██████████587	Capital Center Credit Corp	C/O MCGINN SMITH & CO INC ATTN DAVID P REES
NPS/Fidelity	██████████178	Capital Center Credit Corp	
JPMorganChase	██████████4817	Capital Center Credit Corp c/o McGinn Smith & Co	
Monterey Bank	██████████854	Charter Cruise Ventures	dba YOLO Cruises
M&T Bank	██████████133	CMS Financial	
M&T Bank	██████████6965	CMS Financial Services Corp.	
M&T Bank	██████████064	CMS Financial Services Corp.	
Monterey Bank	██████████846	Cruise Charter Ventures	dba YOLO Cruises
Mercantile Bank	██████████8972	Cruise Charter Ventures LLC	
Mercantile Bank	██████████1307	Cruise Charter Ventures LLC	
Mercantile Bank	██████████2808	Cruise Charter Ventures Trust 08	
M&T Bank	██████████5528	First Advisory Income Notes	Operating
M&T Bank	██████████489	First Advisory Income Notes	Escrow
M&T Bank	██████████9147	First Excelsior Income Notes LLC	Alarm Account
M&T Bank	██████████9139	First Excelsior Income Notes LLC	Operating
Charter One Bank	██████████863-8	First Excelsior Income Notes LLC	Escrow
JPMorganChase	██████████5928	First Excelsior Income Notes LLC	
NPS/Fidelity	██████████9280	First Excelsior Income Notes LLC	
M&T Bank	██████████5013	First Independent Income Notes	Operating
M&T Bank	██████████9279	First Independent Income Notes	Monitoring Contract Account

**Exhibit B
Known Bank Accounts**

Institution	Account Number	Name of Account Holder	Account Name 2
Charter One Bank	██████████003-6	First Independent Income Notes	Timothy McGinn
JP Morgan Chase	██████████893	First Independent Income Notes	
JP Morgan Chase	██████████087	First Independent Income Notes	
NFS Fidelity	██████████934	First Independent Income Notes	
Mercantile Bank	██████████1921	FirstLine Senior Trust 07 DTD 5/19/07	McGinn Smith Capital Holdings Corp. TTEE
M&T Bank	██████████5028	FirstLine Sr Trust 07	
M&T Bank	██████████5366	FirstLine Sr Trust 07 Series B	
Mercantile Bank	██████████0733	FirstLine Sr Trust 07 Series B	McGinn Smith & Co Inc Trustee
M&T Bank	██████████5010	FirstLine Trust 07	
Mercantile Bank	██████████0910	FirstLine Trust 07 DTD 5/19/07	McGinn Smith Capital Holdings Corp. TTEE
Mercantile Bank	██████████0722	FirstLine Trust 07 Series B	McGinn Smith & Co Inc Trustee, UAD 10/16/07
M&T Bank	██████████5358	FirstLine Trust 07 Series B	
M&T Bank	██████████6413	Fortress Trust 08	c/o McGinn Smith Capital Holdings Corp.
Mercantile Bank	██████████9187	Fortress Trust 08 UTD 9/10/08	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████████6165	Integrated Excellence Jr Trust	
Mercantile Bank	██████████9994	Integrated Excellence Jr Trust 08 DTD 5/28/08	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████████6173	Integrated Excellence Sr Trust	
Mercantile Bank	██████████3983	Integrated Excellence Sr Trust 08 DTD 5/27/08	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████████6868	IP Investors LLC	
M&T Bank	██████████8783	James J. Carroll Charitable Fund	
M&T Bank	██████████6815	JGC Trust 00	Operating c/o McGinn Smith
Mercantile Bank	██████████0674	Luxury Cruise Center Inc	
Mercantile Bank	██████████0446	Luxury Cruise Center Inc	
Mercantile Bank	██████████0435	Luxury Cruise Charter Inc. Payables	
Mercantile Bank	██████████9945	Luxury Cruise Receivables LLC	
Mercantile Bank	██████████1967	Luxury Cruise Receivables LLC	
M&T Bank	██████████8996	M&S Partners	
JP Morgan Chase	██████████0443	McGinn Smith & Co	
JP Morgan Chase	██████████0670	McGinn Smith & Co	

**Exhibit B
Known Bank Accounts**

Institution	Account Number	Name of Account Holder	Account Name 2
NFS/Fidelity	██████████0167	MCGINN SMITH & CO DELI GIANNIS MASTER ACCOUNT	
NFS/Fidelity	██████████035	MCGINN SMITH & CO AVERAGE PRICE ACCOUNT	
JPMorganChase	██████████000	McGinn Smith & Co Capital A/C	
JPMorganChase	██████████002	McGinn Smith & Co Corporate Bond A/C Attn: David Rees	
JPMorganChase	██████████006	McGinn Smith & Co Deposit Account Attn: David Rees	
JPMorganChase	██████████005	McGinn Smith & Co Error Account Attn: David Rees	
JPMorganChase	██████████001	McGinn Smith & Co Firm Trading A/C Attn: David Rees	
JPMorganChase	██████████003	McGinn Smith & Co Govt Bond A/C Attn: David Rees	
NFS/Fidelity	██████████007	MCGINN SMITH & CO INC	
NFS/Fidelity	██████████051	MCGINN SMITH & CO INC ALBANY BTAM S DIFFERENCE	
NFS/Fidelity	██████████043	MCGINN SMITH & CO INC ALBANY BTAM MASTER ACCOUNT	
NFS/Fidelity	██████████007	MCGINN SMITH & CO INC DAVID L SMITH	
NFS/Fidelity	██████████175	MCGINN SMITH & CO INC DELI GIANNIS S DIFFERENCE	
NFS/Fidelity	██████████086	MCGINN SMITH & CO INC NYC BTAM UNALLOCATED	
NFS/Fidelity	██████████728	MCGINN SMITH & CO INC REVENUE ACCOUNT	
NFS/Fidelity	██████████060	MCGINN SMITH & CO INC ALBANY BTAM UNALLOCATED	
NFS/Fidelity	██████████205	MCGINN SMITH & CO INC BOYLAN S DIFFERENCE	

Exhibit B
Known Bank Accounts

Institution	Account Number	Name of Account Holder	Account Name 2
NFS/Fidelity	██████████191	MCGINN SMITH & CO INC BOYLAN MASTER ACCOUNT	
NFS/Fidelity	██████████83	MCGINN SMITH & CO INC DELIGIANNIS UNALLOCATED	
NFS/Fidelity	██████████116	MCGINN SMITH & CO INC ERROR ACCOUNT	
NFS/Fidelity	██████████230	MCGINN SMITH & CO INC RABINOVICH'S DIFFERENCE	
NFS/Fidelity	██████████221	MCGINN SMITH & CO INC RABINOVICH MASTER ACCOUNT	
NFS/Fidelity	██████████248	MCGINN SMITH & CO INC RABINOVICH UNALLOCATED	
NFS/Fidelity	██████████140	MCGINN SMITH & CO INC SANCHIRICO'S DIFFERENCE	
NFS/Fidelity	██████████32	MCGINN SMITH & CO INC SANCHIRICO MASTER ACCOUNTS	
NFS/Fidelity	██████████159	MCGINN SMITH & CO INC SANCHIRICO UNALLOCATED	
NFS/Fidelity	██████████108	MCGINN SMITH & CO INC SYNDICATE ACCOUNT	
JPMorganChase	██████████304	McGinn Smith & Co Municipal Bond Account Attn: David Rees	
JPMorganChase	██████████815	McGinn Smith & Co Reserve A/C Residual Bal	
NFS/Fidelity	██████████019	MCGINN SMITH & CO RISKLESS PRINCIPAL	
JPMorganChase	██████████807	McGinn Smith & Co Syndicate A/C	
M&T Bank	██████████1061	McGinn Smith & Company	Dividend

