

EXHIBIT 20

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

FACSIMILE TRANSMITTAL SHEET

TO: Mr. Thomas Urbelis	FROM: David Smith
COMPANY:	DATE: May 9, 2005
FAX NUMBER: 617-338-0122	TOTAL NO. OF PAGES INCLUDING COVER: 28 2
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.



in communications with the NASD and in preparation of a Registration Statement on Form S-11 to be filed with the Securities and Exchange Commission in connection with the proposed offering.

I understand that material misstatements or the omission of material facts in the Registration Statement may give rise to civil and criminal liabilities for the Company, each officer and director of the Company signing the Registration Statement on behalf of the Company and other persons signing such document. I will notify the Company of any such misstatement of a material fact in the Registration Statement or any amendment thereto, and of the omission of any material fact necessary to make the statements contained therein not misleading, as soon as practicable after a copy of the Registration Statement or any such amendment thereto has been provided to me.

Dated: May 9, 2005

X Thomas Urbelis as Trustee and not individually
NAME: Thomas Urbelis, TRUSTEE
TITLE: David L. Smith and
Lynn A. Smith
Irrevocable Trust
dated 8/4/04

EXHIBIT 21

* * * COMMUNICATION RESULT REPORT (JUN. 7. 2005 2:23PM) * * *

FAX HEADER: URBELIS & FIELDSTEEL

TRANSMITTED/STORED : JUN. 7. 2005 2:17PM
FILE MODE OPTION

FILE MODE	OPTION	ADDRESS	RESULT	PAGE
009	MEMORY TX	15184494894	OK	26/26

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-3) NO ANSWER

E-2) BUSY
E-4) NO FACSIMILE CONNECTION

URBELIS & FIELDSTEEL, LLP
155 FEDERAL STREET
BOSTON, MA 02110

Telephone: (617) 338-2200
Telecopier: (617) 338-0122

Andover
Telephone: (978) 475-4552

F A X C O V E R S H E E T

TO: David Smith
FROM: Thomas J. Urbelis, Esq.
RE:
DATE: June 7, 2005

FAX: (518) 449-4894
PHONE: (617) 338-2200

Number of pages including cover sheet: 26

Message:

Dear Dave,

Please call me on this.

Thank you,
Thomas J. Urbelis



File -
David Smith
"Frustrated Trust"

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

URBELIS & FIELDSTEEL, LLP
155 FEDERAL STREET
BOSTON, MA 02110

Telephone: (617) 338-2200
Telecopier: (617) 338-0122

Andover
Telephone: (978) 475-4552

F A X C O V E R S H E E T

TO: David Smith
FROM: Thomas J. Urbelis, Esq.
RE:
DATE: June 7, 2005
FAX: (518) 449-4894
PHONE: (617) 338-2200

Number of pages including cover sheet: 26

Message:

Dear Dave,

Please call me on this.

Thank you,
Thomas J. Urbelis

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DEERFIELD TRIARC
Capital Corp.

FAX COVER SHEET

DATE: June 6, 2005
TO: David Smith
FAX #:
FROM: Frederick L. White
PHONE #: (773) 380-6377
NUMBER OF PAGES ATTACHED: none
SUBJECT: Deerfield Triarc Capital Corp.
COMMENTS:

DTCC has extended, from 5pm EST June 8, 2005 to 5pm EST June 10, 2005, the deadline for submitting the various documents that are required to be provided to DTCC in order to sell your shares in the Initial Public Offering of DTCC's common stock.

Deerfield Triarc Capital Corp.
8700 West Bryn Mawr Avenue
South Tower, Suite 1200
Chicago, Illinois 60631
Phone: (773) 380-1600
Facsimile: (773) 380-1600

www.deerfieldtriarc.com

Board of Directors
Nelson Peltz, Chairman
Robert E. Fischer
Robert B. Machinist
Peter Rothschild
Howard Rubin
Gregory A. Sachs
Jonathan W. Trutter

Officers
Jonathan W. Trutter
Chief Executive Officer
Robert C. Grien
President
Robert E. Armour
Senior Vice President,
Chief Financial Officer
and Treasurer
Frederick L. White
Senior Vice President,
General Counsel
and Secretary

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DEERFIELD TRIARC
Capital Corp.

Deerfield Triarc Capital Corp.
8700 West Bryn Mawr Avenue
South Tower, Suite 1200
Chicago, Illinois 60631
Phone: (773) 380-1600
Facsimile: (773) 380-1601

www.deerfieldtriarc.com

FAX COVER SHEET

DATE: June 2, 2005
TO: Electing Shareholders
FAX #:
FROM: Frederick L. White
PHONE #: (773) 380-6377
NUMBER OF PAGES ATTACHED: 23
SUBJECT: Deerfield Triarc Capital Corp.
COMMENTS:

Please contact Sharon Tse at (773) 380-1621 if you do not receive all pages of this fax.

Board of Directors
Nelson Peltz, Chairman
Robert E. Fischer
Robert B. Machinist
Peter Rothschild
Howard Rubin
Gregory M. Sachs
Jonathan W. Trutter

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DEERFIELD TRIARC
Capital Corp.

June 1, 2005

Dear Stockholder:

The purpose of this letter is to inform you that Deerfield Triarc Capital Corp. (the "Company") filed an amendment ("Amendment No. 2") to the registration statement relating to the initial public offering of its common stock (the "IPO Registration Statement") on June 1, 2005. You have indicated by response to a questionnaire that you desire to include certain of your shares of common stock of the Company in the IPO Registration Statement and participate as a selling stockholder in the Company's initial public offering ("IPO").¹

Final Decision Whether to Participate in IPO

Amendment No. 2 sets forth a projected price range at which shares of common stock (the "Shares") are expected to be sold in the IPO of \$17.00 to \$19.00 per share. There is no guarantee that the actual public offering price will be within this range.

IF YOU WANT TO PARTICIPATE IN THE IPO:

If you still desire to sell Shares in the IPO, you must immediately (a) fill out and sign the documents listed under items (1) through (5) below and (b) deliver an opinion from your counsel dated June 8, 2005 as to the matters described in item (6) below (the "Participating Stockholder Documents"), copies of which are enclosed herewith, and **return each such Participating Stockholder Document to us in accordance with the instructions on page 4 below, by no later than 5:00 p.m. Eastern Time on June 8, 2005:**

¹ Capitalized terms used but not defined in this letter have the meanings set forth in the Registration Rights Agreement dated December 23, 2004, among the Company and Credit Suisse First Boston LLC, Deutsche Bank Securities Inc., and Bear, Stearns & Co. Inc. (the "Registration Rights Agreement").

