

EXHIBIT 12

Investment Bankers • Investment Brokers

99 Pine Street
Albany, NY 12207
518-449-5131
Fax 518-449-4894
www.mcginnsmith.com

August 4, 2004

Mr. Thomas Urbelis
Urbelis, Fieldsteel & Balin, LLP
155 Federal Street
Boston, MA 02110

Dear Tom:

Thanks for agreeing to be the Trustee for the Private Annuity Trust that I spoke to you about. Please sign and have notarized the Declaration of Trust and apply for the tax ID number. Return to me ASAP, as they are originals. Tax returns will be done by Piaker & Lyons, the accountants for the firm and Lynn and I. You and I will be able to consult on investments, but I am not eligible to exercise any direct control over the Trust or its investments. We will discuss some options to accomplish that at a later date. We will discuss a fee for your services at that time also.

The Trust was drawn by Bruce Hoover of Sullivan and Oliverio in Buffalo, New York. His number is 716-854-5300, and you may call if you have any questions. Geoff is the alternative Trustee. The Trust was drawn at the direction of Daniel Blake of Buffalo who researched the concept at my direction.

Regards,



David L. Smith
President

DLS/pas

Enclosures



DECLARATION OF TRUST

THIS INDENTURE is made the 4th day of AUGUST, 2004, between David L. Smith and Lynn A. Smith, residing at [REDACTED] Saratoga Springs, New York 12866, (herein called the "Donors"), and Thomas Urbelis, with offices at 6 Eastman Road, Andover, Massachusetts 01810-4009 (the "Trustee") and shall be known as the **DAVID A. & LYNN A. SMITH IRREVOCABLE TRUST U/A DATED AUGUST 4, 2004.**

WITNESSETH:

The Donors hereby transfer and deliver unto the Trustee the property described in Schedule A, attached hereto, the receipt of which is hereby acknowledged by the Trustee. The Donors have two (2) children, [REDACTED] and [REDACTED]. This Trust is created for the benefit of the Donors' children and their issue.

TO HAVE AND TO HOLD such property unto the Trustee, **IN TRUST**, **NEVERTHELESS**, as follows:

FIRST: During the lives of the Donors, the Trustee shall manage, invest and reinvest the trust estate to satisfy all obligations of the Trust and the Trust shall be divided and managed in two (2) separate and equal shares for each child and any issue of such child (the "Beneficiaries") and collect the income thereof and, until the death of the second Donor to die, shall distribute so much of the net income and principal as the Trustee shall determine in his discretion to provide for the education, health, support and maintenance of the Beneficiaries from the each child's respective trust share, taking into account any other resources of the Beneficiaries and the tax status of each Beneficiary. Consistent with these provisions the Trustee shall have the power (i) to sprinkle the current income and/or the principal to one or more Beneficiaries, from each such Beneficiary's respective share, as the Trustee shall deem necessary to provide for the education, health, support and maintenance of each Beneficiary and (ii) in each tax year to make the trust either a "simple" trust or "complex" trust under applicable federal and state tax laws.

During the lives of the Donors, the Trustee is authorized, in his discretion, at any time to terminate each trust share and thereupon to pay over and distribute the principal thereof, and any income then accrued or held, to each child, or if such child is predeceased, to the issue of such child in equal shares, and if there are no issue, then to other child, and if such other child is predeceased, then to the issue of such other child in equal shares, although it is the Donor's desire this trust be administered as herein provided.

If in any year a contribution is made to the trust estate by the Donors, the Trustee shall promptly notify each of the Beneficiaries, or, if any such person shall be a minor, his or her parent or guardian other than the Donors, of such contribution, and each such beneficiary, or such parent or guardian acting on a Beneficiary's behalf during such Beneficiary's minority, shall have the right at any time within thirty (30) days of receipt of such notice to withdraw from the trust estate an amount not in excess of the lesser of the following: (i) such Beneficiary's pro rata share of the amount of such contribution and (ii) the annual exclusion available to the Donors for United States Federal gift tax purposes with respect to the Beneficiary's pro rata share of such contribution, after taking into account any other gifts made by the Donors to such person in that year. In satisfaction of such right of withdrawal, the Trustee may distribute to a Beneficiary any asset held in the trust estate (including any insurance policies or any interests in such policies or borrow against such policies), valued as of

the date of withdrawal. Such right of withdrawal shall not be cumulative with respect to any prior contributions made to the trust and, if such right of withdrawal is not exercised within such thirty (30) day period, it shall lapse, provided that the amount with respect to which the right of withdrawal shall lapse for any Beneficiary in any year shall not exceed the maximum annual amount with respect to which a power of appointment may lapse and not be considered a release of such power for United States Federal gift tax purposes under Section 2514 of the Internal Revenue Code of 1986, or any provision successor thereto, as in effect for that year (hereinafter, the "maximum lapse amount"), and if any Beneficiary has a right of withdrawal in any year which shall exceed the maximum lapse amount, the power for the beneficiary for that year shall lapse only to the extent of the maximum lapse amount, and any excess withdrawal right shall continue to be exercisable by the Beneficiary, but shall lapse, in the next succeeding year, or years, to the extent of the maximum lapse amount for such year, on the second day of such year. The right of withdrawal hereunder shall be exercised by written notice delivered to the Trustee. The Donors may instruct the Trustee that any Beneficiary shall not have a withdrawal right as described in this article with respect to any contribution during the calendar year, and to disregard a demand by any Beneficiary with respect to any contribution made by the Donors. Each right of withdrawal granted hereunder is personal to the person holding such right and shall expire if he or she dies, is adjudicated bankrupt, shall take advantage of any of the provisions of the bankruptcy act or of any federal or state statute relating to insolvency, shall make an assignment for the benefit of his or her creditors, or shall be adjudicated an incompetent.

SECOND: Upon the death of the second Donor to die, the Trustee shall collect, as principal of the trust estate, the net proceeds of any insurance policies then included in the trust estate and payable to the Trustee, or any other benefits or proceeds payable to the Trustee as beneficiaries, after deduction of all charges against such policies or benefits by way of advances, loans, premiums or otherwise, and any amounts so collected shall be divided equally and added to each share for each child of the Donors. The Trustee may use any part of the income or principal of the trust estate to meet expenses incurred in collecting any such proceeds or benefits. If, however, the Trustee in their discretion shall determine that the income and principal on hand in the trust estate may not be sufficient to meet any expenses and obligations to which the Trustee may be subjected in any litigation to enforce payment of any insurance policy, benefits or proceeds then included in the trust estate, then the Trustee shall not be required to enter into or maintain any litigation to enforce payment of any such amounts until he shall have been indemnified to his satisfaction against all such expenses and obligations. The Trustee is authorized to compromise and adjust any such claims, upon such terms and conditions as they may deem advisable, and the decision of the Trustees in this respect shall be binding and conclusive upon all persons then or thereafter interested in the trust estate.

THIRD: Upon the death of the second Donor to die, the Trustee shall administer and distribute the each trust share hereunder, including the remaining principal of the such trust share, and any income, to the child for whom such trust share is held, or if such child is predeceased, to the issue of such child in equal shares, and if there are no issue, then to other child, and if such other child is predeceased, then to the issue of such other child in equal shares.

FOURTH: If any person whose life measures the duration of a trust hereunder and any remainderman of such trust shall die under such circumstances that there is reasonable doubt as to who died first, then such person whose life measures the duration of such trust shall be conclusively

deemed to have survived such remainderman for the purposes of all provisions of this Indenture.

FIFTH: If any principal or income of any trust created hereunder shall become payable to or be set apart to be distributed to a minor, the Trustee shall have absolute discretion either to pay over such principal or income at any time to the guardian of the property of such minor appointed in any jurisdiction, or to any custodian for such minor under the Uniform Transfers to Minors Act of any state (including the Trustee or a custodian designated by the Trustee) or to retain the same for such minor during minority. In paying over any property to a custodian, the Trustee may direct that the property be retained until the beneficiary reaches the age of twenty-one. In case of retention, the Trustee may apply such principal or income, and any income therefrom, to the support, maintenance, education or other benefit of such minor, irrespective of the other resources of such minor or of his or her parents or guardians. Any such application may be made either directly or by payments to such guardian of the property or parent of such minor or to the person with whom such minor may reside, in any case without requiring any bond, and the receipt of any such person shall be a complete discharge to the Trustee, who shall not be bound to see to the application of any such payment. In holding any property for any minor, the Trustees shall have all the powers and discretion hereinafter conferred.