Exhibit B
Known Bank Accounts

Institution	Account Number	Name of Account Holder	Account Name 2
M&T Bank	██████████734	McGinn Smith & Company	
M&T Bank	██████████569	McGinn Smith Advisors LLC	
M&T Bank	██████████5044	McGinn Smith Alarm Trading LLC	
M&T Bank	██████████4351	McGinn Smith Capital Holdings	MSCH Paying Agent for Vidsort Inc.
M&T Bank	██████████8551	McGinn Smith Capital Holdings	Payment Agent for Vigilant Privacy Corp.
M&T Bank	██████████8803	McGinn Smith Capital Holdings	
JPMorganChase	██████████573	McGinn Smith Capital Holdings	
NFS/Fidelity	██████████734	MCGINN SMITH CAPITAL HOLDINGS	
M&T Bank	██████████5783	McGinn Smith Capital Holdings Corp	Henson Reserve Account
Mercantile Bank	██████████1635	McGinn Smith Funding LLC	
Monterey Bank	██████████838	McGinn Smith Funding LLC	
M&T Bank	██████████8925	McGinn Smith Holdings LLC	
NFS/Fidelity	██████████944	MCGINN SMITH INCENTIVE PL CUST IRA OF TIMOTHY MCGINN	
JPMorganChase	██████████946	McGinn Smith Incentive Savings Plan	
Mercantile Bank	██████████9022	McGinn Smith Independent Services Corp	
M&T Bank	██████████5975	McGinn Smith Independent Services Corp	
M&T Bank	██████████5051	McGinn Smith Licensing Company LLC	
Mercantile Bank	██████████3083	McGinn Smith Transaction Funding Corp	
M&T Bank	██████████5207	McGinn Smith Transaction Funding Corp	
Mercantile Bank	██████████8857	McGinn Smith Transaction Funding Corp	2nd Offering Account
M&T Bank	██████████5036	McGinn Smith Acceptance Corp	

Exhibit B
Known Bank Accounts

Institution	Account Number	Name of Account Holder	Account Name 2
JPMorganChase	██████████294	McGinn, Tim (Union Bank of California Cost Adms. Keegan Retirement Svgs Plan, FBO Tim McGinn A/C # ██████████5003)	
NFS/Fidelity	██████████745	McGinn, Timothy M.	
M&T Bank	██████████2675	McGinn, Timothy M.	
M&T Bank	██████████9504	McGinn, Timothy M.	
Mercantile Bank	██████████5288	McGinn, Timothy M.	
JPMorganChase	██████████9653	McGinn, Timothy M.	
Bank of America	****5452	McGinn, Timothy and Nancy	
Mercantile Bank	██████████2171	MR Cranberry LLC	c/o Timothy McGinn
NFS/Fidelity	██████████272	MR Cranberry LLC	
M&T Bank	██████████6421	MSFC Security Holdings LLC	
Mercantile Bank	██████████2220	NEI Capital LLC	
M&T Bank	██████████5833	Pacific Trust 02	Operating
Mercantile Bank	██████████9687	Prime Vision Communication Mgmt Keys Cove LLC	c/o McGinn Smith & Co
Bank of Florida	██████████976	Prime Vision Communications LLC	
Mercantile Bank	██████████9698	Prime Vision Communications of Cutler Cay LLC	c/o McGinn Smith & Co
Mercantile Bank	██████████9518	Prime Vision Funding of Cutler Cove LLC	c/o McGinn Smith & Co
Mercantile Bank	██████████9529	Prime Vision Funding of Key Cove LLC	c/o McGinn Smith & Co
M&T Bank	██████████767	RTC Trust 02	Accum
M&T Bank	██████████775	RTC Trust 02	Operating
M&T Bank	██████████3635	SAI Trust 00	
Charter One Bank	██████████23-3	SAI Trust 00	
M&T Bank	██████████8966	SAI Trust 03	Jr
M&T Bank	██████████4620	SAI Trust 03	Sr
M&T Bank	██████████7729	Security Participation Trust I	
M&T Bank	██████████9410	Security Participation Trust II	Accum
M&T Bank	██████████9288	Security Participation Trust II	Operating
M&T Bank	██████████8123	Security Participation Trust III	Operating
M&T Bank	██████████8115	Security Participation Trust III	Accum
M&T Bank	██████████5460	Security Participation Trust IV	
Charter One Bank	██████████023-6	Security Participation Trust Oper	
M&T Bank	██████████492	Seton Hall Associates	McGinn & Smith
NFS/Fidelity	██████████208	Smith, David L.	
M&T Bank	██████████65	Smith, David L.	
NFS/Fidelity	xxx-xxx777	Smith, David L.	
NFS/Fidelity	xxx-xxx4353	Smith, David and Lynn	

**Exhibit B
Known Bank Accounts**

Institution	Account Number	Name of Account Holder	Account Name 2
NPS/Fidelity	██████████916	Smith, Lynn A.	
NPS/Fidelity	██████████912	Smith, Lynn A.	
Bank of America		Smith, Lynn A.	
JPMorgan Chase	██████████	Smith, Lynn A.	
Mercantile Bank	██████████9507	TDM Cable Funding LLC	c/o McGinn Smith & Co
Mercantile Bank	██████████9573	TDM Cable Funding LLC / TDM Cable Trust 06	c/o McGinn Smith & Co
M&T Bank	██████████8765	TDM Cable Funding LLC TDM Verifier Trust 07 Operating	TDM Verifier Trust 07 Operating
M&T Bank	██████████8500	TDM Cable Funding LLC Trust 06 Account	Trust 06 Account
M&T Bank	██████████5234	TDM Luxury Cruise Trust 07	
Mercantile Bank	██████████2086	TDM Luxury Cruise Trust 07 DTD 7/16/07	McGinn Smith Capital Holdings Corp - TTEE
Mercantile Bank	██████████1437	TDM Verifier Trust 07	Escrow
Mercantile Bank	██████████4216	TDM Verifier Trust 07R	
M&T Bank	██████████5738	TDM Verifier Trust 08	
Mercantile Bank	██████████1030	TDM Verifier Trust 08 DTD 12/11/07	McGinn Smith Capital Holdings Corp - TTEE
Mercantile Bank	██████████9132	TDM Verifier Trust 08R DTD 12/11/07	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████████6736	TDM Verifier Trust 09	
Mercantile Bank	██████████4007	TDM Verifier Trust 09 DTD 12/15/08	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████████7064	TDM Verifier Trust 11	
M&T Bank	██████████409	TDM Verifier Trust 11	
M&T Bank	██████████7056	TDMM Benchmark Trust 09	
Mercantile Bank	██████████9077	TDMM Cable Funding LLC	
Mercantile Bank	██████████4139	TDMM Cable Jr Tr 09 DTD 1/16/09	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████████6728	TDMM Cable Jr Trust 09	
Mercantile Bank	██████████6150	TDMM Cable Sr Tr 09 DTD 1/16/09	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████████6710	TDMM Cable Sr Trust 09	
M&T Bank	██████████462	Third Albany Income Notes	Escrow
NPS/Fidelity	██████████384	Third Albany Income Notes	
M&T Bank	██████████9550	Third Albany Income Notes	Operating
M&T Bank	██████████8593	Third Albany Income Notes	Alarm Account
JPMorgan Chase	██████████988	Third Albany Income Notes	