Deerfield Triarc Capital Corp.
8700 West Bryn Mawr Avenue
South Tower, Suite 1200
Chicago, Illinois 60631
Phone: (773) 380-1600
Facsimile: (773) 380-1601

www.deerfieldtriarc.com

Board of Directors

Nelson Peltz, Chairman
Robert E. Fischer
Robert B. Machinist
Peter Rothschild
Howard Rubin
Gregory H. Sachs
Jonathan W. Trutter

Officers

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Chief Executive Officer
Robert C. Grien
President
Robert E. Armour
Senior Vice President,
Chief Financial Officer
and Treasurer
Frederick L. White
Senior Vice President,
General Counsel
and Secretary



DEERFIELD TRIARC
Capital Corp

- (1) the power of attorney, granting Jonathan W. Trutter and Frederick L. White (officers of the Company) as your attorneys-in-fact, each with full power and authority to act in your name with respect to all matters arising in connection with your sale of Shares to the underwriters, including the power and authority to (a) determine the price at which your Shares will be sold in the IPO, (b) sell your Shares pursuant to the underwriting agreement to be entered into with the underwriters of the IPO and (c) execute such underwriting agreement on your behalf and perform your obligations thereunder;
- (2) the custody agreement, pursuant to which the Shares that you intend to sell in the IPO and the proceeds therefrom will be deposited with and delivered by the custodian thereunder;
- (3) a stock power, endorsed in blank, with signature guaranteed by a bank, trust company, broker, dealer, municipal securities dealer, government securities dealer or broker, credit union, a national securities exchange, registered securities association or clearing agency, or a savings institution that is a participant in a Securities Transfer Association recognized program or by a Medallion Signature Guarantor;
- (4) a DWAC acceptance letter, authorizing American Stock Transfer & Trust Company, as custodian, to accept a DWAC withdrawal request (i.e., moving your Shares from The Depository Trust Company to the custodian) from your broker relating to your Shares;
- (5) IRS Form W-9 (as attached to the custody agreement); and
- (6) Form of Opinion of your counsel.

In addition, enclosed please find the form of representations and warranties and indemnities that you will be giving as part of the underwriting agreement that Jonathan W. Trutter and Frederick L. White, as your attorneys-in-fact, will sign on your behalf. Please note that these representations and warranties and indemnities are subject to change.

At your instruction, your broker must issue a DWAC withdrawal request to the custodian on or before June 8, 2005.



DEERFIELD TRIARC

Capital Corp

IF YOU DO NOT WANT TO PARTICIPATE IN THE IPO:

If you do not desire to sell Shares in the IPO, it will be very helpful to the Company if you sign the enclosed Withdrawal Form and return it to us by 5:00 p.m. Eastern Time on June 8, 2005, but you do not HAVE TO return the signed form by that deadline in order to withdraw as a participant in the IPO Registration Statement. You will be DEEMED to have withdrawn if you do NOT return EITHER the Withdrawal Form or all of the Participating Stockholder Documents.

IF YOU DO NOT RETURN THE REQUESTED FORMS BY JUNE 8, 2005:

As noted above, if (i) you do NOT return ALL of the Participating Stockholder Documents (the power of attorney, the custody agreement, the stock power, the DWAC acceptance letter, an IRS Form W-9 and an opinion of your counsel) and (ii) the custodian has not received a DWAC withdrawal request from your broker relating to your Shares by June 8, 2005, your shares will NOT be included in the IPO Registration Statement. In that event, you will be DEEMED to have withdrawn as a participant in the IPO, whether or not you have submitted a Withdrawal Form.

If you elect to sell Shares in the IPO, such sale will be subject to customary underwriting discounts and commissions and fees. The total discounts and commissions payable by you to the underwriters are expected to be 6.0% of the gross proceeds of the Shares sold by you in the IPO. These discounts and commissions will not be greater than the discounts, commissions and fees payable by the Company on the sale of its Shares. You will also be bound by all applicable terms of the underwriting agreement that the Company and you (by your attorneys-in-fact) will enter into with the underwriters of the IPO.

At all times, your right to include your Shares in the IPO Registration Statement is conditioned upon your participation in the underwriting of the IPO and the inclusion of your Shares in the underwriting in accordance with, and subject to, the provisions of the Registration Rights Agreement.

Depending on the number of Shares 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 that you may propose to include in the IPO Registration Statement if the managing underwriters and the Company mutually agree that marketing factors require a limitation on the number of Shares to be underwritten in the IPO.



DEERFIELD TRIARC
Capital Corp

If you do not sell all or any part of your Shares in connection with the IPO, your Shares will be included in a Shelf Registration Statement that the Company will file promptly following completion of the IPO, in order to provide for the resale by you and other holders of Shares that are not sold in the IPO. Sales of Shares pursuant to this Shelf Registration Statement may be made on the open market or otherwise at prices determined by you, will not be subject to any underwriting discount or commission and will not be subject to the terms and conditions of an underwriting agreement.

Market Stand-off

In addition, in connection with the IPO, the underwriters have requested that all stockholders be restricted from offering, pledging, selling, contracting to sell or granting any option or contract to purchase Shares for a period of sixty (60) days following the effective date of the IPO Registration Statement. As a result, all stockholders, whether or not they request to include, or in fact do include, any Shares in the IPO Registration Statement, will be deemed to have agreed not to effect any sale or distribution of Shares for a period of sixty (60) days following the effective date of the IPO Registration Statement.

The information 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 withdraw your Shares from the IPO Registration Statement.

Please review the attached documents and consider whether you wish to withdraw your Shares of Common Stock from the IPO Registration Statement (and thus include your Shares in the Shelf Registration Statement). If you do not wish to withdraw, you must complete, sign, date and return by email or fax AND overnight courier in the enclosed pre-addressed envelope the completed Participating Stockholder Documents (Power of Attorney, Custody Agreement, Stock Power, DWAC Letter, Form W-9 and Opinion of Counsel) by no later than 5:00 p.m. Eastern Time on June 8, 2005 to:

Deerfield Triarc Capital Corp.
Attention: Frederick L. White
8700 West Bryn Mawr Avenue
12th Floor
Chicago, Illinois 60631
Email: fwhite@deerfieldcapital.com
Fax: (773) 380-1601



DEERFIELD TRIARC
Capital Corp.

If you have any questions, please call Frederick L. White at (773) 380-6377 or Robert Armour at (773) 380-6490.

Deerfield Triarc Capital Corp.

A handwritten signature in black ink, appearing to read "Frederick L. White".

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



DEERFIELD TRIARC
Capital Corp

WITHDRAWAL FORM

The undersigned hereby withdraws the number of shares of Common Stock set forth below from the IPO Registration Statement relating to the IPO of the Common Stock of Deerfield Triarc Capital Corp.:

Number of Shares of Common Stock to be withdrawn: _____

(If you are unsure about the number of Shares of Common Stock that you initially elected to include in the IPO Registration Statement, and you wish to withdraw ALL of those Shares of Common Stock from the IPO Registration Statement, you may so indicate by writing "ALL" in the blank provided above.)

Please sign and date this Withdrawal Form and provide the information requested below. Please return your completed Withdrawal Form to Deerfield Triarc Capital Corp., Attention: Frederick L. White, 8700 West Bryn Mawr Avenue, 12th Floor, Chicago, Illinois 60631, in the manner set forth in the accompanying letter, or by facsimile at (773) 380-1601, Attention: Frederick L. White by June 8, 2005, 5 p.m. Eastern Time.