SIXTH: Without limitation of the powers conferred by statute or general rules of law, the Trustee is specifically authorized and empowered with respect to any property held by them:

- (1) To retain any property transferred to any trust hereunder, as long as the Trustee in his absolute discretion shall deem it advisable to do so;
- (2) To invest any funds in any stocks, bonds, limited partnership interests or other securities or property, real or personal (including any securities of or issued by any corporate trustee or investment in any common or commingled fund or funds maintained by any corporate trustee), notwithstanding that such investments may not be of the character allowed to trustees by statute or general rules of law, and without any duty to diversify investments, the intention hereof being to give the broadest investment powers and discretion to the Trustees;
- (3) To sell (at public or private sale, without application to any court) or otherwise dispose of any property, whether real or personal, for cash or on credit, in such manner and on such terms and conditions as the Trustee may deem best, and no person dealing with the Trustee shall be bound to see to the application of any moneys paid;
- (4) To manage, operate, repair, improve, mortgage and lease for any period (whether expiring before or after the termination of any trust created hereunder) any real estate;
- (5) Except to the extent prohibited by law, to cause any securities to be registered in the names of the Trustee's nominees, or to hold any securities in such condition that the Trustee will pass by delivery;
- (6) To employ such attorneys, accountants, custodians, investment counsel, real estate consultants and other persons as the Trustee may deem advisable in the administration

of any trust hereunder, and to pay them such compensation as the Trustee may deem proper, without any diminution of or offset against the commissions to which the Trustee shall be entitled by law;

(7) To maintain margin accounts with one or more individuals, partnerships, associations, banks or other corporations on such terms and conditions as the Trustee in his discretion shall determine, and to conduct such transactions in such accounts as he shall so determine, and to pledge all or any portion of any trust hereunder as security for the payment of the respective debit balances in such accounts;

(8) To engage in any arbitrage transactions and transactions involving short sales, and to buy or sell or write options for the purchase or sale of securities or other property (commonly known as puts and calls), whether covered or uncovered;

(9) To use any securities or brokerage firm in the purchase or sale of stocks, bonds or other securities or property for the account of any trust hereunder and to pay such firm such brokerage commissions or other compensation in connection therewith as the Trustees may deem proper, notwithstanding that the Trustee may be members of, or otherwise connected with, such firm, and without diminution of or offset against the commissions to which the Trustee may be entitled by law;

(10) To purchase property from the Donors in exchange for a private annuity payable to the Donors;

(11) To distribute any income or principal of any trust hereunder in cash or in kind and, if in kind, in a fashion other than pro rata, having regard in such event to the characteristics, including tax characteristics, of the property being distributed and to income, needs and tax status of the recipient;

(12) To borrow such amounts, from such persons (including the Trustee or any beneficiary of any trust hereunder) and for such purposes as the Trustee may deem advisable and to pledge any assets of any trust hereunder to secure the repayment of any amounts so borrowed;

(13) To lend such amounts, to such persons, for such purposes and upon such terms (whether secured or unsecured) as the Trustee may deem advisable;

(14) In general, to exercise all powers in the management of the trust estate which any individual could exercise in the management of property owned in his own right.

SEVENTH: Any trust estate held hereunder may be increased from time to time by the addition of such property as may be added to it by the Donors or by any other person with the consent of the Trustee.

EIGHTH: The Trustee is empowered to pay any taxes which may become payable from time to time with respect to the trust estate, or any transfer thereof or transaction affecting the same,

under the laws of any jurisdiction which the Trustee is advised may validly tax the same.

NINTH: (A) If the Trustee hereunder shall die or is unable or unwilling to act as trustee, then the Donors may appoint a Trustee, independent of the Donors. Any such appointment so made may be revoked by the maker thereof, by written instrument, duly executed and acknowledged, at any time prior to the happening of the event upon which it is to become effective, and a new appointment may be made as above provided. Upon the happening of the event upon which such appointment is to take effect and upon qualifying as hereinafter provided any successor Trustee so appointed shall become a Trustee hereunder, as though originally named herein.

(B) Any Trustee acting hereunder may resign and be discharged from any trust created hereunder by giving, personally or by mail, written notice of resignation, duly acknowledged, to the Donors, or if they shall not then be living, to the remaindermen of such trust (or if any income beneficiary shall be a minor, to either of his or her parents or to the guardian of his or her property). Such notice shall specify the date when such resignation shall take effect, which date (except as the persons entitled to such notice shall otherwise consent) shall be at least thirty days after the service or mailing thereof.

(C) In case any Trustee at any time acting hereunder for any reason shall cease to act, the retiring Trustee or his or her personal representative, as the case may be, shall upon the effective date of his or her resignation or upon his or her death turn over the trust estate or any portion of it under his or her control to the Trustee who shall thereafter be acting hereunder, and shall execute and deliver all instruments which may be deemed necessary more effectively to vest title in such Trustee.

(D) Any successor Trustee appointed as above provided and then entitled to act shall qualify as such by delivering or mailing written acceptance of such trust, duly acknowledged, to any other Trustee then acting hereunder and to the income beneficiaries or, if any be minors, to their parent or the adult with whom they reside.

(E) The Trustee shall have sole authority to make decisions required or authorized by this Identure. Either [REDACTED] or [REDACTED] shall serve as co-trustee for the limited and express purpose of executing such documents or instruments to fulfill decisions and actions taken by the Trustee, in the absence of the Trustee to execute any such document or instrument.

TENTH: The Trustee at any time acting hereunder at any time may render an account of their proceedings to the income beneficiary of any trust during the accounting period (or, if such person shall have died during or after the accounting period, to his or her personal representative); provided, however, that if any person to whom an account would be so rendered shall be a minor, such account instead may be rendered to either of such minor's parents other than an accounting Trustee or the guardian of his or her property. If approved in writing by the parties to whom such account shall have been rendered as above provided, such account shall be final, binding and conclusive upon all persons who may then or thereafter have any interest in the trust estate. The Trustee also at any time may render a judicial account of his proceedings.

In an accounting or other proceeding in which all persons interested in any trust hereunder are required by law to be served with process, if a party to the proceeding has the same or a similar interest as a person under a disability, it shall not be necessary to serve process upon the person under a disability, it being the Donors' intention to avoid the appointment of a guardian ad litem wherever possible.

ELEVENTH: Except as otherwise expressly provided herein, all estates, powers, trusts, duties and discretion herein created or conferred upon the Trustee shall extend to any Trustee who at any time may be acting hereunder, whether or not named herein.

No bond or other security shall be required of any trustee hereunder in any jurisdiction.

TWELTH: This Declaration and the trust(s) created hereunder shall be irrevocable, shall take effect upon acceptance by the Trustee and in all respects shall be construed and regulated by law of the State of New York. No beneficial interest under this trust, whether income or principal, is subject to anticipation, assignment, pledge, sale, or transfer in any manner, and no beneficiary may anticipate, encumber, or charge such interest. Each beneficiary's interest, while in the possession of the Trustees will not be liable for or subject to the debts, contracts, obligations, liabilities, accounts and/or creditors of any beneficiary.

THIRTEENTH. (A) This article states the Donors' tax purposes in creating this trust, and all provisions of this trust shall be construed so as best to effect these purposes and to the extent required, the Trust shall be reformed to effect these overriding tax purposes and no Trustee shall exercise any discretion in a manner that may reasonably be expected to frustrate the accomplishment of any of these purposes:

(1) All gifts made to this trust shall be complete gifts of present interests for federal gift tax purposes.

(2) The assets of this trust shall be excluded from the Donors' gross estates for federal estate tax purposes.

(3) This trust shall be a separate taxpayer for federal income tax purposes. At no time shall this trust be deemed to be owned by the Donors for federal income tax purposes.

(B) The Trustee is authorized to grant to, or, if granted, to take away from, a Beneficiary by an instrument in writing, signed and delivered to the Beneficiary, the power to appoint, by will admitted to probate, any part or all of the principal of a trust share held for such Beneficiary. This power of appointment, if granted, shall be exercisable only by a specific reference thereto in the Beneficiary's will and shall not be deemed to have been exercised by any general residuary article contained therein.

(C) The Trustee may exercise the authority granted to them hereunder for any reason whatsoever, whether to take advantage of any generation-skipping transfer exemption under Chapter 13 of the Internal Revenue Code, to reduce the overall transfer taxes payable upon a distribution or the death of a Beneficiary or for any other reason.

(D) Upon the death of any Beneficiary hereunder, if any estate, transfer, succession or other inheritance taxes, and any interest and penalties thereon, are imposed on such Beneficiary's estate by reason of the fact that any portion of the property held by the Trustee in trust hereunder is included in such Beneficiary's estate for Federal estate tax purposes and if no direction is made in such Beneficiary's will by specific reference to such trust concerning the payment of such taxes, and any interest and penalties thereon, then the Trustee shall pay from the principal of such trust an amount equal to such taxes, interest and penalties imposed by the United States or any state or subdivision thereof, so that such Beneficiary's estate shall not be required to bear any larger amount of estate, transfer, succession or inheritance taxes, and any interest and penalties thereon, than it would have had to pay if the property held in such trust were not included in such Beneficiary's estate.

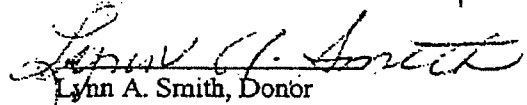
IN WITNESS WHEREOF, the parties hereto have duly executed this instrument under seal as of the day and year first above written.



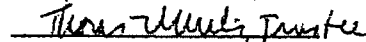
DANIEL S. BLAKE
NOTARY PUBLIC - STATE OF NY
QUALIFIED IN ERIE CO.
MY COMMISSION EXPIRES 9-5-2005



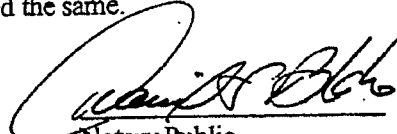
David L. Smith, Donor



Lynn A. Smith, Donor


Thomas Urbelis, Trustee

On this 7th day of August, 2004, before me personally came David A. Smith, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.