Exhibit B
Known Bank Accounts

Institution	Account Number	Name of Account Holder	Account Name 2
NPS/Fidelity	[REDACTED] 671	Urbelis Thomas TTEE David L Smith & Lynn A Smith, Irrev Tr U/A 8/4/04	
Mercantile Bank	[REDACTED] 2022	White Glove Cruises LLC	
Mercantile Bank	[REDACTED] 3201	White Glove Cruises LLC	
Mercantile Bank	[REDACTED] 2231	White Glove Cruises LLC	
Mercantile Bank	[REDACTED] 2759	White Glove Cruises LLC	

EXHIBIT “B”

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

JAN 26 2012

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

LAWRENCE K. BAERMAN, CLERK
ALBANY

UNITED STATES OF AMERICA :

Criminal Number: 1:12-CR-028-DNH

v. :

VIOLATIONS:

18 U.S.C. § 1349 (Conspiracy);

18 U.S.C. § 1341 (Mail Fraud);

18 U.S.C. § 1343 (Wire Fraud);

15 U.S.C. §§ 78j(b) and 78ff;

17 C.F.R. § 240.10b-5 (Securities Fraud);

TIMOTHY M. MCGINN and

26 U.S.C. § 7206(1) (Filing a False Return);

DAVID L. SMITH,

18 U.S.C. § 2 (Aiding and Abetting and Causing
an Act to be Done)

Defendants.

One Forfeiture Allegation

INDICTMENT

THE GRAND JURY CHARGES:

At all times relevant to this Indictment unless otherwise stated:

Relevant Persons and Entities

1. From in or about 1981 through on or about December 24, 2009, McGinn, Smith & Co. Inc. (the "broker-dealer") was a broker-dealer registered with the Securities and Exchange Commission ("SEC"). The broker-dealer's registration with the SEC allowed it to buy and sell securities for itself and others.

2. The broker-dealer's headquarters was in Albany, New York, and by in or about 2005, it had more than 30 registered representatives working in, among other places, its offices in Albany, Clifton Park, and New York, New York. In addition, the broker-dealer had a relationship with Lex and Smith Associates, Ltd. in King of Prussia, Pennsylvania.

3. Defendants TIMOTHY M. MCGINN and DAVID L. SMITH founded the broker-dealer and each owned 50% of the broker-dealer until in or after about 2003, when MCGINN sold 20% of his interest in the broker-dealer to another person. From in or about September 2006 through in or about December 2009, both MCGINN and SMITH were active in the day-to-day management of the broker-dealer.

4. Among other things, the broker-dealer was engaged in the business of creating and selling unregistered securities pursuant to Regulation D of the Securities Act of 1933, 17 C.F.R. § 230.501 *et seq.* Sales of these unregistered securities were generally limited to certain types of investors including individuals who met minimum net worth and income requirements.

5. As part of the sales process, the broker-dealer provided investors with documents describing the unregistered securities known as private placement memoranda (“PPMs”).

6. McGinn, Smith Capital Holdings, Corp. (“MS Capital”) was a New York corporation owned by defendant TIMOTHY M. MCGINN (25.5%), defendant DAVID L. SMITH (25.5%), and another company controlled either directly or indirectly by MCGINN and SMITH (49%).

7. From on or about September 29, 2006 through on or about January 21, 2009, defendants TIMOTHY M. MCGINN and DAVID L. SMITH created the following limited liability companies which they controlled either directly or indirectly: TDM Cable Funding, LLC; NEI Capital LLC; TDMM Cable Funding, LLC; McGinn, Smith Funding LLC; and Cruise Charter Ventures, LLC (collectively “the LLCs”).

8. McGinn, Smith Transaction Funding Corp. was a New York corporation controlled by defendants TIMOTHY M. MCGINN and DAVID L. SMITH through McGinn, Smith Holdings LLC, a New York limited liability company owned by defendant DAVID L. SMITH (50%),

defendant TIMOTHY M. MCGINN (30%), and another person (20%). From on or about May 2, 2008 through on or about November 26, 2008, the broker-dealer raised approximately \$6.8 million from investors for McGinn, Smith Transaction Funding Corp. According to the PPM, investor money would be used to (a) provide capital to close financial transactions originated by the broker-dealer; (b) invest in other public and private securities; and (c) purchase \$1.5 million of the broker-dealer's 2008 Series Cumulative Preferred Stock.

The Trusts

9. Between on or about October 23, 2006 and on or about July 10, 2009, on the following dates, defendants TIMOTHY M. MCGINN and DAVID L. SMITH used MS Capital to create the following 17 trusts ("the Trusts") as defined in declarations of trust for each of the Trusts:

Name of Trust	Trust Creation Date
TDM Cable Trust 06	10/23/06
TDM Verifier Trust 07	1/18/07
Firstline Trust 07	5/19/07
Firstline Sr. Trust 07	5/19/07
TDM Luxury Cruise Trust 07	7/11/07
Firstline Trust 07 Series B	10/15/07
Firstline Sr. Trust 07 Series B	10/15/07
TDM Verifier Trust 08	12/11/07
Integrated Excellence Jr. Trust 08	5/27/08
Integrated Excellence Sr. Trust 08	5/27/08
Fortress Trust 08	9/10/08
TDM Verifier Trust 09	12/12/08
TDMM Cable Jr. Trust 09	1/16/09

Name of Trust	Trust Creation Date
TDMM Cable Sr. Trust 09	1/16/09
TDM Verifier Trust 07R	1/29/09
TDM Verifier Trust 08R	6/30/09
TDMM Benchmark Trust 09	7/10/09

10. From in or about October 2006 through in or about November 2009, defendants TIMOTHY M. MCGINN and DAVID L. SMITH used the broker-dealer to offer and sell approximately \$37 million of unregistered securities to investors in the form of investments in the Trusts.

11. According to the PPMs prepared for the offering and sale of these investments in the Trusts, after deducting fees and other deal costs, such as underwriting fees, investor money would be provided to one of the LLCs or McGinn, Smith Transaction Funding Corp., which had entered into or would enter into an agreement with a third party requiring payments from the third party. Those agreements were related to (a) burglar alarm, broadband, cable, and telephone services; (b) loans to companies providing those services; (c) guaranteed payment units (scheduled payments) from an entity providing capital to companies providing those services; and (d) luxury cruise charters and travel agencies (the "Agreements").

12. According to the PPMs, investors would receive principal and interest payments ranging from 7.75% to 13% over twelve to sixty-six months. When there were two classes of contract certificates – the senior and junior classes – the senior certificates offered a lower interest rate and a higher priority of repayment, while the junior certificates offered a higher interest rate and a lower priority of repayment.

13. According to the PPMs, the broker-dealer would receive approximately \$2.2 million in underwriting fees from the Trusts. Between in or about 2006 and 2009, the broker-dealer received in excess of \$6 million in connection with transactions related to the Trusts, of which approximately \$1.8 million was paid directly from the Trusts and booked as underwriting fees. Approximately 80% of the more than \$6 million paid to the broker-dealer consisted of investor money.

14. The trustee for each of the trusts was MS Capital, and, according to the PPMs, the trustee would not receive any fees for its services.

15. As direct and indirect owners of MS Capital, defendants TIMOTHY M. MCGINN and DAVID L. SMITH owed a legal duty to investors requiring that they not put their own interests ahead of the interests of investors.

16. With the exception of TDM Cable Trust 06, the declarations of trust for all of the Trusts, which were attached to the PPMs, limited the use of investor money to the direct or indirect acquisition of revenue streams created by the Agreements and temporary investments in (1) certificates of deposit; (2) short term AAA rated debt obligations regularly traded on a recognized exchange in the United States; or (3) obligations issued by the United States Treasury or other obligations backed by the full force and credit of the United States (the "Permitted Investments").