* * *

Name of Holder: _____
(Type or Print)

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

Title: _____

Date: _____, 2005

Telephone Number: _____

Facsimile Number: _____

Address: _____

Deerfield Triarc Capital Corp.
8700 West Bryn Mawr Avenue
South Tower, Suite 1200
Chicago, Illinois 60631
Phone: (773) 380-1600
Facsimile: (773) 380-1601

www.deerfieldtriarc.com

Board of Directors

- Nelson Peltz, Chairman
- Robert E. Fischer
- Robert B. Machinist
- Peter Rothschild
- Howard Rubin
- Gregory H. Sachs
- Jonathan W. Trutter

Officers

- Jonathan W. Trutter
Chief Executive Officer
- Robert C. Grien
President
- Robert E. Armour
*Senior Vice President,
Chief Financial Officer
and Treasurer*
- Frederick L. White
*Senior Vice President,
General Counsel
and Secretary*

DEERFIELD TRIARC CAPITAL CORP.

Public Offering of Common Stock

IRREVOCABLE POWER OF ATTORNEY OF SELLING STOCKHOLDER

Mr. Jonathan W. Trutter
Mr. Frederick L. White
Deerfield Triarc Capital Corp.
8700 West Bryn Mawr Avenue
12th Floor
Chicago, Illinois 60631

The undersigned stockholder of Deerfield Triarc Capital Corp., a Maryland corporation (the "Company"), understands that it is contemplated that certain stockholders of the Company, including the undersigned ("Selling Stockholders"), will sell common stock, \$0.001 par value ("Common Stock"), of the Company to certain underwriters (the "Underwriters") represented by Credit Suisse First Boston LLC ("CSFB"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), UBS Securities LLC ("UBS") and Deutsche Bank Securities Inc. ("DB") and, together with CSFB and UBS, the "Representatives") pursuant to the Underwriting Agreement referred to below, and that the Underwriters propose to offer and sell such Common Stock to the public. The undersigned also understands that, in connection with such offer and sale, the Company has filed a Registration Statement ("Registration Statement") with the Securities and Exchange Commission ("Commission") to register under the Securities Act of 1933, as amended, the shares to be offered.

Concurrently with the execution and delivery of this Power of Attorney, the undersigned is also executing and delivering a Custody Agreement in substantially the form attached as Annex I (the "Custody Agreement") pursuant to which at least the number of shares of Common Stock to be sold by the undersigned as set forth opposite the signature of the undersigned at the end of this instrument are being deposited with American Stock Transfer & Trust Company, as custodian ("Custodian") in accordance with the undersigned's DWAC Acceptance Letter (the "DWAC Letter").

1. In connection with the foregoing, the undersigned hereby irrevocably constitutes and appoints Jonathan W. Trutter and Frederick L. White as attorneys-in-fact (the "Attorneys") of the undersigned, each with full power and authority to act, together or alone, including full power of substitution, in the name of and for and on behalf of the undersigned with respect to all matters arising in connection with the sale of Common Stock by the undersigned including, but not limited to, the power and authority to take any and all of the following actions:

(a) to sell, assign and transfer to the Underwriters pursuant to the Underwriting Agreement (as defined herein) the Maximum Number of Shares (as set forth on the signature page hereof) of Common Stock of the Company deposited by the undersigned with the Custodian pursuant to the Custody Agreement, or such lesser number as the Attorneys, or any one of them, in their or his or her sole discretion shall determine, at a purchase price per share to be paid by the Underwriters, as determined by negotiation among the Company, the Attorneys and the

Representatives, but at the same price per share to be paid by the Underwriters to each of the other Selling Stockholders and to the Company for the Common Stock sold by it;

(b) for the purpose of effecting such sale, to make, execute, deliver and perform the undersigned's obligations under the Underwriting Agreement among the Company, the Selling Stockholders and the Underwriters substantially in the form filed as an exhibit to the Registration Statement (such agreement, in the form in which executed, being herein called the "Underwriting Agreement"), and in connection therewith the undersigned hereby acknowledges the receipt of the forms of representations and warranties, indemnities and opinions to the Underwriting Agreement as such relate to the undersigned, containing such additions to or changes in the terms, provisions and conditions thereof as the Attorneys, or any one of them, in their or his or her sole discretion shall determine, including, subject to the limitation set forth in paragraph 1(a) hereof, the purchase price per share to be paid by the Underwriters and including any additions to or changes in the terms, provisions and conditions thereof relating to the public offering of such Common Stock by the Underwriters;

(c) to give such orders and instructions to the Custodian and the transfer agent for the Common Stock as the Attorneys, or any one of them, in their or his or her sole discretion shall determine, with respect to (i) the transfer of the Common Stock on the books of the Company in order to effect the sale to the Underwriters, including giving the name or names in which such Common Stock is to be issued and the denominations thereof, (ii) the delivery to or for the account of the Underwriters of such Common Stock against receipt by the Custodian of the purchase price to be paid therefor, (iii) the payment by the Custodian out of the proceeds of such sale of any expenses that are to be borne by the undersigned in connection with the offer, sale and delivery of the Common Stock, (iv) the remittance to the undersigned of the number of shares of Common Stock that is in excess of the number of shares of Common Stock sold by the undersigned to the Underwriters;

(d) to retain legal counsel in connection with any and all matters referred to herein (which counsel may, but need not, be counsel for the Company);

(e) to execute and deliver any amendment to the Custody Agreement; provided, however, that no such amendment shall increase the number of shares of Common Stock to be sold by the undersigned above the Maximum Number of Shares specified below;

(f) to agree to the allocation of the expenses of the offering among the Company and the Selling Stockholders, including the undersigned;

(g) to make, acknowledge, verify and file on behalf of the undersigned applications, consents to service of process and such other documents, undertakings or reports as may be required by law with state commissioners or officers administering state securities laws; and

(h) to make, exchange, acknowledge and deliver all such other contracts, powers of attorney, orders, receipts, notices, requests, instructions, certificates, letters and other writings, including communications to the Commission, and amendments to the Underwriting Agreement, and in general to do all things and to take all actions, that the Attorneys, or any one of them, in their or his or her sole discretion may consider necessary or proper in connection with or to carry out the aforesaid sale of Common Stock to the Underwriters and the public offering thereof, as fully as could the undersigned if personally present and acting.

2. This Power of Attorney and all authority conferred hereby are granted and conferred subject to the interests of the Underwriters and in consideration of those interests, and for the purpose of completing the transactions contemplated by the Underwriting Agreement and this Power of Attorney. This Power of Attorney and all authority conferred hereby shall be irrevocable and shall not be terminated by the undersigned or by operation of law, whether by the death or incapacity of the undersigned (if the undersigned is an individual), by the death or incapacity of any trustee or executor or the termination of any trust or estate (if the undersigned is a trust or an estate), or by the dissolution or liquidation of any corporation or partnership (if the undersigned is a corporation or partnership), or by the occurrence of any other event. If any event described in the preceding sentence shall occur before the delivery of the Common Stock to be sold by the undersigned under the Underwriting Agreement, such Common Stock shall be delivered by or on behalf of the undersigned in accordance with the terms and conditions of the Underwriting Agreement and the Custody Agreement, and all other actions required to be taken under the Underwriting Agreement and the Custody Agreement shall be taken, and action taken by the Attorneys, or any one of them, pursuant to this Power of Attorney shall be as valid as if such event had not occurred, whether or not the Custodian, the Attorneys, or any one of them, shall have received notice of such event.