Notary Public

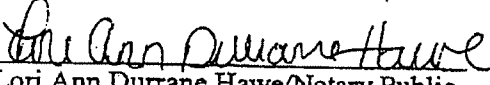
STATE OF NEW YORK) DANIEL S. BLAKE
NOTARY PUBLIC - STATE OF NY
: SS: QUALIFIED IN ERIE CO.
COUNTY OF ERIE) MY COMMISSION EXPIRES 9-5-2005

On this 4 day of August, 2004, before me personally came Lynn A. Smith, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she acknowledged to me that she executed the same.


Notary Public

SUFFOLK, SS.

On this 9th day of August, 2004, before me, the undersigned notary public, personally appeared Thomas J. Urbelis, proved to me through satisfactory evidence of identification, which is personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged that he signed it voluntarily for its stated purpose.


Lori Ann Durrane Hawe/Notary Public
My Commission Expires:



LORI ANN DURANNE HAWE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 10, 2008

EXHIBIT 13

Investment Bankers • Investment Brokers

99 Pine Street
Albany, NY 12207
518-449-5131

December 21, 2004
Fax 518-449-4894
www.mcginnsmith.com

Mr. Thomas J. Urbelis
Urbelis, Fieldsteel & Bailin, LLP
155 Federal Street, 4th Floor
Boston, MA 02110

Dear Mr. Urbelis:

Please sign the enclosed documents where indicated and return them as soon as possible in the return overnight envelope:

1. David & Lynn Smith Irrev. Trust - [REDACTED] 67-1-7

Documents to be signed for Pine Street Capital Partners LP

- Subscription Booklet
- Letter of Authorization to transfer funds (\$100,000)
- Letter of Authorization to transfer funds (3 Blank forms)

2. U/W Phyllis Parkhurst fbo [REDACTED] 80-1-5

Documents to be signed for Third Albany Income Notes 5.75%

- Subscription Agreement
- Purchaser Questionnaire
- Letter of Authorization to transfer funds (\$31,042.20)

Please enclose a check for \$8,957.80 payable to: M&T Bank Escrow Agent for TAIN

3. U/W Phyllis Parkhurst fbo [REDACTED] 81-1-4

Documents to be signed for Third Albany Income Notes 5.75%

- Subscription Agreement
- Purchaser Questionnaire
- Letter of Authorization to transfer funds (\$29,761.66)

Please enclose a check for \$5,238.34 payable to: M&T Bank Escrow Agent for TAIN

4. U/W Phyllis Parkhurst fbo [REDACTED] 82-1-3

Documents to be signed for Third Albany Income Notes 10.25%

- Subscription Agreement
- Purchaser Questionnaire
- Letter of Authorization to transfer funds (\$34,753.42)

Please enclose a check for \$5,246.58 payable to: M&T Bank Escrow Agent for TAIN



5. [REDACTED] IRA - [REDACTED] 53-1-0

Documents to be signed for Third Albany Income Notes 10.25%

- Subscription Agreement
- Purchaser Questionnaire
- Letter of Authorization to transfer funds (\$20,000)
- Request for Outside Purchase
- Non- Affiliation Letter

6. [REDACTED] IRA - [REDACTED] 52-1-7

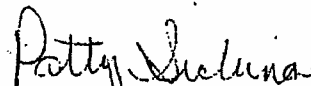
Documents to be signed for Third Albany Income Notes 10.25%

- Subscription Agreement
- Purchaser Questionnaire
- Letter of Authorization to transfer funds (\$40,000)
- Request for Outside Purchase
- Non- Affiliation Letter

Integrated Alarm Services, Inc. has not received the original certificates or affidavits of loss for the 12% 5 Year Promissory Notes that were called on November 22, 2004 for the Parkhurst accounts. If you have the original certificates please return them or sign the enclosed affidavits of loss. Upon receipt the principal will be deposited to the Bear Stearns accounts.

If you have any questions, please do not hesitate to call David Smith or me at 518-449-5131.

Sincerely


Patty Sicluna

/ps

Enclosures

S 2525

Chapter 507

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Four

AN ACT FURTHER REGULATING PUBLIC CONSTRUCTION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to further regulate public construction, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 44D 1/2 of chapter 143 of the General Laws, inserted by section 19 of chapter 193 of the acts of 2004, is hereby amended by striking out subsection (i) and inserting in place thereof the following subsection:-

(i) Notwithstanding subsections (a) to (h), inclusive, if the awarding authority qualifies less than 3 general contractors to submit bids pursuant to said subsection (h) and the prequalification process was required pursuant to said subsection (a), the awarding authority shall reject all responses and issue at least 1 new request for qualifications and, if the awarding authority still prequalifies less than 3 general contractors to submit bids pursuant to said subsection (h), then the awarding authority may reject all responses and issue a new request for qualifications, invite general bids pursuant to sections 44B to 44E, inclusive, or, if the awarding authority prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2 prequalified general contractors. If the awarding authority qualifies less than 3 general contractors to submit bids pursuant to said subsection (h) and the prequalification process was initiated at the option of the awarding authority pursuant to said subsection (a), the awarding authority may reject all responses and issue a new request for qualifications, invite general bids pursuant to said sections 44B to 44E, inclusive, without further prequalification, or, if the awarding authority prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2 prequalified general contractors. An awarding authority re-issuing a request

APPROVED: 1-13-05 (9:33 am)
TAKES EFFECT: 1-13-05

EXHIBIT 14

MCGINN, SMITH & Co., INC.

99 PINE STREET
ALBANY, NY 12207

FACSIMILE TRANSMITTAL SHEET

TO: <u>Thomas Urbelke</u>	FROM: <u>Patty Sicluna</u>
COMPANY:	DATE: <u>12/22/04</u>
FAX NUMBER: <u>617-338-0122</u>	TOTAL NO. OF PAGES INCLUDING COVER: <u>8</u>
PHONE:	SENDER'S PHONE NUMBER: <u>(518) 449-5131</u>
RE:	SENDER'S FAX NUMBER: <u>(518) 449-4894</u>

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

Please sign pages 1, 6 + 7 and
fax back to me at 518-449-4894.
Also, please mail the originals.
Thank you

CONFIDENTIALITY NOTE

THE DOCUMENT(S) ACCOMPANYING THIS FACSIMILE TRANSMISSION CONTAINS INFORMATION FROM MCGINN, SMITH & Co., INC. WHICH IS CONFIDENTIAL OR PRIVILEGED. THIS INFORMATION IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. DISCLOSURE OF ANY OF THE INFORMATION CONTAINED HEREIN IS PROHIBITED. IF YOU RECEIVE THIS TRANSMISSION IN ERROR, PLEASE CONTACT THE SENDER IMMEDIATELY.

PLAINTIFF'S EXHIBIT
19 FOR 10
6-1-10

**ANNEX III
FORM OF SUBSCRIPTION AGREEMENT FOR
INSTITUTIONAL AND INDIVIDUAL ACCREDITED INVESTORS**

Deerfield Triarc Capital Corp.
8700 West Bryn Mawr Avenue
Chicago, Illinois 60631

Credit Suisse First Boston LLC
Deutsche Bank Securities Inc.
Bear, Stearns & Co. Inc.,
as representatives of the initial purchasers
c/o Credit Suisse First Boston LLC,
11 Madison Avenue
New York, NY 10010-3629

Dear Sirs:

In connection with the undersigned's proposed purchase of shares of the common stock, per value \$0.001 per share (the "*Common Stock*"), of Deerfield Triarc Capital Corp. (the "*Company*") from the Company, the undersigned confirms that:

1. Upon the terms and subject to the conditions set forth in this letter and that certain Purchase/Placement Agreement (the "*Agreement*"), dated as of December , 2004, by and among the Company and Credit Suisse First Boston LLC ("*CSFB*"), Deutsche Bank Securities Inc. ("*DB*") and Bear, Stearns & Co. Inc. ("*Bear Stearns*"), as representatives of the several initial purchasers, the undersigned hereby irrevocably subscribes for and agrees to purchase from the Company such number of shares of Common Stock as is set forth on the signature page of this letter at a price equal to \$ per share (the "*Purchase Price*") on the terms provided for herein and in the Offering Memorandum (defined below). The undersigned understands and agrees that the Company reserves the right to accept or reject the undersigned's subscription for the common stock for any reason or for no reason, in whole or in part, at any time prior to its acceptance by the Company, and the same shall be deemed to be accepted by the Company only when this Subscription Agreement is signed by a duly authorized person by or on behalf of the Company; the Company may do so in counterpart form. In the event of rejection of the entire subscription, the undersigned's payment hereunder will be returned promptly to the undersigned along with this Subscription Agreement, and this Subscription Agreement shall have no force or effect.

2. The undersigned agrees to deliver to CSFB on or before the business day preceding the Closing Date (as such term is defined in the Agreement) the Purchase Price by wire transfer of United States dollars in immediately available funds to an CSFB account specified by CSFB and authorizes CSFB to deliver the Purchase Price on the undersigned's behalf to the Company in accordance with Section 2 of the Agreement.