The Firstline Trusts

17. Firstline Security, Inc. ("Firstline") was a Utah corporation engaged in the business of selling primarily residential security alarm contracts.

18. ADT Security Services, Inc. ("ADT") was Firstline's dealer for security alarm contracts, and ADT had a security interest in all alarm contracts generated by Firstline.

19. On or about May 9, 2007, defendant TIMOTHY M. MCGINN, as Chairman of McGinn, Smith Funding LLC, executed an agreement with Firstline promising to lend Firstline approximately \$2.8 million secured by alarm contracts generated by Firstline (the "May Loan"). From in or about September 2007 through in or about April 2012, Firstline was required to make monthly payments on the May Loan.

20. On or about May 19, 2007, MS Capital formed Firstline Trust 07 for the purpose of acquiring two classes in the Firstline financing.

21. Between on or about May 24, 2007, and on or about January 4, 2008, the broker-dealer raised approximately \$3.7 million from investors who purchased unregistered securities from Firstline Trust 07 and Firstline Sr. Trust 07 (the "Firstline Trusts") in return for monthly payments on their investments to be paid from the revenue stream produced by the May Loan. In connection with these sales, defendants TIMOTHY M. MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose to Firstline Trust 07 and Firstline Sr. Trust 07 investors that in connection with the May Loan they had paid themselves \$620,000 from McGinn, Smith Funding LLC above and beyond what was disclosed in the PPMs.

22. From in or about September 2007 through in or about December 2007, Firstline made the scheduled monthly payments on the May Loan.

23. On or about August 8, 2007, Firstline's Chief Executive Officer told defendant TIMOTHY M. MCGINN that ADT had informed Firstline that Firstline was in breach of its dealer agreement, and on October 4, 2007, Firstline's attorney told McGinn, Smith Funding LLC that ADT might sue Firstline and seek more than \$7.5 million in damages related to the breach (the "Potential ADT Litigation").

24. Beginning on or about August 8, 2007, defendants TIMOTHY M. MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose the Potential ADT Litigation to the existing and prospective Firstline Trust investors.

25. On or about October 4, 2007, defendant TIMOTHY M. MCGINN, as Chairman of McGinn, Smith Funding LLC, executed an agreement with Firstline promising to lend Firstline approximately \$2.4 million secured by alarm contracts generated by Firstline (the "October Loan"). From in or about January 2008 through in or about October 2012, Firstline was required to make monthly payments on the October Loan.

26. Between in or about October 29, 2007, and in or about June 16, 2008, the broker-dealer raised approximately \$3.2 million from investors who purchased unregistered securities from Firstline Trust 07 Series B and Firstline Sr. Trust 07 Series B (the "Firstline Series B Trusts") in return for monthly payments on their investments from the revenue stream produced by the October Loan. In connection with these sales, defendants TIMOTHY M. MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose to Firstline Series B Trust investors (a) the Potential ADT Litigation; and (b) that in connection with the October Loan they planned to pay themselves \$315,000 from McGinn, Smith Funding LLC above and beyond what was disclosed in the PPMs.

27. On or about November 20, 2007, ADT filed a lawsuit in Arapahoe County, Colorado against Firstline, the broker-dealer, and others alleging that Firstline was in breach of the dealer agreement and seeking the appointment of a receiver for Firstline (the "ADT Litigation").

28. Between on or about November 20, 2007 and June 16, 2008, in connection with the sale of contract certificates for the Firstline Series B Trusts, defendants TIMOTHY M. MCGINN and DAVID L. SMITH, in violation of their legal duty to disclose material information to investors,

concealed, disguised, and failed to disclose the ADT Litigation to existing and prospective Firstline Series B Trust investors.

29. Beginning in or about January 2008, Firstline stopped making payments on the May Loan and failed to make its first payment on the October Loan.

30. On or about January 25, 2008, Firstline filed a voluntary petition for Chapter 11 bankruptcy in United States Bankruptcy Court in the District of Utah.

31. From in or about January 2008 through in or about September 2009, Firstline made no payments on the May and October Loans, and there was no income stream to make payments to investors.

32. From in or about January 2008 through in or about September 2009, the Firstline and Firstline Series B Trusts continued to make approximately \$2 million in payments to investors by diverting money from trusts and entities controlled by defendants TIMOTHY M. MCGINN and DAVID L. SMITH, including, among other trusts and entities, TDM Cable Trust 06; TDM Verifier Trust 07; Integrated Excellence Jr. Trust 08; TDM Luxury Cruise Trust 07; TDM Verifier Trust 07R; and TDM Cable Funding, LLC when, as MCGINN and SMITH then well knew, this was not a permitted use of investor funds in those trusts as defined by the relevant PPMs and the declarations of trust. Defendant TIMOTHY M. MCGINN directed these improper diversions of funds, which misled the Firstline and Firstline Series B investors into believing that the income streams in which they had invested were performing well.

33. From in or about January 2008 through in or about September 2009, defendants TIMOTHY M. MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose to existing and prospective Firstline and Firstline Series B investors that (a) Firstline had defaulted on

the May and October Loans; (b) Firstline had filed for bankruptcy; and (c) contrary to the PPMs for the Firstline and Firstline Series B Trusts, investor payments had been and would be made using money improperly diverted from entities controlled by defendants TIMOTHY M. MCGINN and DAVID L. SMITH including, among other trusts and entities, TDM Cable Trust 06; TDM Verifier Trust 07; Integrated Excellence Jr. Trust 08; TDM Luxury Cruise Trust 07; TDM Verifier Trust 07R; and TDM Cable Funding, LLC.

34. From in or about January 2008 through in or about September 2009, defendants TIMOTHY M. MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose to investors in TDM Cable Trust 06; TDM Verifier Trust 07; Integrated Excellence Jr. Trust 08; TDM Luxury Cruise Trust 07; and TDM Verifier Trust 07R that money had been improperly diverted to make payments to Firstline and Firstline Series B investors when, as MCGINN and SMITH then well knew, this was not a permitted use of investor funds as defined by the PPMs and the declarations of trust.

35. From on or about January 25, 2008 through on or about June 16, 2008, after Firstline filed for bankruptcy, the broker-dealer sold unregistered securities for Firstline Trust 07 Series B and Firstline Sr. Trust 07 Series B including approximately \$600,000 of unregistered securities for Firstline Trust 07 Series B to replace an investment made by a broker's father and, in connection with those sales, defendants TIMOTHY M. MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose to these new investors that (a) Firstline had defaulted on the May and October Loans; (b) Firstline had filed for bankruptcy; and (c) contrary to the PPMs for the Firstline and Firstline Series B Trusts, investor payments had been and would be made using money improperly diverted from trusts and entities controlled by defendants TIMOTHY M. MCGINN and DAVID L.

SMITH including, among other trusts and entities, TDM Cable Trust 06; TDM Verifier Trust 07; Integrated Excellence Jr. Trust 08; TDM Luxury Cruise Trust 07; TDM Verifier Trust 07R; and TDM Cable Funding, LLC.

36. On or about September 10, 2009, more than 19 months after Firstline filed for bankruptcy and defaulted on the May and October Loans, defendants TIMOTHY M. MCGINN and DAVID L. SMITH first notified Firstline and Firstline Series B investors of Firstline's January 25, 2008 bankruptcy filing and the defaults on the May and October Loans by mailing investors a memorandum from the general counsel for the broker-dealer. The memorandum falsely stated that (a) post-bankruptcy investor payments had been funded by an unidentified lender when, as MCGINN and SMITH then well knew, the payments to investors had been made with money improperly diverted from trusts and entities controlled by MCGINN and SMITH; and (b) Firstline had concealed the Potential ADT Litigation when, as MCGINN and SMITH then well knew, Firstline had disclosed the Potential ADT Litigation approximately two years earlier.