Notwithstanding the foregoing, if the Underwriting Agreement shall not be entered into and the transactions contemplated thereby shall not be consummated prior to the 180th day after the date of this Power of Attorney, then from and after such date the undersigned shall have the power to revoke all authority hereby conferred by giving notice on or promptly after such date to each of the Attorneys, with a copy to the Custodian, that this Power of Attorney has been terminated; subject, however, to all lawful action done or performed by the Attorneys or any one of them, pursuant to this Power of Attorney prior to the actual receipt of such notice.

3. The undersigned ratifies all that the Attorneys, or any one of them, has done or shall do pursuant to paragraphs 1 and 2 of this Power of Attorney.

4. The Attorneys shall be entitled to act and rely upon any statement, request, notice or instruction respecting this Power of Attorney given to the Attorneys by the undersigned; provided, however, that the Attorneys shall not be entitled to act on any statement or notice to the Attorneys with respect to Closing Date under the Underwriting Agreement, or with respect to the termination of the Underwriting Agreement, or advising that the Underwriting Agreement shall not have been executed and delivered, unless such statement or notice shall have been confirmed in writing to the Attorneys by CSFB.

5. The undersigned agrees to hold the Attorneys, jointly and severally, free and harmless from any and all loss, damage or liability that they, or either one of them, may sustain as a result of any action taken in good faith hereunder. It is understood that the Attorneys shall serve without compensation.

6. In acting hereunder, the Attorneys may rely on the representations, warranties and agreements of the undersigned made in the Custody Agreement.

7. This Power of Attorney shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws.

Date: _____, 2005

Maximum Number of Shares
of Common Stock to be
sold to the Underwriters:

_____ Shares

Print name(s)

Signature(s)

Address

Signature guaranteed by:

(Note: The signature must be guaranteed by a bank, trust company, broker, dealer, municipal securities dealer, government securities dealer or broker, credit union, a national securities exchange, registered securities association or clearing agency, or a savings institution that is a participant in a Securities Transfer Association recognized program or by a Medallion Signature Guarantor.)

ANNEX I

DEERFIELD TRIARC CAPITAL CORP.

Public Offering of Common Stock

CUSTODY AGREEMENT

American Stock Transfer & Trust Company
59 Maiden Lane
Plaza Level
New York, N.Y. 10038

Dear Sirs:

There are delivered to you herewith, in accordance with the undersigned's DWAC Acceptance Letter (the "DWAC Letter"), the number of shares of common stock (accompanied by a duly executed stock power or powers, in blank, bearing the signature of the undersigned with such signature guaranteed by a bank, trust company, broker, dealer, municipal securities dealer, government securities dealer or broker, credit union, a national securities exchange, registered securities association or clearing agency, or a savings institution that is a participant in a Securities Transfer Association recognized program or by a Medallion Signature Guarantor), \$0.001 par value (the "Common Stock"), of Deerfield Triarc Capital Corp., a Maryland corporation (the "Company"), set forth opposite the signature of the undersigned at the end of this letter. The undersigned agrees to deliver to the Attorneys (as defined herein) or to you such additional documentation as the Attorneys, or any one of them, or the Company or Credit Suisse First Boston LLC ("CSFB") or you or any of their respective counsel may request to effectuate or confirm compliance with any of the provisions hereof, of the Company's charter, as amended, or of the Underwriting Agreement (as defined herein), all of the foregoing to be in form and substance satisfactory in all respects to the Attorneys and you. The Common Stock is to be held by you as Custodian for the account of the undersigned and is to be disposed of by you in accordance with this Custody Agreement.

Concurrently with the execution and delivery of this Custody Agreement, the undersigned has executed and delivered an irrevocable power of attorney ("Power of Attorney") to Jonathan W. Trutter and Frederick L. White or their duly designated substitutes (individually, an "Attorney" and collectively, the "Attorneys") authorizing the Attorneys, or any one of them (*inter alia*), to sell up to that number of shares of Common Stock set forth opposite the signature of the undersigned at the end of this letter, or such lesser number as the Attorneys, or any one of them, may determine, and for that purpose to enter into and perform an underwriting agreement (the "Underwriting Agreement"), among the Company, the Selling Stockholders, and certain underwriters (the "Underwriters") represented by CSFB, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), UBS Securities LLC ("UBS") and Deutsche Bank Securities Inc. ("DB" and, together with CSFB and UBS, the "Representatives").

In addition the undersigned has completed and signed the attached Substitute Form W-9.

You are authorized and directed (a) to hold the Common Stock deposited with you in accordance with the DWAC Letter in your custody and (b) on the closing date specified in the Underwriting

Agreement (the "Closing Date") you shall take all necessary action (i) to cause the Common Stock to be transferred on the books of the Company into such names as the Attorneys, or any one of them, or CSFB shall have instructed you and to register such Common Stock in such names and in such denominations as the Attorneys, or any one of them, or CSFB shall have instructed you, and (ii) to deliver such Common Stock to CSFB for the account of the Underwriters, against payment of the purchase price for such Common Stock, and give receipt for such payment, (iii) pay such expenses, including transfer taxes, as you may be instructed to pay by the Attorneys, or any one of them, and, if instructed by the Attorneys to do so, remit to the undersigned the balance, after deducting such expenses, of the amount received by you as payment for such Common Stock, and (iv) furnish to the undersigned a Form 1099 on or before the next following January 31. With such remittance you shall also deliver or cause to be delivered to the undersigned new certificates (which may bear appropriate legends) representing the number of shares of Common Stock deposited hereunder (if any) that are in excess of the number of shares of Common Stock sold by the undersigned to the Underwriters.

If the Underwriting Agreement shall not be entered into and the transactions contemplated thereby shall not be consummated prior to the 180th day after the date of this Custody Agreement, notwithstanding the terms of the third paragraph next below, upon the written request to you of the Attorneys, or any one of them, or the undersigned (accompanied in the latter case by written notice of termination of the Power of Attorney addressed to each of the Attorneys with a copy to you) on or promptly after that date, you are to return to the undersigned the Common Stock deposited with you hereunder.