3. The undersigned has received a copy of the preliminary offering memorandum, subject to completion, dated November 24, 2004, and will receive a copy of the final offering memorandum, relating to the offering of the Common Stock described therein (collectively, as amended, the "*Offering Memorandum*"), and the undersigned understands and agrees that the Offering Memorandum speaks only as of its date and that the information contained in the Offering Memorandum may not be correct or complete as of any time subsequent to that date.

4. The undersigned understands and agrees that the Common Stock is being offered in a transaction not involving any public offering within the United States within the meaning of the Securities Act of 1933, as amended (the "*Securities Act*") and that the Common Stock has not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. The undersigned agrees, on its own behalf and on behalf of each account for which it acquires any Common Stock, that, if in the future it

decides to offer, resell, pledge or otherwise transfer such Common Stock prior to the date which is two years after the date of purchase (the "Resale Restriction Termination Date"), such Common Stock may be offered, resold, pledged or otherwise transferred only (a) to the Company or a subsidiary thereof, (b) pursuant to a registration statement that has been declared and is effective under the Securities Act, (c) pursuant to offers and sales to non-U.S. persons¹ (a "Regulation S Investor") that occur outside the United States within the meaning of Regulation S under the Securities Act, or (d) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and subject to compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. The undersigned understands that the registrar and transfer agent for the Common Stock will not be required to accept for registration of transfer any Common Stock acquired by it, except upon presentation of evidence satisfactory to the Company and the transfer agent that an exemption to the registration requirement under the Securities Act and the rules and regulations thereunder have been complied with. The undersigned further understands that any certificates representing Common Stock acquired by it will bear a legend reflecting the substance of this paragraph. The undersigned acknowledges, on its own behalf and on behalf of any investor account for which it is purchasing the Common Stock, that the Company and CSFB reserve the right to restrict any offer, sale or other transfer of the Common Stock (i) pursuant to clauses (c) or (d) above prior to the Resale Restriction Termination Date, or (ii) prior to the end of the one-year restricted period within the meaning of Rule 903(b)(3) of Regulation S under the Securities Act, and to require the completion, execution and delivery of a letter from the transferee substantially in the form of the Transferee's Letter attached hereto as *Exhibit A* and certifications and other information satisfactory to the Company and the registrar and transfer agent and an opinion of counsel approved by the Company and the registrar and transfer agent to ensure compliance with the Securities Act and the rules and regulations thereunder.

5. The undersigned is an Accredited Investor as defined in Rule 501(a) under the Securities Act.

6. The undersigned has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Common Stock, and each of the undersigned and any account for which the undersigned is acting is able to bear the economic risk of such investment and can afford the complete loss of such investment. The undersigned is aware that there are substantial risks incident to the purchase of the Common Stock, including those summarized under "Risk Factors" in the Offering Memorandum.

7. The undersigned is acquiring the Common Stock for the undersigned's account and not for the account of others for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. The undersigned was not formed for the specific purpose of acquiring the Common Stock.

8. The undersigned is acquiring the Common Stock for the undersigned's own account or for one or more accounts (each of which is an Accredited Investor) as to each of which the undersigned exercises sole investment discretion and is authorized to make the representations, and enter into the agreements, contained in this letter and the Offering Memorandum.

¹ In order to qualify as a non-U.S. person under Regulation S, (a) the undersigned's principal address must be outside the United States, (b) the undersigned was located outside the United States at the time any offer to buy the Common Stock was made to it and at the time that the buy order was originated by it, and (c) the undersigned is not a "U.S. person" (as defined in Rule 902(k) under the Securities Act).

9. The undersigned has received such information as the undersigned deems necessary in order to make an investment decision with respect to the Common Stock. The undersigned acknowledges that the undersigned and the undersigned's advisor(s), if any, have had the right to ask questions of and receive answers from the Company and its officers and directors, and to obtain such information concerning the terms and conditions of this offering of the Common Stock, as the undersigned and the undersigned's advisor(s), if any, deem necessary to verify the accuracy of (i) the information in the Offering Memorandum and (ii) any other information that the undersigned deems relevant to making an investment in the Common Stock. The undersigned represents and agrees that prior to the undersigned's agreement to purchase Common Stock, the undersigned and the undersigned's advisor(s), if any, will have asked such questions, received such answers and obtained such information as the undersigned deems necessary to verify the accuracy of (i) the information in the Offering Memorandum and (ii) any other information that the undersigned deems relevant to making an investment in Common Stock. The undersigned became aware of this offering of the Common Stock and the Common Stock was offered to the undersigned solely by means of the Offering Memorandum or by direct contact between the undersigned or you. The undersigned did not become aware of, nor were the shares of Common Stock offered to the undersigned by any other means, including, in each case, by any form of general solicitation or general advertising. The undersigned understands and agrees that the Common Stock offered pursuant to the Offering Memorandum is not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws. In making the decision to purchase the Common Stock, the undersigned relied solely on the information set forth in the Offering Memorandum and any other information obtained by the undersigned directly from the Company as a result of any inquiries by the undersigned or the undersigned's advisor(s).

10. The undersigned hereby makes the representations and warranties deemed made by it under the section of the Offering Memorandum entitled "Notice to Investors" and agrees to be bound by the restrictions set forth in such section.

11. The undersigned (check applicable box):

- is:
 is not:

an "affiliate" (as defined in Rule 144 under the Securities Act) of the Company or acting on behalf of an affiliate of the Company.

12. The undersigned (check applicable box):

- is:
 is not and, for so long as it owns the Common Stock, will not be:

acting on behalf of (i) an "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as Amended ("ERISA")), whether or not it is subject to Title I of ERISA (for example, a pension plan, profit sharing plan, 401(k) plan or other plan subject to ERISA, or any "employee benefit plan" that is exempt from ERISA because, e.g., it is maintained by a governmental employer or is a church or a foreign plan, (ii) a plan described in Section 4975 of the Internal Revenue Code (for example a qualified plan, a qualified annuity plan, an individual retirement account or arrangement, an Archer MSA or a Coverdell Education Savings Account), (iii) an entity whose underlying assets include "plan assets" by reason of a plan's investment in such entity (including but not limited to an insurance company general account), or (iv) an entity that otherwise constitutes a "benefit plan investor" within the meaning of the DOL Regulation Section 2510.3-101 (29 C.F.R. Sections 2510.3-101) (for example a fund, and the assets of that fund are deemed to be "plan assets" under DOL Regulation Section 2510.3-101, 29 C.F.R. Section 2510.3-101, by application of the "look through" rule under the regulation) (each, a "Covered Plan").

13. The undersigned represents, warrants and agrees that it (check applicable box):

is:

is not and, for so long as it owns the Common Stock, will not be:

using the assets of a Covered Plan (as defined in Section 12 above) that is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code to acquire or hold the Common Stock.

14. The undersigned represents, warrants and agrees that its acquisition and holding of the Common Stock will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code or a violation of any applicable other laws or regulations that contain one or more provisions that are similar to the provisions of Title I of ERISA or Section 4975 of the Internal Revenue Code.

15. The undersigned (check applicable box):

is:

is not and, for so long as it owns the Common Stock, will not be:

a person who has discretionary authority or control with respect to the assets of the Company or a person who provides investment advice for a fee (direct or indirect) with respect to such assets or an affiliate of such person (a "Controlling Person").

16. The undersigned represents, warrants and agrees that it will not transfer or assign its interest in the Common Stock to any transferee (including any change in the source of funds that is a result of a transfer to an affiliate or a different account) unless such transferee represents, warrants and agrees that (i) the transferee is not (and will not be), and is not acting on behalf of a person who is (or will be), a Covered Plan or Controlling Person and (ii) such transferee will obtain from its transferee the representations and agreement set forth in this sentence (including without limitation clauses (i) and (ii)).

17. The undersigned acknowledges that CSFB has acted as agent for the Company in connection with the sale of the Common Stock. The undersigned consents to CSFB's actions in this regard and hereby waives any and all claims, actions, liabilities, damages or demands it may have against CSFB in connection with any alleged conflict of interest arising from CSFB's engagement as an agent of the Company with respect to the sale by the Company of the Common Stock to the undersigned.

18. The undersigned understands that there is no established market for the Common Stock and there is no guarantee that a public market for the Common Stock may develop.

19. The undersigned acknowledges that CSFB, the Company and others will rely on the acknowledgments, representations and warranties contained in this letter. The undersigned agrees to promptly notify CSFB and the Company if any of the acknowledgments, representations and warranties set forth herein are no longer accurate. The undersigned agrees that each purchase by the undersigned of securities from the Company will constitute a reaffirmation of the acknowledgments, representations and warranties herein (as modified by any such notice) as of the time of such purchase.

20. CSFB and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

NOTE: YOU MUST COMPLETE AND SIGN THE PURCHASER QUESTIONNAIRE ATTACHED HERETO.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO

PURCHASER QUESTIONNAIRE

Accredited Investor Status for Individual Investors (Please check all applicable boxes):

- (1) I am a director, executive officer or general partner of the issuer of the securities being offered or sold, or a director, executive officer or general partner of a general partner of that issuer;
- (2) I am a natural person whose individual net worth or joint net worth with my spouse, at the time of purchase, exceeds \$1,000,000; or
- (3) I am a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with my spouse in excess of \$300,000 in each of those years and have a reasonable expectation of reaching the same income level in the current year.