The Integrated Excellence Trusts

37. Integrated Excellence, Inc. was a Georgia corporation engaged in the business of selling residential security alarm contracts. Integrated Excellence Funding, LLC was a Georgia corporation created for the purpose of obtaining capital for Integrated Excellence, Inc.

38. On or about May 27, 2008, MS Capital formed Integrated Excellence Sr. Trust 08 and Integrated Excellence Jr. Trust 08 ("the Integrated Excellence Trusts") for the purpose of acquiring two classes in the Integrated Excellence Funding, LLC financing.

39. On or about May 28, 2008, defendant TIMOTHY M. MCGINN, as Chairman of McGinn, Smith Transaction Funding Corp., executed an agreement with Integrated Excellence

Funding, LLC promising to lend money to Integrated Excellence Funding, LLC secured by alarm contracts generated by Integrated Excellence, Inc. From on or about May 29, 2008 through on or about August 1, 2008, Integrated Excellence Funding, LLC borrowed approximately \$697,815 under the terms of that agreement (the "Integrated Excellence Loans").

40. Between in or about June 2008 and in or about August 2013, Integrated Excellence Funding, LLC was required to make monthly payments on the Integrated Excellence Loans.

41. Between on or about June 9, 2008 and on or about September 26, 2008, the broker-dealer raised approximately \$1.2 million from investors who purchased unregistered securities from the Integrated Excellence Trusts in return for monthly payments on their investments to be paid from the revenue stream produced by the Integrated Excellence Loans.

42. On or about July 1, 2008 and on or about July 15, 2008, defendants TIMOTHY M. MCGINN and DAVID L. SMITH, who were officers and owners of the Trustee for Integrated Excellence Jr. Trust 08, for their own benefit and without authorization, improperly diverted \$85,000 from an escrow account holding investor funds for Integrated Excellence Sr. Trust 08 to their personal bank accounts, and between in or about July 2008 and in or about April 2010, MCGINN and SMITH concealed, disguised, and failed to disclose to investors that they had done so.

43. In or about August 2008, defendant TIMOTHY M. MCGINN directed that \$142,000 be improperly diverted from an escrow account holding investor funds for Integrated Excellence Jr. Trust 08 and be used to make investor payments to Firstline Sr. Trust 07 investors and TDM Luxury Cruise Trust 07 investors, and from in or about August 2008 through in or about April 2010, defendants MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose to (a) Integrated Excellence Jr. Trust 08 investors that they did so when, as MCGINN and SMITH then

well knew, this was not a permitted use of investor funds as defined by the PPMs and declarations of trust; and (b) Firstline Sr. Trust 07 and TDM Luxury Cruise Trust 07 investors that, contrary to the relevant PPMs and declarations of trust, their investor payments had been and would be made using money improperly diverted from the Integrated Excellence Jr. Trust 08.

44. From in or about June 2008 through in or about December 2009, Integrated Excellence Funding, LLC, through another entity, made monthly payments on the Integrated Excellence Loans totaling approximately \$244,709, which loan payments were not sufficient to cover payments of approximately \$283,159 due to the Integrated Excellence investors.

45. Between in or about June 2008 and in or about December 2009, defendant TIMOTHY M. MCGINN directed that the Integrated Excellence Trusts continue to make payments due to investors by diverting money from trusts and entities controlled by defendants TIMOTHY M. MCGINN and DAVID L. SMITH, including, among other trusts and entities, TDM Luxury Cruise Trust 07 and TDMM Cable Sr. Trust 09 when, as MCGINN and SMITH then well knew, this was not a permitted use of investor funds as defined by the relevant PPMs and the declarations of trust, and between in or about June 2008 and in or about February 2010, MCGINN and SMITH concealed, disguised, and failed to disclose to investors in the TDM Luxury Cruise Trust 07 and TDMM Cable Sr. Trust 09 that they had done so. These payments misled the Integrated Excellence Trust investors into believing that the income streams in which they had invested were performing well.

46. Between in or about June 2008 and in or about February 2010, defendants TIMOTHY M. MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose to the Integrated Excellence investors that (i) the Integrated Excellence Loans were not generating sufficient revenue to make monthly investor payments; and (ii) contrary to the PPMs for the Integrated Excellence

Trusts, investor payments had been and would be made using money improperly diverted from trusts and entities controlled by MCGINN and SMITH including, among other trusts and entities, TDM Luxury Cruise Trust 07 and TDMM Cable Sr. Trust 09.

TIMOTHY M. MCGINN and DAVID L. SMITH Improperly Divert \$4.1 Million for Their Own Benefit and the Benefit of a Senior Managing Director of the Broker-Dealer

47. Between on or about October 2, 2006 and on or about August 28, 2009, defendants TIMOTHY M. MCGINN and DAVID L. SMITH for their own benefit and the benefit of Matthew Rogers, a senior managing director of the broker-dealer, and without authorization, improperly diverted approximately \$4.1 million above and beyond what was disclosed in the relevant PPMs from the LLCs; Integrated Excellence Jr. Trust 08; TDMM Cable Jr. Trust 09; and McGinn, Smith Transaction Funding Corp. as follows when, as MCGINN and SMITH then well knew, these transfers were not a permitted use of investor funds as defined by the relevant PPMs and declarations of trust:

- (A) Between on or about October 2, 2006 and on or about August 28, 2009, in connection with transactions related to many of the Trusts, MCGINN and SMITH improperly diverted approximately \$3.8 million from the LLCs to their own and Rogers's personal bank accounts and to pay \$40,000 to Waterville Golf Links in Ring of Kerry, Ireland for a membership for Rogers;
- (B) In or about July 2008, MCGINN and SMITH, who were officers and owners of the Trustee for Integrated Excellence Sr. Trust 08 (MS Capital), improperly diverted approximately \$85,000 directly from an escrow account holding investor funds for Integrated Excellence Sr. Trust 08 to their personal

bank accounts;

- (C) On or about April 30, 2009, MCGINN, who was an officer and owner of the Trustee for TDMM Cable Jr. Trust 09 (MS Capital), improperly diverted approximately \$30,000 directly from an escrow account holding investor funds for TDMM Cable Jr. Trust 09 to his personal bank account; and
- (D) From on or about August 22, 2008 through on or about July 8, 2009, MCGINN improperly diverted approximately \$230,000 from McGinn, Smith Transaction Funding Corp., to his personal bank accounts, and on or about February 27, 2009, MCGINN repaid \$100,000 of the money that he had taken.

48. Between in or about October 2006 and in or about April 2010, defendants TIMOTHY M. MCGINN and DAVID L. SMITH concealed, disguised, and failed to disclose to investors in the Trusts that for their own benefit and the benefit of Matthew Rogers and without authorization they had improperly diverted approximately \$4.1 million from the LLCs; Integrated Excellence Jr. Trust 08; TDMM Cable Jr. Trust 09; and McGinn, Smith Transaction Funding Corp. above and beyond what was disclosed in the relevant PPMs. MCGINN received approximately \$1,616,142 (approximately \$1,386,142 of which was related to the Trusts), and SMITH received approximately \$1,567,000.