Under the terms of the Power of Attorney, the authority conferred thereby is granted, made and conferred subject to and in consideration of the interests of the Underwriters and, except as set forth in the preceding paragraph, is irrevocable and not subject to termination by the undersigned or by operation of law, and the obligations of the undersigned under the Underwriting Agreement are similarly not subject to termination and shall remain in full force and effect until such date. Accordingly, the Common Stock deposited with you in accordance to the DWAC Letter and this Custody Agreement and your authority hereunder are subject to the interests of the Underwriters, and this Custody Agreement and your authority hereunder are irrevocable and are not subject to termination, except as set forth in the preceding paragraph, by the undersigned or by operation of law, whether by the death or incapacity of the undersigned (if the undersigned is an individual), by the death or incapacity of any trustee or executor or the termination of any trust or estate (if the undersigned is a trust or an estate), or by the dissolution or liquidation of any corporation or partnership (if the undersigned is a corporation or partnership) or the occurrence of any other event. If any event referred to in the preceding sentence should occur before the delivery of the Common Stock to be sold by the undersigned under the Underwriting Agreement, such Common Stock shall, except as specifically provided in the Underwriting Agreement, be delivered by you on behalf of the undersigned in accordance with the terms and conditions of the Underwriting Agreement and this Custody Agreement, and action taken by you pursuant to this Custody Agreement shall be as valid as if such event had not occurred, whether or not you or the Attorneys, or any one of them, shall have received notice of such event.

Until payment of the purchase price pursuant to the Underwriting Agreement has been made to the undersigned by or for the account of the Underwriters, the undersigned shall remain the owner of the Common Stock delivered to you hereunder and shall have the right to vote such Common Stock and all other Common Stock, if any, deposited with you in accordance with the DWAC Letter and to receive any and all dividends and distributions thereon.

You shall be entitled to act and rely upon any statement, request, notice or instruction respecting this Custody Agreement given to you by the Attorneys, or any one of them; provided, however, that you shall not be entitled to act on any statement or notice to you with respect to Closing Date under the

Underwriting Agreement, or with respect to the termination of the Underwriting Agreement, or advising that the Underwriting Agreement shall not have been executed and delivered, unless such statement or notice shall have been confirmed in writing to you by CSFB.

It is understood that you assume no responsibility or liability to any person other than to deal with the Common Stock deposited with you in accordance with the DWAC Letter and to deliver to the undersigned a Form 1099 in accordance with the provisions of this Custody Agreement, and the undersigned agrees to indemnify and hold you harmless with respect to anything done by you in good faith in accordance with the foregoing instructions.

This Custody Agreement constitutes a representation and warranty by the undersigned that (a) the undersigned has, and at the Closing Date will have, valid and unencumbered title to the Common Stock to be sold on the Closing Date pursuant to the Underwriting Agreement, the undersigned will have full right and power and all authorizations and approvals required by law to sell, assign, transfer and deliver such Common Stock under the Underwriting Agreement and upon the delivery of and payment for such Common Stock under the Underwriting Agreement, the Underwriters will receive valid and unencumbered title thereto; and (b) the undersigned has, and at all times through the Closing Date will have, full legal right and power and all authorizations and approvals required by law to enter into this Custody Agreement, the Power of Attorney and the Underwriting Agreement and to carry out all the applicable terms and provisions hereof and thereof, and this Custody Agreement, the Power of Attorney and the Underwriting Agreement are, and at all times through the Closing Date will be, valid and binding obligations of the undersigned.

The undersigned has carefully reviewed the representations, warranties, statements and agreements to be made by the undersigned as a Selling Stockholder under the Underwriting Agreement and does hereby represent, warrant and agree that (a) such representations, warranties and statements, insofar as they relate to the undersigned, are true and correct as of the date hereof and will be true and correct at all times through the Closing Date and (b) such agreements, insofar as they relate to the undersigned, have (where applicable) been complied with as of the date hereof and will be complied with on and after the Closing Date.

The undersigned has received and carefully reviewed a copy of the Registration Statement as filed on June 1, 2005, as amended by Amendment No. 1 filed on May 13, 2005 and by Amendment No. 2 filed on May 31, 2005 for the offer and sale of the number of shares of Common Stock indicated therein and will so review any amendment to the Registration Statement and the prospectus contained therein upon receipt thereof. To the best of the undersigned's knowledge, the information provided by the undersigned to the Company in writing for inclusion in the Registration Statement did not contain any untrue statement or omit any material fact required to be stated by or about the undersigned in the Registration Statement or necessary to make the statements in the Registration Statement by or about the undersigned not misleading. The undersigned shall also promptly notify the Attorneys and CSFB of any untrue statement of a material fact about the undersigned included in any amendment to the Registration Statement or the prospectus or of any omission from such amendment or prospectus of any material fact required to be stated by or about the undersigned therein or necessary to make the statements therein by or about the undersigned not misleading. The undersigned will promptly notify the Attorneys and CSFB of any facts coming to the attention of the undersigned that would cause the foregoing statements not to be true.

The undersigned has not taken and will not take, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the shares of Common Stock being sold pursuant to the Underwriting Agreement.

The foregoing representations, warranties and agreements, and those contained in the questionnaire previously completed by the undersigned and submitted to the Company and those contained in the Underwriting Agreement, are made for the benefit of, and may be relied upon by, the Attorneys, the Company, the Underwriters, the Custodian and the representatives, agents and counsel of each of the foregoing.

This Custody Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws.

Please acknowledge your acceptance hereof as Custodian, and receipt of the Common Stock deposited with you in accordance with the DWAC Letter, by executing and returning to the undersigned the enclosed copy hereof.

Dated: _____, 2005

Very truly yours,

Print name(s)

Maximum Number of Shares
of Common Stock to be
sold to the Underwriters:

Signature(s)

_____ Shares

Signature guaranteed by:

(Note: The signature must be guaranteed by a bank or trust company, a broker dealer, municipal securities dealer or broker, government securities dealer or broker, a credit union, a national securities exchange, registered securities association or clearing agency, a savings institution that is a participant in a Securities Transfer Association recognized program, or a Medallion Signature Guarantor.)

AMERICAN STOCK TRANSFER & TRUST
COMPANY

By: _____
Name:
Title:

PAYOR'S NAME: AMERICAN STOCK TRANSFER & TRUST COMPANY

<p>SUBSTITUTE</p> <p>Form W-9</p> <p>Department of the Treasury Internal Revenue Service</p> <p>Payor's Request for Taxpayer Identification Number ("TIN") and Certification</p>	<p>Part 1 – Taxpayer Identification Number – For all accounts, enter your taxpayer identification number in the box at right. (For most individuals, this is your social security number.) Certify by signing and dating below.</p>	<p>_____ Social Security Number</p> <p>OR</p> <p>_____ Employer Identification Number</p> <p>Awaiting TIN <input type="checkbox"/></p>
--	--	--

	<p>Part 2 – For Payees Exempt from Backup Withholding, see the enclosed Guidelines and complete as instructed therein.</p>
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CERTIFICATION — Under penalties of perjury, I certify that:

(1) The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me), and

(2) I am not subject to backup withholding because (a) I am exempt from backup withholding, (b) I have not been notified by the Internal Revenue Service (the "IRS") that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

CERTIFICATE INSTRUCTIONS — You must cross out item (2) above if you have been notified by the IRS that you are subject to backup withholding because of underreporting interest or dividends on your tax return. However, if after being notified by the IRS that you were subject to backup withholding, you received another notification from the IRS that you are no longer subject to backup withholding, do not cross out item (2).

Signature _____ Date _____

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN BACKUP WITHHOLDING OF 30% OF ANY PAYMENTS MADE TO YOU.

YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU MARKED "AWAITING TIN" IN THE SPACE PROVIDED FOR THE TIN IN PART 1 OF SUBSTITUTE FORM W-9.

<p>CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER</p>	
<p>I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (1) I have mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office or (2) I intend to mail or deliver an application in the near future. I understand that if I do not provide a taxpayer identification number by the time of payment, 30% of all reportable payments made to me will be withheld and retained until I provide a tax identification number to the payor and that, if I do not provide my taxpayer identification number within sixty (60) days, such retained amounts will be remitted to the IRS as backup withholding.</p>	
<p>_____ Signature</p>	<p>_____ Date</p>
<p>_____ Name (Please Print)</p>	

DWAC ACCEPTANCE LETTER

VIA FACSIMILE 718-236-4538
American Stock Transfer & Trust Company
59 Maiden Lane
New York, New York 10038

Attn: Ms. Susan Silber

Re: Deerfield Triarc Capital Corp. common stock

Ladies and Gentlemen:

The undersigned stockholder (the "Stockholder") has committed to selling the number of shares of common stock of Deerfield Triarc Capital Corp. (the "Issuer") specified below (the "Shares") in the Issuer's initial public offering scheduled to take place in June 2005. The Stockholder has entered into a Power of Attorney and a Custody Agreement to that effect in which the Stockholder has appointed each of Jonathan W. Trutter and Frederick L. White as his agent and attorney-in-fact (each an "Attorney-in-Fact") with power and authority as set forth therein.

In preparation for the sale of the Shares via the Issuer's initial public offering, the Stockholder hereby notifies American Stock Transfer & Trust Company ("AST") that, at such Stockholder's instruction, _____, the Stockholder's broker, has issued a DWAC withdrawal request to AST and the Stockholder instructs AST, as the Issuer's transfer agent, to accept a DWAC from such broker, for _____ shares of common stock of the Issuer (Cusip No. _____) to be issued in the manner set forth in the Custody Agreement. A stock power, duly executed in blank and medallion guaranteed, is enclosed with this letter.

American Stock Transfer & Trust Company
Page 2

Please contact us with any questions or concerns.

Sincerely,

STOCKHOLDER:

By: _____
(signature)

(name)

(title if stockholder is not a natural person)

**Form of Opinion of Counsel
for Individual Selling Stockholder**

(i) [] (the "Selling Stockholder") has valid and unencumbered title to the Maximum Number of Shares, as defined in the Power of Attorney, dated June [], 2005 (the "Power of Attorney"), of the Selling Stockholder (such Shares being hereinafter referred to as the "Shares"), which Shares are being concurrently deposited with American Stock Transfer & Trust Company, as custodian (the "Custodian"), pursuant to the Custody Agreement, dated the date of the Power of Attorney (the "Custody Agreement"), between the Selling Stockholder and the Custodian, and has full right, power and authority to sell, assign, transfer and deliver the Shares pursuant to the Underwriting Agreement (as defined in the Power of Attorney); and upon consummation of the sale of the Shares by the Selling Stockholder to the Underwriters (as defined in the Underwriting Agreement) pursuant to the Underwriting Agreement, the several Underwriters will have acquired valid and unencumbered title to the Shares purchased by them thereunder.

Form of Opinion of Counsel
for Institutional Selling Stockholder

(i) [] (the "Selling Stockholder") has valid and unencumbered title to the Maximum Number of Shares, as defined in the Power of Attorney, dated June [], 2005 (the "Power of Attorney"), of the Selling Stockholder (such Shares being hereinafter referred to as the "Shares"), which Shares are being concurrently deposited with American Stock Transfer & Trust Company, as custodian (the "Custodian"), pursuant to the Custody Agreement, dated the date of the Power of Attorney (the "Custody Agreement"), between the Selling Stockholder and the Custodian, and has full right, power and authority to sell, assign, transfer and deliver the Shares pursuant to the Underwriting Agreement (as defined in the Power of Attorney); and upon consummation of the sale of the Shares by the Selling Stockholder to the Underwriters (as defined in the Underwriting Agreement) pursuant to the Underwriting Agreement, the several Underwriters will have acquired valid and unencumbered title to the Shares purchased by them thereunder;

(ii) No consent, approval, authorization or order of, or filing with, any governmental agency or body or any court is required to be obtained or made by the Selling Stockholder for the consummation of the transactions contemplated by the Underwriting Agreement in connection with the sale of the Shares, except such as have been or will be obtained or made under the Securities Act of 1933, as amended, and such as may be required under state securities laws;

(iii) The execution, delivery and performance of the Underwriting Agreement and the consummation of the transactions therein contemplated will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, any statute, any rule, regulation or order of any governmental agency or body or any court having jurisdiction over the Selling Stockholder or any of its properties or any agreement or instrument to which the Selling Stockholder is a party or by which the Selling Stockholder is bound or to which any of the properties of the Selling Stockholder is subject, or the charter or by-laws of the Selling Stockholder;

(iv) Each of the Power of Attorney and Custody Agreement has been duly authorized, executed and delivered by the Selling Stockholder and constitutes a valid and legally binding obligation of the Selling Stockholder enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; and

(v) Upon execution and delivery of the Underwriting Agreement by one of the Attorneys (as defined in the Power of Attorney) on behalf of the Selling Stockholder, the Underwriting Agreement will have been duly authorized, executed and delivered by the Selling Stockholder.

Selling Stockholder Representations and Warranties and Indemnities in the Underwriting Agreement

Representations and Warranties

(i) Such Selling Stockholder has and on the First Closing Date hereinafter mentioned will have valid and unencumbered title to the Firm Securities to be delivered by such Selling Stockholder on such Closing Date and full right, power and authority to enter into this Agreement and to sell, assign, transfer and deliver the Firm Securities to be delivered by such Selling Stockholder on the First Closing Date hereunder; and upon the delivery of and payment for the Firm Securities on the First Closing Date hereunder the several Underwriters will acquire valid and unencumbered title to the Firm Securities to be delivered by such Selling Stockholder on the First Closing Date.

(ii) Except as disclosed in the Prospectus, there are no contracts, agreements or understandings between such Selling Stockholder and any person that would give rise to a valid claim against such Selling Stockholder or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with this offering.

(iii) This Agreement has been duly authorized, executed and delivered by or on behalf of such Selling Stockholder.

(iv) The Custody Agreement and Power of Attorney, in the form heretofore furnished to the Representatives (the "Power of Attorney and Custody Agreement"), has been duly authorized, executed and delivered by such Selling Stockholder and is the valid and binding agreement of such Selling Stockholder.