If other than natural person, check one:

- General Partnership
- Limited Partnership
- Corporation
- Subchapter S Corporation
- "Grantor" Trust
- Trust
- Estate

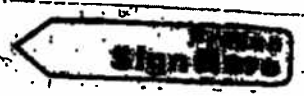
If Joint Ownership, check one:

- Joint Tenants w/Rights of Survivorship
- Tenants-in-Common
- Community Property

Accredited Investor Status for Institutional Investors (Please check all applicable boxes):

- (i) The undersigned is either: a bank as defined in section 3(a)(2) of the Securities Act or a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities act, whether acting in its individual or fiduciary capacity; a broker-dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; an insurance company as defined in Section 2(a)(13) of the Securities Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, having total assets in excess of \$5,000,000; an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, in which the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or an employee benefit plan having total assets in excess of \$5,000,000, or, if a self-directed plan, in which the investment decisions are made solely by persons that are accredited investors;
- (ii) The undersigned is a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
- (iii) The undersigned is an organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the Common Shares, with total assets in excess of \$5,000,000;
- (iv) The undersigned is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Common Shares, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) under the Securities Act; or
- (v) The undersigned is an entity in which all of the equity owners are accredited investors.

Thomas J. Helis, Trustee
 Annex III-6
 Thomas Helis, Trustee



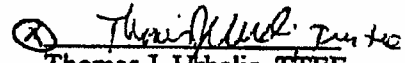
McGinn, Smith & Co., Inc.
99 Pine Street
Albany, NY 12207

To Whom It May Concern:

Please accept this letter as authorization to wire \$750,000.00 from the account of David L. Smith & Lynn A. Smith Irrev. Trust, account # [REDACTED] 7-700 to:

Bank: _____
ABA #: _____
Account Name: _____
Account Number: _____
FFC: _____
Account#: _____
Account Name: _____

Sincerely,


Thomas J. Urbelis, TTEE

PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER STATE.

Date: 12/17, 2004

David L. Smith

Lynn A. Smith

Irrevocable Trust dated 8/4/04

Date: 12/17, 2004

Signature of investor Thomas Wilkins, Trustee

Thomas Wilkins, Trustee
(Name of investor)

Very truly yours,

By: _____

Print Name:

Company Name:

Title:

Address:

Signature of joint investor, if applicable

(Name of joint investor, if applicable)

If the investor is an individual, the investor's State/Province of Residence is:

If the investor is a corporation, partnership, trust or other legal entity it:

- is organized under the laws of: State NY;
- has its principal place of business in: NY; and
- was formed for the purpose of: creating a trust for the donor's children

Investor's Social Security Number or Taxpayer Identification Number:

(Please indicate name and capacity of person signing above if the investor is other than a natural person.)

Residence or Principal Place of Business Address:

Street

Saratoga Springs, NY 12866
City, State, Zip Code

David L. Smith
Attn:

Telephone No.: 518-883-6823

Telecopier No.: _____

Name of Placement Agent Sales Representative: David L. Smith, McGraw, Smith & Co. Inc

Number of Common Shares (50,000 minimum) subscribed for:

Subscription Amount: \$ 750,000

NOTE: THE FOLLOWING MUST BE COMPLETED


Name of DTC Participant: _____

Participant's DTC Account Number: _____

Investor's Account Number with Participant: _____

EXHIBIT 15

EXHIBIT 16

 **PINE STREET CAPITAL PARTNERS LLC**

March 1, 2005

Mr. Thomas Urbelis, Esq.
2 Rolling Brook Dr.
Saratoga Springs, NY 12866

Re: David L. Smith & Lynn A. Smith Irrev. Trust

Dear Mr. Urbelis:

The initial closing of capital on behalf of Pine Street Capital Partners, LP was held on January 6, 2005, at which time each Limited Partner made a capital contribution equal to 10% of their total capital commitment. This contribution was evidenced by a 5-year Note bearing interest at 9% per annum. Our Limited Partnership Agreement and Subscription Documents provide that an additional thirty percent (30%) of each Limited Partner's total capital commitment is due sixty (60) days after the date of closing, or in our case, on March 8, 2005.

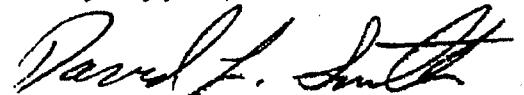
In your specific case, the required capital contribution is \$300,000. Please make your check payable to: "M&T Bank Escrow Agent for Pine Street Capital Partners, LP". A return envelope has been provided for your convenience. If you wish to send your payment by wire transfer the instructions follow:

Bank: M&T Bank
ABA Routing Number: [REDACTED] 2246
Account Name: Trust Division
Account Number: [REDACTED] 0200
FFC:
Account #: [REDACTED] 478
Account Name: Pine Street Capital Partners, LP

This second capital contribution shall also be evidenced by a 9% Note due December 31, 2009. This Note will be sent to you shortly.

We appreciate your support. If you have any questions, please do not hesitate to contact us directly at the address and number shown above.

Very truly yours,



David L. Smith
Managing Partner

DLS/pas

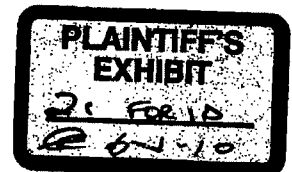


EXHIBIT 17

McGinn, Smith & Co., Inc.
99 Pine Street
Albany, NY 12207

To Whom It May Concern:

Please accept this letter as authorization to wire \$300,000.00 from the David L. Smith & Lynn A. Smith Irrevocable Trust dtd 8/4/04, account [REDACTED] 7-700 to:

Bank: M&T Bank
ABA #: [REDACTED]0046
Account Name: Trust Division
Account Name: [REDACTED]0200
FFC:
Account#: [REDACTED]478
Account Name: Pine Street Capital Partners, LP

Sincerely,

Thomas Urbelis, Trustee 3/25/10
Thomas Urbelis, TTEE

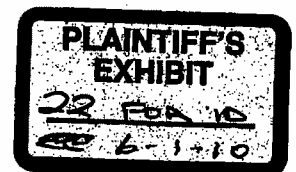


EXHIBIT 18

Overnighted to Tom Urbelis 4/12/05

**McGinnSmith
& Company, Inc.**

Investment Bankers • Investment Brokers

99 Pine Street
Albany, NY 12207
518-449-5131
Fax 518-449-4894
www.mcginnsmith.com

April 12, 2005

Urbelis, Fieldsteel, LLP
Attn: Thomas Urbelis
155 Federal Street
Boston, MA 02110

Re: 2004 Taxes - Trust

Dear Mr. Urbelis:

Please find the enclosed check in the amount of \$2,300.00. This check represents payment for the 2004 taxes for the David and Lynn Smith Irrevocable Trust as follows:

\$1,800.00 Federal Taxes
\$ 500.00 New York State Taxes

Also enclosed is a letter of authorization to issue a check in the amount of \$2,300.00 from the David and Lynn Smith Irrevocable Trust (held at Bear Stearns Securities Corp.) payable to David L. Smith to reimburse these payments to him.

Please sign this letter of authorization and return it to my attention in the envelope provided.

Please feel free to call David L. Smith or me with any questions regarding this matter.

Sincerely,

David C. McQuade
David C. McQuade
Operations Manager



April 12, 2005

McGinn, Smith & Co., Inc.
99 Pine Street, 5th Floor
Albany, NY 12207-2776

Re: [REDACTED] 7-800 David L. Smith & Lynn A. Smith Irrevocable Trust


Dear Sirs:

Please accept this letter as authorization to issue a check in the amount of \$2,300.00 payable to:


David L. Smith
2 Rolling Brook Drive
Saratoga Springs, NY 12866

Thank you for your prompt attention to this matter.

Sincerely,



Thomas Urbelis - Trustee

DAVID L. SMITH 99 PINE ST. ALBANY, NY 12207		10-4 220 2008	1630
PAY TO THE ORDER OF <u>Charles, Fieldsteel</u>		\$ <u>2300.00</u>	
<u>Two thousand three hundred and 00/100</u>		DOLLARS	
			
MEMO <u>2004 taxes - Trust</u>		<u>David L. Smith</u>	
⑆ 0046⑆		9965⑆	

*McGinnSmith
& Company, Inc.*

DAVID L. SMITH
President

7500 Federal
Sec 1095

Overnight

Urbes, Fieldsteel, LLP

155 Federal St

Boston Ma 02110

Call - 617-338-2200

EXHIBIT 19

MCGINN, SMITH & CO., INC.
99 PINE STREET
ALBANY, NY 12207
Fax number: 518-449-4894

FACSIMILE TRANSMITTAL SHEET

TO: Mr. Thomas Ubelis	FROM: David Smith
COMPANY:	DATE: May 9, 2005
FAX NUMBER: 617-338-0122	TOTAL NO. OF PAGES INCLUDING COVER: 20
PHONE: 617-338-2200	SENDER'S PHONE NUMBER: (518) 449-5131

CONFIDENTIALITY NOTE

THE DOCUMENT(S) ACCOMPANYING THIS FACSIMILE TRANSMISSION CONTAINS INFORMATION FROM MCGINN, SMITH & CO., INC., WHICH IS CONFIDENTIAL OR PRIVILEGED. THIS INFORMATION IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. DISCLOSURE OF ANY OF THE INFORMATION CONTAINED HEREIN IS PROHIBITED. IF YOU RECEIVE THIS TRANSMISSION IN ERROR, PLEASE CONTACT THE SENDER IMMEDIATELY.