49. Between in or about October 2006 and in or about August 2009, defendant TIMOTHY M. MCGINN used the money that had been improperly diverted to his personal bank accounts for, among other things: (a) expenses related to his homes in Niskayuna, New York (at least \$129,997) and Boca Raton, Florida (at least \$63,808); (b) thoroughbred race horses (at least

\$39,458); (c) alimony (at least \$147,942); (d) loan payments to defendant DAVID L. SMITH and his wife (at least \$255,000); (e) country club expenses at, among others, Waterville Golf Links in Ring of Kerry, Ireland; Pine Tree Golf Club in Boynton Beach, Florida; and Schuyler Meadows in Loudonville, New York (at least \$54,414); (f) payments to investment accounts (at least \$62,250); and (g) income tax payments (at least \$89,642).

50. Between in or about October 2006 and in or about August 2009, defendant DAVID L. SMITH used the money that had been improperly diverted to his personal bank accounts for, among other things: (a) expenses related to his homes in Orchid Island, Florida (at least \$145,445) and Saratoga Springs, New York (at least \$86,334), (b) country club expenses at among others, Waterville Golf Links in Ring of Kerry, Ireland; Orchid Island Golf and Beach Club in Vero Beach, Florida; Schuyler Meadows in Loudonville, New York; and Saratoga Golf and Polo Club in Saratoga, New York (at least \$57,928); (c) payments to investment accounts (at least \$810,000); and (d) income tax payments (at least \$145,092).

**Defendants TIMOTHY M. MCGINN and DAVID L. SMITH Direct
False Accounting Entries Regarding the Improperly Diverted \$4.1 Million
and Fail to Declare It On Their Tax Returns**

51. In or about October 2007, defendant DAVID L. SMITH directed accountants at the broker-dealer and an outside accounting firm to reclassify transactions regarding money improperly diverted in 2006 from TDM Cable Funding, LLC to the personal bank accounts of MCGINN, SMITH, and Rogers as “loans” when, as he then well knew, (a) they were not “loans”; (b) they were not a permitted use of investor funds as defined by the PPM and the declaration of trust for TDM Cable Trust 06; and (c) they were not disclosed in the TDM Cable Trust 06 PPM as “loans.”

52. Between in or about October 2007 and in or about the fall of 2009, at the direction of defendants TIMOTHY M. MCGINN and DAVID L. SMITH, accountants at the broker-dealer continued to book the money that had been improperly diverted from the LLCs as “loans” when, as MCGINN and SMITH then well knew (a) they were not “loans,” (b) they were not a permitted use of investor funds as defined by the relevant PPMs and the declarations of trust, and (c) they were not disclosed in the relevant PPMs as “loans.”

53. Between in or about October 2007 and in or about October 2009, defendants TIMOTHY M. MCGINN and DAVID L. SMITH and Matthew Rogers failed to declare the \$4.1 million improperly diverted for their own benefit on their federal income tax returns for tax years 2006, 2007, 2008, and 2009.

54. In or about November 2008 and in or about the spring of 2009, defendants TIMOTHY M. MCGINN and DAVID L. SMITH did not include any of the money that had been improperly diverted for their own benefit as “loans” on audited personal financial statements prepared by their outside accountant.

55. From in or about September 2009 through in or about January 2010, defendants TIMOTHY M. MCGINN and DAVID L. SMITH misled the broker-dealer’s regulator, Financial Industry Regulatory Authority, Inc. (“FINRA”), about the money that had been diverted from the LLCs by (1) directing the creation of backdated promissory notes to support the false “loan” accounting entries discovered by FINRA; and (2) causing the submission of the backdated promissory notes to FINRA.

56. On or about November 2, 2009, after discovering that defendant TIMOTHY M. MCGINN had improperly diverted money from McGinn, Smith Transaction Funding Corp.,

defendant DAVID L. SMITH, to conceal the source of the diverted funds, directed an accountant for the broker-dealer to make a false accounting entry indicating that MCGINN had taken \$130,000 from NEI Capital LLC.

Count One
(Conspiracy to Commit Mail and Wire Fraud)

57. Paragraphs One through Fifty-Six are hereby realleged and incorporated by reference as if fully set forth herein.

58. From on or about September 29, 2006 through on or about April 20, 2010, within the Northern District of New York and elsewhere, defendants TIMOTHY M. MCGINN and DAVID L. SMITH and others conspired to commit the following offenses:

a. **Mail Fraud**, by devising and intending to devise a scheme and artifice to defraud investors by soliciting investments under false pretenses and concealing, disguising, and failing to disclose material information, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, promises, and material omissions and for the purpose of executing such scheme and artifice and attempting so to do, knowingly placed, caused to be placed, and took and received in a post office and authorized depository for mail certain matters, documents, letters, and mailings to be sent or delivered by the United States Postal Service and/or by any private or commercial interstate carrier, in violation of Title 18, United States Code, Section 1341;

b. **Wire Fraud**, by devising and intending to devise a scheme and artifice to defraud investors by soliciting investments under false pretenses and concealing, disguising, and failing to disclose material information, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, promises, and material omissions, and for the purpose of

executing such scheme and artifice and attempting so to do, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate commerce any writings, signs, signals, and sounds, in violation of Title 18, United States Code, Section 1343.

Purpose

59. A purpose of the conspiracy was to mislead investors regarding the safekeeping and use of investor money by the Trusts and McGinn, Smith Transaction Funding Corp.; the risks of the Trust and McGinn, Smith Transaction Funding Corp. offerings; the performance of the underlying income streams; the source of payments to investors; and the improper diversion of investor money, all done in order to obtain money from investors and enrich themselves.

Manner and Means

60. MCGINN, SMITH, and their co-conspirators made and caused to be made numerous material misrepresentations and material omissions designed to mislead prospective and existing investors regarding the risks of the Trust and McGinn, Smith Transaction Funding Corp. offerings; the use of investor money; the performance of the underlying income streams; the source of investor payments; and the improper diversion of investor money.

61. As a result of the material misrepresentations and material omissions by MCGINN, SMITH and their co-conspirators, investors in the Trusts were not aware that MCGINN and SMITH had improperly diverted money for their own use and without authorization directly from escrow accounts containing investor money for Integrated Excellence Sr. Trust 08 and TDMM Cable Jr. Trust 09.

62. As a result of the material misrepresentations and material omissions by MCGINN, SMITH and their co-conspirators, investors in the Trusts were not aware that MCGINN and SMITH

had improperly diverted money from an escrow account containing investor money for Integrated Excellence Jr. Trust 08 to make payments to Firstline Sr. Trust 07 and TDM Luxury Cruise Trust 07 investors.

63. As a result of the material misrepresentations and material omissions by MCGINN, SMITH, and their co-conspirators, investors in the Trusts were not aware that for their own benefit and the benefit of Matthew Rogers and without authorization, MCGINN and SMITH had improperly diverted \$3.9 million from the LLCs above and beyond what was disclosed in the PPMs.

64. As a result of the material misrepresentations and material omissions by MCGINN, SMITH, and their co-conspirators, investors in the Trusts and McGinn, Smith Transaction Funding Corp. were not aware that MCGINN, for his own benefit and without authorization, had improperly diverted \$230,000 from McGinn, Smith Transaction Funding Corp. above and beyond what was disclosed in the PPM.

65. As a result of the material misrepresentations and material omissions by MCGINN, SMITH and their co-conspirators, investors in the Trusts were not aware of: (a) the Potential ADT Litigation; (b) the ADT Litigation; (c) Firstline's defaults on the May and October Loans; (d) Firstline's bankruptcy petition; (e) the failure of the underlying income streams to generate sufficient income to pay investors in the Firstline and Firstline Series B Trusts and the Integrated Excellence Trusts; and (f) the diversion of money to pay Firstline, Firstline Series B, and Integrated Excellence Trust investors.