(v) The execution and delivery of this Agreement and the Power of Attorney and Custody Agreement and the sale and delivery of the Firm Securities to be sold by such Selling Stockholder and the consummation of the transactions contemplated herein and compliance by such Selling Stockholder with its obligations hereunder do not and will not, whether with or without the giving of notice or passage of time or both, (a) conflict with or constitute a breach of, or default under, or result in the creation or imposition of any tax, lien, charge or encumbrance upon the Firm Securities to be sold by such Selling Stockholder or any property or assets of such Selling Stockholder pursuant to any material contract, indenture, mortgage, deed of trust, loan or credit agreement, note, license, lease or other agreement or instrument to which such Selling Stockholder is a party or by which such Selling Stockholder may be bound, or to which any of the property or assets of such Selling Stockholder is subject, nor (b) will such action result in any violation of the provisions of the charter or bylaws or other organizational instrument of such Selling Stockholder, if applicable, or any applicable treaty, law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over such Selling Stockholder or any of its properties except, in the case of clause (a), for such conflicts, breaches or defaults that would not have, or reasonably be expected to have, a material adverse effect on the condition (financial or otherwise), business, earnings, properties, results of operations, assets or prospects of such Selling Stockholder and its subsidiaries taken as a whole ("Selling Stockholder Material Adverse Effect").

(vi) Such Selling Stockholder has and at the Closing will have, valid title to the Firm Securities to be sold by such Selling Stockholder free and clear of all security

interests, claims, liens, equities or other encumbrances and the legal right and power, and all authorization and approval required by law, to enter into this Agreement and the Power of Attorney and Custody Agreement and to sell, transfer and deliver the Firm Securities to be sold by such Selling Stockholder.

(vii) Such Selling Stockholder has not taken, and will not take, directly or indirectly, any action which is designed to or which has constituted or might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Firm Securities in violation of Regulation M of the Act.

(viii) To the knowledge of such Selling Stockholder, no filing with, or consent, approval, authorization, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the performance by each Selling Stockholder of its obligations hereunder or in the Power of Attorney and Custody Agreement, or in connection with the sale and delivery of the Firm Securities hereunder or the consummation of the transactions contemplated by this Agreement, except (a) such as may have previously been made or obtained or as may be required under the Act or the Rules and Regulations or state securities laws and (b) such as have been obtained under the laws and regulations of jurisdictions outside the United States in which the Firm Securities are offered or the absence of which would not have, or reasonably be expected to have, a Selling Stockholder Material Adverse Effect.

(ix) Such Selling Stockholder shall execute and deliver on or prior to the date of this Agreement a duly authorized Lock-Up Agreement (as defined herein), which shall constitute the valid and binding agreement of such Selling Stockholders.

(x) Except as otherwise provided in the Registration Statement, neither such Selling Stockholder nor any of its affiliates directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is a person associated with (within the meaning of Article I(dd) of the By-laws of the National Association of Securities Dealers, Inc.), any member firm of the NASD.

Indemnity

(i) The Selling Stockholders, jointly and severally, will indemnify and hold harmless each Underwriter, its partners, members, directors officers and its affiliates and each person who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement, the Prospectus, or any amendment or supplement thereto, any related preliminary prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred, but only insofar as any such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission of a material fact contained in and in conformity with information furnished in writing by such Selling Stockholder to the Company for use in the Registration Statement or the Prospectus; provided, however, that the Selling Stockholders will not be liable in any such case to the extent that any such loss, claim,

damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by an Underwriter through the Representatives specifically for use therein; it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (c) below.

(ii) Each Underwriter will severally and not jointly indemnify and hold harmless the Company, its directors and officers and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and each Selling Stockholder against any losses, claims, damages or liabilities to which the Company or such Selling Stockholder may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement, the Prospectus, or any amendment or supplement thereto, or any related preliminary prospectus, or arise out of or are based upon the omission or the alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by the Company and each Selling Stockholder in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of (i) the following information in the Prospectus furnished on behalf of each Underwriter: the concession and reallowance figures appearing in the paragraph under the caption "Underwriting" and the information contained in the thirteenth and fourteenth paragraphs under the caption "Underwriting."

EXHIBIT 22

April 17, 2006

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

Re: [REDACTED] 9671 Thomas J. Urbelis TTEE, David L. Smith & Lynn A. Smith
Irrevocable Trust, U/A 8/4/04

Dear Sirs:

Please accept this letter as authorization to wire \$92,105.00 from the above
referenced account to:

BANK NAME: M & T Bank

ABA#: [REDACTED] 0046

FOR CREDIT TO: David L. Smith

ACCOUNT#: [REDACTED] 9965

Thank you for your prompt attention to this matter.

Sincerely,

X _____
Thomas J. Urbelis - TTEE



 *** ACTIVITY REPORT ***

ST. TIME	CONNECTION TEL/ID	SENDER NAME	NO.	MODE	PGS.	RESULT
*04/13 09:01			5801	AUTO RX ECM	1	OK 00'18
*04/13 09:12			5802	AUTO RX ECM	4	OK 00'45
*04/13 09:15			5803	AUTO RX ECM	1	OK 00'22
*04/13 09:50	16102657513		3301	TRANSMIT ECM	2	OK 00'23
*04/13 10:32	4316014		3302	TRANSMIT ECM	2	OK 00'39
*04/13 12:07	SSG CAPITAL		3303	TRANSMIT ECM	2	OK 00'40
	16109403875					
*04/13 12:09	4048411010		5804	AUTO RX ECM	2	OK 00'37
*04/13 12:13	4048411010		5805	AUTO RX ECM	2	OK 00'38
*04/13 12:23			5806	AUTO RX ECM	1	OK 00'18
*04/13 13:38	3476434625		5807	AUTO RX ECM	4	OK 00'48
*04/13 13:58	SSG CAPITAL		3304	TRANSMIT ECM	5	OK 01'32
	16109403875					
*04/13 14:02	18668000190		3305	TRANSMIT ECM	4	OK 00'46
*04/13 14:17	LANG STAMP MORSE		3306	TRANSMIT ECM	2	OK 00'24
	6907277					
*04/13 14:24	18078478710		3307	TRANSMIT ECM	4	OK 00'52
*04/13 14:45	18003618150		5808	AUTO RX ECM	2	NG 00'50
					2	
*04/13 14:47	18003618150		5809	AUTO RX ECM	5	OK 01'19
*04/13 14:49	18003618150		5810	AUTO RX ECM	1	OK 00'26
*04/13 15:47	9545658831		5811	AUTO RX G3	1	OK 00'58
*04/13 15:48	47863859		3308	TRANSMIT	0	NG 00'00
					0	#018
*04/13 17:57	714 908 4861		5812	AUTO RX ECM	1	OK 00'33
*04/13 18:14	20060413191310014186		5813	AUTO RX ECM	1	OK 01'36
*04/13 21:24			5814	AUTO RX G3	5	OK 01'51
*04/14 08:58	16315774568		3309	TRANSMIT ECM	2	OK 00'22
*04/15 12:52			5815	AUTO RX G3	0	NG 00'48
					0	#005
*04/17 07:46	BRIAN MAYER		3310	TRANSMIT ECM	1	OK 00'25
	12122026097					
*04/17 07:47	CLIFTONPARK		3311	TRANSMIT ECM	9	OK 01'01
	3480107					
*04/17 08:23	516 997 8639		5816	AUTO RX ECM	1	OK 00'26
*04/17 08:25	7853659		3312	TRANSMIT ECM	3	OK 00'55
04/17 09:00	17166396553		3313	TRANSMIT ECM	1	OK 00'14
04/17 10:20			5817	AUTO RX ECM	1	OK 00'18
04/17 10:36			5818	AUTO RX ECM	2	OK 00'29
04/17 10:41			5819	AUTO RX ECM	3	OK 00'31
04/17 10:52	4777599		3314	TRANSMIT ECM	2	OK 00'33
04/17 10:55	17166396553		3315	TRANSMIT ECM	2	OK 00'30
04/17 11:44	13015274873		3316	TRANSMIT ECM	4	OK 00'34
04/17 11:45	12127855179		3317	TRANSMIT G3	5	OK 01'30
04/17 11:49	18004832329		3318	TRANSMIT ECM	2	OK 00'21
04/17 11:56			5820	AUTO RX ECM	2	OK 00'21
04/17 13:10			5821	AUTO RX ECM	1	OK 00'16
04/17 13:26	16173380122		3319	TRANSMIT ECM	2	OK 00'18