McGinnis Smith
Investment Bankers • Investment Brokers

Investment Bankers • Investment Brokers

99 Pine Street
Albany, NY 12207
518-445-5131
Fax 518-445-4894
www.mcginnsmith.com

TO: Mr. Thomas Urbelis
FAX #: 617-338-0122
FROM: David L. Smith
DATE: May 9, 2005
SUBJECT: Deerfield Triarc Capital Corp.

FOR IMMEDIATE ATTENTION

Tom,

Please sign page 7 of the first section and page 11 of the second section and fax back to me immediately. This must be submitted today! You only need to send me the signature pages, keep the rest for your file. Any questions call me. My fax is: 518-449-4894.



DEERFIELD TRIARC
Capital Corp.

15

April 6, 2005

Dear Stockholder:

Deerfield Triarc Capital Corp. (the "Company") hereby notifies you (each recipient of this notice, a "Holder") that the Company has filed with the Securities and Exchange Commission (the "SEC") a registration statement on Form S-11 (Registration No. 333-113762) (the "IPO Registration Statement") in connection with its initial public offering (the "IPO") of shares of common stock, par value \$0.001 per share, of the Company (the "Common Stock"). The Company also intends to apply to list its Common Stock on the New York Stock Exchange.

This notice is being provided pursuant to the Registration Rights Agreement, dated December 23, 2004, among the Company, on the one hand, and Credit Suisse First Boston LLC, Deutsche Bank Securities Inc. and Bear, Stearns & Co. Inc. for the benefit of the Initial Purchasers and the Holders (as defined therein), on the other hand, (the "Registration Rights Agreement"). In accordance with and subject to the terms of the Registration Rights Agreement, you may request to include the shares of Common Stock you currently hold in the IPO Registration Statement.

IPO Registration Statement

The managing underwriters of the proposed IPO are expected to be Credit Suisse First Boston LLC, Deutsche Bank Securities Inc., and UBS Securities LLC. In order to sell any of your Common Stock pursuant to the IPO Registration Statement, you must fill out and sign the following documents enclosed herewith and return them to the Company by April 26, 2005:

- (1) Registration Notice and Questionnaire (the "Notice"); and
- (2) Questionnaire to be completed by all directors, officers and stockholders of the Company as required by the National Association of Securities Dealers, Inc. (the "NASD Questionnaire").

Deerfield Triarc Capital Corp.
8700 West Bryn Mawr Avenue
South Tower, Suite 1200
Chicago, Illinois 60651
Phone: (773) 380-1500
Facsimile: (773) 380-1601

www.deerfieldtriarc.com

Board of Directors
Nelson Peltz, Chairman
Robert E. Fischer
Robert B. Machlis
Peter Rottschild
Howard Rubin
Gregory H. Sachs
Jonathan W. Truher

Officers
Jonathan W. Truher
Chief Executive Officer
Robert C. Green
President
Marvin Shvart
Senior Vice President,
Chief Financial Officer
and Treasurer
Frederick L. White
Senior Vice President,
General Counsel
and Secretary



DEERFIELD TRIARC
Capital Corp

The managing underwriters of the proposed IPO have advised the Company that, subject to market conditions, they may be unable to underwrite all of the shares of Common Stock that Holders may request to include. Depending on the number of shares of Common Stock that the Company and the requesting Holders propose to offer in the IPO, the managing underwriters may, pursuant to the Registration Rights Agreement, exclude shares of Common Stock that you may propose to include in the IPO Registration Statement if they determine in good faith that marketing factors require a limitation on the number of shares to be underwritten in the IPO.

Shelf Registration Statement

If you do not elect to participate in the Company's IPO, the Company will remain obligated under the Registration Rights Agreement to register your Common Stock for resale in a shelf registration statement (the "Shelf Registration Statement") to be filed no later than 90 days after the consummation of the IPO.

Lock-up

In addition, in connection with the IPO, the underwriters have requested that all Holders be restricted from offering, selling, pledging, contracting to sell or granting any option or contract to purchase shares of Common Stock. As a result, in accordance with the Registration Rights Agreement, all Holders, whether or not they request to include, or in fact do include, any shares of their Common Stock in the IPO Registration Statement, will be deemed to have agreed not to effect any sale or distribution of Common Stock for a period of 180 days following the effective date of the IPO Registration Statement.

Your Additional Obligations

Please note also that in order for your shares to be included in the IPO Registration Statement, you must enter into an underwriting agreement with the managing underwriters selected by the Company, execute any questionnaires, powers of attorney, indemnities, lock-up agreements, security escrow agreements and other documents reasonably required under the terms of such underwriting, and furnish to this Company such information as the Company may reasonably request.

Withdrawal Rights and Obligations

You may elect to withdraw from the IPO and not include such shares in the IPO Registration Statement by notifying the Company and the managing underwriters in writing of such election to withdraw at least ten (10) business days prior to the effective date of the IPO Registration Statement, unless in the opinion of counsel such withdrawal would necessitate a recirculation of the IPO prospectus to investors, in which case, you must deliver such written notice at least twenty (20) business days prior to the effective date of the IPO Registration Statement. Once the price range for the IPO has been determined, the Company will notify Holders who have elected to participate in the IPO



DEERFIELD TRIARC
Capital Corp.

of that price range and of the deadline for providing notices of withdrawal in a later meeting.

The information set forth in this letter is qualified in its entirety by the provisions of the Registration Rights Agreement. You should carefully review those provisions in connection with a decision whether to include your Shares of Common Stock in the IPO Registration Statement.

Please review the enclosed Registration Notice and Questionnaire, consider whether you wish to include your shares of Common Stock in the IPO Registration Statement, complete the information requested and sign, date and return the completed Registration Notice and Questionnaire and NASD Questionnaire to Deerfield Triarc Capital Corp. at:

Deerfield Triarc Capital Corp.
Attention: Frederick L. White, Esq.
8700 West Bryn Mawr Avenue, 12th Floor
Chicago, Illinois 60631

Please send the completed Registration Notice and Questionnaire and NASD Questionnaire to the above address by registered or certified mail, return receipt requested, or by overnight courier. You may also send it by facsimile. Attention: Frederick L. White, Esq., at (773) 380-1601.

Sincerely,

Frederick L. White, Esq.
Senior Vice President, General
Counsel and Secretary

REGISTRATION NOTICE AND QUESTIONNAIRE

The undersigned beneficial owner of common stock, par value \$0.001 per share (the "Common Stock"), of Deerfield Triarc Capital Corp. (the "Company"), understands that the Company has filed with the Securities and Exchange Commission (the "SEC") a registration statement on Form S-11, which will provide for the registration under the Securities Act of 1933, as amended (the "Securities Act"), of Common Stock to be issued and sold by the Company (the "IPO Registration Statement") to the public (an "IPO").

Each beneficial owner is entitled to the benefits of the Registration Rights Agreement (the "Registration Rights Agreement"), dated as of December 23, 2004, among the Company, Credit Suisse First Boston LLC, Deutsche Bank Securities Inc. and Bear, Stearns & Co. Inc. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below.

In order to sell or otherwise dispose of any shares of Common Stock pursuant to the IPO Registration Statement, a beneficial owner of Common Stock generally will be required to be named as a selling security holder in the related prospectus, delivered to purchasers of Common Stock and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions as described below). Beneficial owners are required to complete and deliver the documents listed below and return each to the Company by April 26, 2005 in order to be named as selling security holders in the IPO Registration Statement and related prospectus at the time of effectiveness:

- (1) This Notice of Election and Questionnaire (the "Notice"); and
- (2) A questionnaire to be executed by each holder of equity securities of the Company as required by the National Association of Securities Dealers, Inc. (the "NASD Questionnaire").

Beneficial owners that do not complete this Notice and the NASD Questionnaire and deliver each to the Company as provided herein will not be named as selling security holders in the prospectus and therefore will not be permitted to sell any Common Stock pursuant to the IPO Registration Statement.

Certain legal consequences may arise from being named as selling security holders in the IPO Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Common Stock are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling security holder in the IPO Registration Statement and the related prospectus.

NOTICE OF ELECTION

The undersigned beneficial owner of Common Stock hereby gives notice to the Company of its election to sell or otherwise dispose of Common Stock beneficially owned by it and listed in Item (4) (unless otherwise specified under Item (4)) pursuant to the IPO Registration Statement. The undersigned, by signing and returning this notice, understands that it will be bound by the terms and conditions of this Notice and the Registration Rights Agreement.