66. Part of the manner and means of the conspirators' scheme to defraud consisted of misleading investors into believing that the income streams in which they had invested were performing well by making payments to investors with money improperly diverted from other trusts

and entities controlled by defendants TIMOTHY M. MCGINN and DAVID L. SMITH.

67. As part of the conspiracy, the broker-dealer routinely used the United States mail, private mail carriers, electronic mail, interstate facsimiles, and interstate wire transfers from financial institutions located outside New York State to send investment documents, PPMs, and investor payments. The broker-dealer also routinely obtained investor money through interstate wire transfers from financial institutions located outside New York State and through mailings delivered by the United States Postal Service and private mail carriers. Most of these mailings came to and from Albany and Clifton Park in the Northern District of New York.

68. The use of the mails and interstate wires was foreseeable, and defendants TIMOTHY M. MCGINN and DAVID L. SMITH were aware that use of the mails and interstate wires would follow in the ordinary course of business.

In violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH EIGHT
(Mail Fraud)

69. Paragraphs One through Fifty-Six and Fifty-Nine through Sixty-Eight are hereby realleged and incorporated by reference as if fully set forth herein.

70. From in or about September 2006 through in or about December 2009, in the Northern District of New York and elsewhere, defendants TIMOTHY M. MCGINN and DAVID L. SMITH devised and intended to devise a scheme and artifice to defraud investors by soliciting investments under false pretenses and concealing, disguising, and failing to disclose material information, and to obtain money and property by means of material false and fraudulent pretenses, representations, promises, and material omissions and attempting to do so.

71. For the purpose of executing such scheme and to obtain money and property by means of material false and fraudulent pretenses, representations, promises, and material omissions and attempting to do so, defendants TIMOTHY M. MCGINN and DAVID L. SMITH, in the Northern District of New York and elsewhere, on or about the following dates knowingly placed, caused to be placed, and took and received in a post office and authorized depository for mail certain matters, documents, letters, and mailings to be sent or delivered by the United States Postal Service and/or by any private or commercial interstate carrier, the following matters and things to and from the addresses listed below:

<u>Count</u>	<u>Date</u>	<u>Matter or Thing</u>	<u>Address</u>
2	10/2007	A private placement memorandum for Firstline Trust 07 Series B	<u>Delivered to:</u> T.B. Guilderland, NY
3	12/18/2007	A \$50,000 check from M. & K.D. to purchase contract certificates from Firstline Sr. Trust 07 Series B	<u>Delivered to:</u> McGinn, Smith & Co. Inc. Clifton Park, NY
4	01/28/2008	A letter of authorization for a \$30,000 wire transfer from H.C. to purchase contract certificates from Firstline Sr. Trust 07 Series B	<u>Delivered to:</u> McGinn, Smith & Co. Inc. Clifton Park, NY
5	05/15/2008	A \$50,000 check from R. & S. B. to purchase contract certificates from Firstline Trust 07 Series B	<u>Delivered to:</u> McGinn, Smith & Co. Inc. Clifton Park, NY
6	06/06/2008	A subscription agreement for Firstline Trust 07 Series B	<u>Delivered from:</u> R. & J. P. Schenectady, NY
7	06/09/2008	A \$100,000 check from B.S. to purchase contract certificates from Integrated Excellence Sr. Trust 08	<u>Delivered to:</u> McGinn, Smith & Co. Inc. Clifton Park, NY
8	09/10/2009	A letter and memorandum from McGinn Smith Capital Holdings Corp. regarding Firstline Trust 07 Series B to A.G.	<u>Delivered from:</u> McGinn, Smith & Co. Inc. Clifton Park, NY

All in violation of Title 18, United States Code, Section 1341.

COUNTS NINE THROUGH EIGHTEEN
(Wire Fraud)

72. Paragraphs One through Fifty-Six and Fifty-Nine through Sixty-Eight are hereby realleged and incorporated by reference as if fully set forth herein.

73. From in or about September 2006 through in or about December 2009, in the Northern District of New York and elsewhere, defendants TIMOTHY M. MCGINN and DAVID L. SMITH devised and intended to devise a scheme and artifice to defraud investors by soliciting investments under false pretenses and concealing, disguising, and failing to disclose material information, and to obtain money and property by means of material false and fraudulent pretenses, representations, promises, and material omissions and attempting to do so.

74. For the purpose of executing such scheme and artifice, defendants TIMOTHY M. MCGINN and DAVID L. SMITH, in the Northern District of New York and elsewhere, on or about the dates listed below, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce the following writings, signs, and signals, specifically, facsimile transmissions and money transfers, as described below:

<u>Count</u>	<u>Date</u>	<u>Writing, Sign, or Signal</u>	<u>Origin</u>	<u>Destination</u>
9	04/23/2008	Facsimile related to B.K.'s purchase of contract certificates from Firstline Trust 07 Series B	McGinn, Smith & Co. Inc. Clifton Park, NY	National Financial Services LLC Marlborough, MA
10	05/10/2008	Facsimile related to A.C.'s purchase of contract certificates from Firstline Trust 07 Series B	McGinn, Smith & Co. Inc. Clifton Park, NY	National Financial Services LLC Marlborough, MA
11	05/28/2008	Facsimile related to T.R.'s purchase of contract certificates from Firstline Trust 07 Series B	McGinn, Smith & Co. Inc. Clifton Park, NY	National Financial Services LLC Marlborough, MA

<u>Count</u>	<u>Date</u>	<u>Writing, Sign, or Signal</u>	<u>Origin</u>	<u>Destination</u>
12	07/14/2008	Facsimile related to S.J.T.W.'s purchase of contract certificates from Integrated Excellence Sr. Trust 08	McGinn, Smith & Co. Inc. Clifton Park, NY	National Financial Services LLC Marlborough, MA
13	08/29/2008	Wire transfer of \$97,000 to Firstline Sr. Trust 07	Integrated Excellence Jr. Trust 08 Mercantile Bank account ending in 3994 Boca Raton, Florida	Firstline Sr. Trust 07 M & T bank account ending in 5028 Albany, New York
14	08/29/2008	Wire transfer of \$45,000 to TDM Luxury Cruise Trust 07	Integrated Excellence Jr. Trust 08 Mercantile Bank account ending in 3994 Boca Raton, Florida	TDM Luxury Cruise Trust 07 M & T bank account ending in 5234 Albany, New York
15	07/01/2008	Wire transfer of \$35,000 to David L. Smith	Integrated Excellence Sr. Trust 08 Mercantile Bank account ending in 3983 Boca Raton, Florida	David L. Smith M & T bank account ending in 9965 Albany, New York
16	07/01/2008 07/15/2008	Wire transfers totaling \$50,000 to Timothy M. McGinn	Integrated Excellence Sr. Trust 08 Mercantile Bank account ending in 3983 Boca Raton, Florida	Timothy M. McGinn M & T bank account ending in 9504 Albany, New York
17	08/22/2008 09/08/2008 10/22/2008 10/27/2008 11/07/2008 07/08/2009	Wire transfers totaling \$230,000 to Timothy M. McGinn	McGinn, Smith Transaction Funding Corp. Mercantile Bank account ending in 3083 Boca Raton, Florida	Timothy M. McGinn M & T bank accounts ending in 9504 & 2675 Albany, New York
18	04/30/2009	Wire transfer of \$30,000 to Timothy M. McGinn	TDMM Cable Jr. Trust 09 Mercantile Bank account ending in 4139 Boca Raton, FL	Timothy M. McGinn M & T bank account ending in 2675 Albany, New York

All in violation of Title 18, United States Code, Section 1343.

COUNTS NINETEEN THROUGH TWENTY-FOUR
(Securities Fraud)

75. Paragraphs One through Fifty-Six and Fifty-Nine through Sixty-Eight are hereby realleged and incorporated by reference as if fully set forth herein.

76. On or about the following dates, each such date constituting a separate count of this Indictment, within the Northern District of New York and elsewhere, the defendants TIMOTHY M. MCGINN and DAVID L. SMITH, and others, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce and the mails, in connection with the purchase and sale of any securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; and (c) engaging in transactions, acts, practices, and courses of business which operated or would operate as a fraud and deceit upon persons in connection with the following transactions:

<u>Count</u>	<u>Date</u>	<u>Transaction</u>
19	01/11/2008 01/28/2008	Wire transfers related to TDM Verifier Trust 08 totaling \$50,000 from the McGinn, Smith Funding LLC Mercantile bank account ending in 1635 to the Timothy M. McGinn M & T bank account ending in 9504
20	01/28/2008	Wire transfer related to TDM Verifier Trust 08 of \$50,000 from the McGinn, Smith Funding LLC Mercantile bank account ending in 1635 to the David L. Smith M & T bank account ending in 9965
21	09/29/2008 10/03/2008 10/06/2008	Wire transfers related to Fortress Trust 08 totaling \$210,000 from the NEI Capital LLC Mercantile bank account ending in 9220 to the Timothy M. McGinn M & T bank account ending in 9504
22	09/29/2008 10/03/2008 10/06/2008	Wire transfer related to Fortress Trust 08 totaling \$360,000 from the NEI Capital LLC Mercantile bank account ending in 9220 to the David L. Smith M & T bank account ending in 9965

<u>Count</u>	<u>Date</u>	<u>Transaction</u>
23	10/03/2008	A wire transfer related to Fortress Trust 08 of \$245,000 from the NEI Capital LLC Mercantile bank account ending in 9220 to the Matthew Rogers Citicorp Florida bank account ending in 9958 related to Fortress Trust 08
24	11/07/2008	Electronic mail message from tmcginn@mcginnsmith.com to Mercantile Bank employees in Boca Raton, Florida related to Fortress Trust 08

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS TWENTY-FIVE THROUGH TWENTY-SEVEN
(Filing False Returns)

77. Paragraphs One through Fifty-Six and Fifty-Nine through Sixty-Eight are hereby realleged and incorporated by reference as if fully set forth herein.

78. On or about the following dates, each such date constituting a separate count of this Indictment, in the Northern District of New York, defendant TIMOTHY M. MCGINN willfully made and subscribed to the following joint U.S. Individual Income Tax Returns for the following tax years, each of which (a) was prepared in the Northern District of New York; (b) was filed with the Internal Revenue Service; (c) was verified by a written declaration that it was made under the penalties of perjury; and (d) defendant TIMOTHY M. MCGINN did not believe to be true and correct as to every material matter, to wit: the returns, at line 22, reported the following amounts as income when, as defendant TIMOTHY M. MCGINN then well knew, the total income he had received during each year was substantially in excess of that amount:

<u>Count</u>	<u>Date Return Filed</u>	<u>Tax Year</u>	<u>Amount Reported at Line 22</u>
25	10/18/2007	2006	\$598,577
26	10/20/2008	2007	\$537,850
27	10/15/2009	2008	\$383,219

All in violation of Title 26, United States Code, Section 7206(1).

COUNTS TWENTY-EIGHT THROUGH THIRTY
(Filing False Returns)

79. Paragraphs One through Fifty-Six and Fifty-Nine through Sixty-Eight are hereby realleged and incorporated by reference as if fully set forth herein.

80. On or about the following dates, each such date constituting a separate count of this Indictment, in the Northern District of New York, defendant DAVID L. SMITH willfully made and subscribed to the following joint U.S. Individual Income Tax Returns for the following tax years, each of which (a) was prepared in the Northern District of New York; (b) was filed with the Internal Revenue Service; (c) was verified by a written declaration that it was made under the penalties of perjury; and (d) defendant DAVID L. SMITH did not believe to be true and correct as to every material matter, to wit: the returns, at line 22, reported the following amounts as income when, as defendant DAVID L. SMITH then well knew, the total income he had received during each year was substantially in excess of that amount:

<u>Count</u>	<u>Date Return Filed</u>	<u>Tax Year</u>	<u>Amount Reported at Line 22</u>
28	10/17/2007	2006	\$487,337
29	10/20/2008	2007	\$475,160
30	10/15/2009	2008	\$501,199

All in violation of Title 26, United States Code, Section 7206(1).

Forfeiture Allegations

81. The allegations contained in Counts One through Twenty-Four of this Indictment are realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

82. Upon conviction of the offenses in violation of Title 18, United States Code, Sections 1341, 1343, and 1349 set forth in Counts One through Eighteen of this Indictment, defendants TIMOTHY M. MCGINN and DAVID L. SMITH shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses.

83. Upon conviction of the offenses in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5 set forth in Counts Nineteen through Twenty-Four of this Indictment, which are realleged and incorporated by reference as if fully set forth herein, defendants TIMOTHY M. MCGINN and DAVID L. SMITH shall forfeit to the United States, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 1956(c)(7), and 1961(1), and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses.

84. If any of the property described above, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party,
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

85. The intent of the United States of America to forfeit such property includes a money judgment in the amount of \$8,000,000 representing the total dollar amount constituting or derived from proceeds traceable to the offenses of conviction.

All pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

RICHARD S. HARTUNIAN
United States Attorney


By: 
Elizabeth C. Coombe
Richard Belliss
Assistant U.S. Attorneys

EXHIBIT “C”

SCHEDULE A

1. Timeshare Unit in Beaver Creek, Colorado: Unit 317, week 3, St. James Place, Avon Colorado.
 - a. Purchased in 1991.
 - b. Estimated value: \$35,000
 - c. Likely proceeds: \$25,000

2. Antique Chinese War Lord Desk: Located in Clifton Park storage unit.
 - a. Purchased in 1995
 - b. Estimated value: \$15,000
 - c. Likely proceeds: \$5,000

3. Oriental Rugs (9): Various locations, including Clifton Park storage.
 - a. Purchased 1997 through 2007
 - b. Estimated value: \$64,000
 - c. Likely proceeds: \$25,000

4. Pine Tree Golf Club Membership Bond:
 - a. Purchased in 2000
 - b. Estimated value: \$10,000
 - c. Likely proceeds: \$7,000

5. Waterville Golf Links Membership Initiation Fee: Located in Ireland.
 - a. Purchased in 2003.
 - b. Estimated value: \$25,000
 - c. Likely proceeds: \$20,000

6. Watches and Jewelry: Breitling, serial No. A49350; Montblanc, model: Meisterstuck
 - a. Purchased 2002 through 2006
 - b. Estimated value: \$10,000
 - c. Likely proceeds: \$3,500

7. Boca Raton Residence, 126 Via Palma Lane, Boca Raton, FL 334787
 - a. Purchased in 2007
 - b. Estimated value: \$495,000
 - c. less Commissions (\$29,700)
 - d. less Debt and Taxes (\$425,000)
 - e. Net Equity: \$40,300

- f. Likely proceeds: \$20,000

- 8. Furniture and personal property at Boca Raton Residence
 - a. Purchased in 2007
 - b. Estimated value: \$10,000
 - c. Likely proceeds: \$6,000

- 9. M & T Bank Account: Acct. No. 9849142675
 - a. Value: \$9,480

- 10. McGinn Smith Retirement Account: Acct. No. 6726005003
 - a. Value: \$7,350

TOTAL:

Estimated Value: \$231,130

Likely Proceeds: \$128,330