The undersigned understands and agrees that by signing and returning this notice to the Company in order to elect to include any Common Stock in the IPO Registration Statement in order to be sold in the IPO:

- (1) it will be required to execute an underwriting agreement in customary form with the representatives of underwriters selected for the IPO ("Underwriters") and any other representation required by law, any questionnaires, powers of attorney, indemnities, lock-up agreements, securities escrow agreements and other documents reasonably required under the terms of such underwriting, and to furnish the Company such information as the Company may reasonably request in writing for inclusion in the IPO Registration Statement;
- (2) it is deemed to have agreed not to effect any public sale or distribution of securities of the Company of the same or similar class or classes of the securities included in the IPO Registration Statement or any securities convertible into or exchangeable or exercisable for such securities, including a sale pursuant to Rule 144 or Rule 144A under the Securities Act, during such periods as reasonably requested by the Underwriters (but in no event for a period longer than one hundred eighty (180) days following the effective date of the IPO Registration Statement);
- (3) the Underwriters may exclude some or all of the shares of Common Stock that the undersigned proposes to include in the IPO if such Underwriters determine in good faith that marketing factors require a limitation on the number of shares to be underwritten in the IPO (an "IPO Cutback"); and
- (4) if the undersigned disapproves of the terms of the IPO, it may withdraw therefrom by written notice to the Company and the Underwriters, delivered at least ten (10) business days prior to the effective date of the IPO Registration Statement, provided, that if, in the opinion of counsel such withdrawal would necessitate a recirculation of the Prospectus to investors, the undersigned shall be required to deliver such written notice at least twenty (20) business days prior to the effective date of the IPO Registration Statement (a "Holder Withdrawal").

The undersigned also understands that the Company has the right to terminate or withdraw the IPO Registration Statement at any time prior to its effectiveness (a

"Company Withdrawal"). To the extent that any shares of Common Stock are not registered under and distributed pursuant to the IPO Registration Statement due to a Company Withdrawal, Holder Withdrawal, IPO Cutback, or a Holder's decision not to include its Common Stock in the IPO (the "Remaining Common Stock"), the undersigned also understands that (1) the Company will file a registration statement providing for the resale from time to time by the holders of the Remaining Common Stock in accordance with the Registration Rights Agreement (a "Shelf Registration Statement") and (2) the undersigned may elect to include its Remaining Common Stock in the Shelf Registration Statement.

The undersigned agrees to execute and deliver each of the following documents, a form of each of which will be provided at a later date:

(1) a power of attorney granting Jonathan W. Trutter and Frederick L. White, as the undersigned's attorneys-in-fact, each with full power and authority to act in the name of the undersigned with respect to all matters arising in connection with sale of shares of Common Stock by the undersigned to the Underwriters, including, but not limited to, the power and authority (a) to sell the undersigned's Common Stock pursuant to the underwriting agreement to be entered into with the Underwriters of the proposed IPO and (b) execute such underwriting agreement on behalf of the undersigned and perform its obligations thereunder (the "Power of Attorney"); and

(2) a custody agreement pursuant to which any certificates for shares of Common Stock that the undersigned sells in the IPO will be deposited with the custodian thereunder.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

References below to "you" are to you as the undersigned Holder or to the organization that you represent, as applicable.

1. (a) Please print or type your name or your organization's name exactly as it should appear in the IPO Registration Statement.

*David L. Smith and Lynn A. Smith Irrevocable Trust
Thomas Uebolis, TTEE dated 8/4/09*

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Shares of Common Stock listed in Item (3) below are held:

(c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Shares of Common Stock listed in Item (3) below are held:

2. **Address for Notices to Holder:**

c/o Urbelis, Fiedelsteed, LLP

155 Federal St. 4th Floor

Boston, MA 02110

Telephone: 617-338-2200

Fax: 617-338-0122

Email address: _____

Contact Person: Thomas Urbelis

3. **Beneficial Ownership of Common Stock:**

Type and Amount of Shares of Common Stock beneficially owned: (Please indicate the type and amount of Shares of Common Stock beneficially owned by you on the appropriate lines below.)

<u>TYPE</u>	<u>CUSIP No(s).</u>	<u>AMOUNT</u>
<u>144A (QIBS¹):</u>	<u>244572 10 3</u>	_____
<input checked="" type="checkbox"/> <u>Private Placement (IAs and AIs²):</u>	<u>244572 20 2</u>	<u>50,000 shares</u>
<u>Regulation S:</u>	<u>244572 30 1</u>	_____
<u>Regulation S:</u>	(ISIN No.) <u>U244 1P 104</u>	_____

4. Please indicate whether you wish to include Shares of Common Stock in the IPO Registration Statement relating to the IPO of the Common Stock of Deerfield Triarc Capital Corp. :

Yes

No

If "yes," please provide the number of Shares of Common Stock requested by you to be registered under the IPO Registration Statement.

Number of Shares to be registered (IPO):

50,000

5. **Beneficial Ownership of Securities of the Company other than the Shares of Common Stock by the Selling Security Holder:**

Except as set forth below in this Item (5), the undersigned is not the beneficial or registered owner of any securities of the Company other than the Shares of Common Stock listed above in Item (3).

¹ "qualified institutional buyers" (as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"))

² institutional "accredited investors" (as defined in Rule 501(a)(1), (2), (3), (7), or (8) of the Securities Act) and individual "accredited investors" (as defined in Rule 501(a)(4), (5), or (6) of the Securities Act)

2. **Address for Notices to Holder:**

[REDACTED]
Saugerties Springs, N.Y. 12866
 Telephone: 518-449-5131
 Fax: 518-449-4894
 Email address:
 Contact Person: David L. Smith

3. **Beneficial Ownership of Common Stock:**

Type and Amount of Shares of Common Stock beneficially owned: (Please indicate the type and amount of Shares of Common Stock beneficially owned by you on the appropriate lines below.)

TYPE	CUSIP No(s)	AMOUNT
<u>144A (QIBS¹):</u>	244572 10 3	
<input checked="" type="checkbox"/> Private Placement (IAs and AIs ²):	244572 20 2	<u>50,000 Shares</u>
<u>Regulation S:</u>	244572 30 1	
<u>Regulation S:</u>	(ISIN No.) U244 1P 104	

4. **Please indicate whether you wish to include Shares of Common Stock in the IPO Registration Statement relating to the IPO of the Common Stock of Deerfield Triarc Capital Corp.:**

Yes No

If "yes," please provide the number of Shares of Common Stock requested by you to be registered under the IPO Registration Statement.

Number of Shares to be registered (IPO):
50,000

5. **Beneficial Ownership of Securities of the Company other than the Shares of Common Stock by the Selling Security Holder:**

Except as set forth below in this Item (5), the undersigned is not the beneficial or registered owner of any securities of the Company other than the Shares of Common Stock listed above in Item (3).

¹ "qualified institutional buyers" (as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"))

² institutional "accredited investors" (as defined in Rule 501(a)(1), (2), (3), (7), or (8) of the Securities Act) and individual "accredited investors" (as defined in Rule 501(a)(4), (5), or (6) of the Securities Act)

Type and amount of securities of the Company beneficially owned other than the Shares of Common Stock owned by the Holder:

None

6. Have you or your organization, if applicable, had any position, office or other material relationship since the inception of the Company in November 2004 with the Company, Deerfield Capital Management LLC, or any affiliates of either?

Yes

No

If yes, please indicate the nature of any such relationship below:

7. Broker-Dealer Status:

Is the undersigned a registered broker-dealer?

Yes

No

Note: In general we will be required to identify any registered broker-dealer as an underwriter in the prospectus.

8. Affiliation with Broker-Dealers:

Is the undersigned an affiliate of a registered broker-dealer? An "affiliate" of a specified person or entity means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

Yes

No

If so, please answer the remaining questions in this section.

(a) Please describe the affiliation between the undersigned and any registered broker-dealers:

(b) If the shares of Common Stock were purchased by the undersigned other than in the ordinary course of business, please describe the circumstances:

N/A

(c) If the undersigned, at the time of its purchase of the shares of Common Stock, had any agreements or understandings, directly or indirectly, with any person to distribute the shares of Common Stock, please describe such agreements or understandings:

N/A

Note: If the undersigned is an affiliate of a broker-dealer and did not purchase its shares of Common Stock in the ordinary course of business or at the time of the purchase had any agreements or understandings, directly or indirectly, to distribute the shares of Common Stock, we must identify the undersigned as an underwriter in the prospectus.

9. Beneficial Ownership by Natural Persons:

Please state the name of the person who has voting or investment power over the shares of Common Stock held by the undersigned? Please describe who has or shares: (a) voting power, which includes the power to vote, or to direct the voting of, such security; and/or, (b) investment power, which includes the power to dispose, or to direct the disposition of, the Common Stock held by the undersigned directly or indirectly, through any contract, arrangement, understanding, relationship.

Thomas Urbelis, Trustee

10. Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Shares of Common Stock listed above in Item (4) pursuant to the IPO Registration Statement only pursuant to the underwriting arrangements to be described in the prospectus forming a part of the IPO Registration Statement.

N/A

The undersigned acknowledges that it understands its obligation to comply with the provisions of the Securities Exchange Act of 1934, as amended, and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Shares of Common Stock pursuant to the IPO Registration Statement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Holder hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons set forth therein.

Pursuant to the Registration Rights Agreement, the Company agreed under certain circumstances to indemnify the Holders against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the IPO Registration Statement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the IPO Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing at the address set forth in Item (2).

In the event any Holder transfers all or any portion of the Common Stock listed in Item (3) above after the date on which such information is provided to the Company, the Holder will notify the transferee(s) at the time of transfer of its rights and obligations under this Registration Notice and Questionnaire and the Registration Rights Agreement.

By signing this Registration Notice and Questionnaire, the undersigned consents to the disclosure of the information contained herein in its answers to Items (1) through (10) above and the inclusion of such information in the IPO Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company without independent investigation or inquiry in connection with the preparation or amendment of the IPO Registration Statement and the related prospectus.

Please sign and date this Registration Notice and Questionnaire and NASD Questionnaire and provide the information requested below. Please return your completed Registration Notice and Questionnaire to Deerfield Triarc Capital Corp., Attention: Frederick L. White, Esq., 8700 West Bryn Mawr Avenue, 12th Floor, Chicago, Illinois 60631, in the manner set forth in the accompanying letter.

Name of Holder: David L. Smith and Lynn A. Smith Irrevocable
(Type or Print) Trust dated
Thomas Urpelis, TTEE 8/4/04

K
Signature of Holder or Person Signing on Behalf of Holder if Holder is an Entity

Title: Trustee

Date: May 9, 2008

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

Address: _____
_____ Saratoga Springs, N.Y. 12866

I know of such information _____

Description:

Further, indicate if you have entered into any arrangements prior to the filing of the Registration Statement, which provide for the receipt of any item of value and/or the transfer of any warrants, options or other securities from the Company to any "underwriter or related person," "member" of the NASD or between a "person associated with a member" of the NASD on the one hand and the Company or any "affiliate," "controlling" shareholder, officer or director thereof on the other hand, or propose to enter into such an arrangement within 90 days after the commencement of the sales of the securities.

Yes _____ No

If "yes," please identify the parties involved and provide the material terms of the arrangement.

Response:

Question 2: State below whether (a) you or any "associate" or "affiliate" of yours are a "member" of the NASD, a "controlling" shareholder of an NASD "member," a "person associated with a member," a direct or indirect "affiliate" of a "member," or an "underwriter or related person" with respect to the proposed offering; (b) you or any "associate" or "affiliate" of yours owns any stock or other securities of any NASD "member" not purchased in the open market; (c) you have any association or other affiliation with a "member" of the NASD otherwise than through share ownership; or (d) you or any "associate" or "affiliate" of yours has made or received any outstanding subordinated loans to any NASD "member." If you are a general or limited partnership, a "no" answer asserts that no such relationship exists for you as well as for each of your general or limited partners.

Yes No _____

If "yes," please identify the NASD "member," provide its name, address and telephone number and describe your relationship, including, in the case of a general or limited partner, the name of the partner.

If you answer "no" to both Question 2 and Question 3, you need not respond to Question 4.

Response:

I serve as the Trustee for the David L. Smith
 & Lynn A. Smith Irrevocable Trust dated 8/4/04.
 Mr. Smith is the principal stockholder, President
 and CEO of: MCGRAW, SMITH & CO - member of the NASD
 99 Pine St. Albany, N.Y. 12207
 518-449-5131

Question 3: State below whether you or any "associate" or "affiliate" of yours has been an underwriter, or a "controlling" person or member of any investment banking or brokerage firm which has been or might be an underwriter for securities of the Company or any "affiliate" thereof including, but not limited to, the common stock now being registered.

Yes _____ No

If "yes," please identify the NASD "member," describe your relationship, including, in the case of a general or limited partner, the name of the partner and state whether such NASD "member" is participating in the proposed public offering, and, if so, the capacity in which such NASD "member" is participating.

If you answer "no" to both Question 2 and Question 3, you need not respond to Question 4.

Response:

Question 4: If your answer to Question 2 or Question 3 was "yes," set forth below information as to all purchases and acquisitions (including contracts for purchase or acquisition) of securities or other means of value of the Company or any "affiliate," "controlling" shareholder, officer or director thereof, by you or any of your "affiliates" or "associates" since the Company's formation, as well as to all proposed purchases and acquisitions which are to be consummated in whole or in part within the next twelve (12) months.

<u>Seller or Prospective Seller</u>	<u>Amount and Nature of Securities</u>	<u>Price or Other Consideration</u>	<u>Date</u>	<u>Description of Relationship</u>
David L. Smith and Lynn A. Smith Irrevocable Trust dated 8/4/04	50,000 shares	\$15.00	12/17/04	David L. Smith is the principal shareholder and serves as President and CEO of McGraw, Smith & Co a member of the NASD.

85223.00004 RICHMOND 1410382v2

Question 5: Set forth below information as to all sales and dispositions (including contracts to sell or to dispose) of securities or other items of value of the Company or any of its "affiliates" since the Company's formation, by you or, to your knowledge, the Company or any "affiliate," "controlling" shareholder, officer or director thereof or any other "persons" to any NASD "member," any "person associated with a member" of the NASD, any person "affiliated" with a member of the NASD or any "underwriter or related person." Also set forth below information as to all proposed sales and dispositions by you or, to your knowledge, the Company or any "affiliate," "controlling" shareholder, officer or director thereof or any other persons to any NASD "member," any "person associated with a member" of the NASD, any person "affiliated" with a member of the NASD or any "underwriter or related person" which are to be consummated in whole or in part within the next twelve (12) months, other than a sale or disposition in connection with the proposed public offering. Also set forth below a description of the relationship, affiliation or association of you and, if known, the other party or parties to the above transactions with an underwriter or other person or entity in the stream of distribution with respect to the offering.

None

<u>Seller or Prospective Seller</u>	<u>Amount and Name of Securities</u>	<u>Price or Other Consideration</u>	<u>Date</u>	<u>Description of Relationship</u>
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Question 6: If you or any of your "associates" or "affiliates" have had since the Company's formation, or are to have within the next twelve (12) months, any transactions of the character referred to in Questions 4 or 5, describe briefly below the relationship, affiliation or association of you and, if known, the other party or parties to any such transaction with an underwriter or other person or entity in the stream of distribution with respect to the proposed offering. In any case, where the purchaser (whether you or any such party) is known by you to be a member of a private investment group, such as a hedge fund or other "group" of purchasers, furnish, if known, the names of all "persons" comprising the "group" and their association with or relationship to any broker-dealer.

NOTE: All of the underwriters may not be set forth in the initial filing of the Registration Statement. They will be listed in the final prospectus, copies of which will be sent to you at a later date. As with all other questions herein, you should advise us of any changes in your responses as soon as possible after you learn of such changes, either as a result of your review of subsequent drafts or amendments of the Registration Statement (including the prospectus) or otherwise.

Response:

None

Question 7: Except as to any arrangement between the Company, Credit Suisse First Boston LLC, Deutsche Bank Securities, Inc., and UBS Securities LLC in connection with the proposed initial public offering, do you know of any arrangement made or to be made by any "person" or of any transaction already effected (i) to limit or restrict the sale of the Company's Common Stock during the period of the offering of the Common Stock to be registered, (ii) to stabilize the market for the Company's Common Stock, (iii) to withhold commissions or otherwise to hold each underwriter or dealer responsible for the distribution of his, her or its participation in the offering, (iv) to grant any discounts or payment of any commissions to any underwriter or the payment of any finder's fee or similar payment or (v) to allocate any of the Company's Common Stock to be registered to you or any of your "associates" or "affiliates" or to any officer or director of the Company?

Response:

NO

Question 8: Do you or any of your "affiliates" or "associates" have a material relationship with or interest in Credit Suisse First Boston LLC, Deutsche Bank Securities, Inc., UBS Securities LLC or any other dealer manager, investment banking firm or underwriting organization?

Response:

yes David L. Smith, Beneficiary of the David L. Smith and Lynn A. Smith Trust dated 9/4/04 is the principal shareholder and President of McGinn, Smith & Co., a member of the NASD. McGinn, Smith is an investment banking firm that has served as an underwriter.

Question 9: Please state the full name, form of organization (e.g., corporation, partnership, etc.), nature of business done by and principal place of business of each "associate" and "affiliate" of yours referred to in the answers to this questionnaire and your relationship with such "associate" or "affiliate," if applicable.

Response:

McGinn, Smith & Co. Inc.
member of the NASD
conducts a general securities business
Corporate headquarters:
99 Pine St.
Albany, N.Y. 12207

Question 10: Indicate below whether you have any knowledge that more than 10% of the aggregate net proceeds of the proposed public offering, not including underwriting compensation, are intended to be paid to (i) "members" "participating" in the distribution of the proposed offering, (ii) "persons associated with a member," (iii) persons "affiliated" with "members" and (iv) members of the "immediate family" of such persons.

Response:

I have no such knowledge

I have such knowledge

Question 11: Please describe below any "conflict of interest" that you, or any "member" identified by you in Question 2 above, may have with the Company.

Response:

None

Question 12: Are you now or have you ever been interested in or "affiliated" with any of the firms of Deloitte & Touche LLP, Clifford Chance US LLP or Hunton & Williams LLP?

Yes No

If so, please identify the party or parties involved and describe such interest or affiliation.

Response:

I understand that the information I have furnished may be forwarded to the NASD. My responses are accurate and complete to the best of my knowledge. I will promptly advise the Company as to any events relating to the items in this questionnaire that occur between now and the completion of the offering.

I understand and agree that my responses to this questionnaire and any future communications regarding these matters will be relied upon by the Company, the underwriters and their respective counsel.