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

FACSIMILE TRANSMITTAL SHEET

TO: Thomas Urbelis	FROM: David L. Smith
COMPANY:	DATE: 4/17/06
FAX NUMBER: 617-338-0122	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE:	SENDER'S PHONE NUMBER: (518) 449-5131

Please sign and fax back to 518-449-4894.

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.

EXHIBIT 23

Wired
4/18/06

Please
approve
Append.

April 17, 2006

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

Re: [REDACTED] 9671 Thomas J. Urbelis TTEE, David L. Smith & Lynn A. Smith
Irrevocable Trust, U/A 8/4/04

Dear Sirs:

Please accept this letter as authorization to wire \$92,105.00 from the above
referenced account to:

BANK NAME: M & T Bank

ABA#: [REDACTED] 0046

FOR CREDIT TO: David L. Smith

ACCOUNT#: [REDACTED] 9965

Thank you for your prompt attention to this matter.

Sincerely,

x Thomas J. Urbelis, Trustee
Thomas J. Urbelis - TTEE



EXHIBIT 24

*McGinnSmith
& Company, Inc.*

Investment Bankers • Investment Brokers

6 Executive Park Dr.
Clifton Park, NY 12065
518-348-0060
Fax 518-348-0107
www.mcginnsmith.com

February 23, 2007

American Stock Transfer
Attn: Paula Carapoli
VIA FACSIMILE: 718-921-8331

Re: 50,000 shares of Deerfield Triarc Cap Corp. Com. ACCD INVS
Cusip# 244572202
David L. Smith & Lynn A. Smith Irrev. Tr. U/A 8/4/04

Dear Paula,

The above referenced client would like to convert their Deerfield Cap. Corp. Com. Accredited Investor shares to the common shares of Deerfield Triarc Cap. Corp., cusip# 244572301.

We will deliver the above shares via DWAC today 2/23/07 to Transfer Agent number 2941 from National Financial Services DTC# 0226.

Once converted please deliver the shares back to our client's account at NFS per the following instructions.

DWAC to: National Financial Services
DTC# 0226
Acct# [REDACTED] 9671
Name: Thomas Urbelis TTEE
David L. Smith & Lynn A. Smith Irrev. Trust
U/A 8/4/04

Please contact me with any questions regarding this matter and thank you for your prompt attention to this transaction.

Sincerely,

David C. McQuads
David C. McQuads
Operations Manager

X *Thomas Urbelis Trustee*
TRUSTEE

PLAINTIFF'S
EXHIBIT
29 FOR ID
6-10

02/23/07 FRI 11:22 [TX/RX NO 8389]

02/23/07 FRI 12:26 [TX/RX NO 8391]

URBELIS & FIELDSTEEL, LLP
155 FEDERAL STREET
BOSTON, MA 02110

Telephone: (617) 338-2200
Telecopier: (617) 338-0122

Andover
Telephone: (978) 475-4552

F A X C O V E R S H E E T

TO: Georgia FAX: (518) 449-4894
FROM: Thomas J. Urbelis, Esq. PHONE: (617) 338-2200
DATE: February 23, 2007
Number of pages including cover sheet: 2

Message:

I will put the original signature page in the mail to you today.

TO: Dave McQuade please
Deliver to him ASAP

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

MCGINN, SMITH & CO., INC.
6 EXECUTIVE PARK DR.
CLIFTON PARK, NY 12065
PHONE: 518-348-0060 FAX: 518-348-0107

FACSIMILE TRANSMITTAL SHEET

TO: <u>Georgia</u>	FROM: <u>Dave McQ</u>
COMPANY:	DATE: <u>2/23/07</u>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: <u>2</u>
PHONE NUMBER:	
RE:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

G-
Please fax this to Tom Urbelis for
him to sign + fax back.
This is very important.
Fax back to me once signed.

*Mark,
Dave*

EXHIBIT 25

April 11, 2008

Dear Sirs:

Please accept this letter as authorization to wire \$110,636.00 from the David L. Smith & Lynn A Smith Irrev Trust account [REDACTED] 1-800 to the following bank account:

Bank: M&T Bank

ABA#: [REDACTED] 0046

A/C#: [REDACTED] 9965

Account Name: David L. Smith

Wire # WJ 58313623

Thank you for your prompt attention to this matter.

Sincerely,

Thomas Urbell, Trustee 4/14/08
Thomas Urbell
Trustee

PLAINTIFF'S
EXHIBIT
30 Ex 10
6-1-10

Faxed 9:12

McGinnSmith & Company, Inc.

99 Pine Street, 5th Floor
Albany, NY 12207
Fax number: 518-449-4894
Phone number: 518-449-5131

FACSIMILE TRANSMITTAL SHEET

TO: <i>Dave</i>	FROM: <i>John</i>
COMPANY:	DATE: <i>4/15/08</i>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: <i>2</i>
PHONE:	SENDER'S PHONE NUMBER: 518-449-5131

LoI for wire on system

CONFIDENTIALITY NOTE

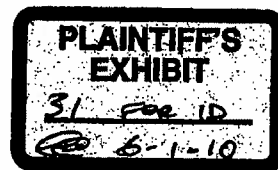
THE DOCUMENT (S) ACCOMPANYING THIS FACSIMILE TRANSMISSION CONTAINS INFORMATION FROM MCGINN, SMITH & CO., INC., WHICH IS CONFIDENTIAL OR PRIVILEGED. THIS INFORMATION IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. DISCLOSURE OF ANY OF THE INFORMATION CONTAINED HEREIN IS PROHIBITED. IF YOU RECEIVE THIS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

EXHIBIT 26

INDEMNITY AGREEMENT

For valuable consideration, the receipt of which is hereby acknowledged, we, David L. Smith and Lynn A. Smith of [REDACTED] Saratoga Springs, New York, on behalf of ourselves and our heirs, devisees and assigns, jointly and severally hereby agree to release, indemnify, defend and hold harmless Thomas J. Urbelis of 6 Eastman Road, Andover, Massachusetts individually and as Trustee of the David L. Smith and Lynn A. Smith Irrevocable Trust dated August 4, 2004, of and from any and all claims, actions, compensation, obligations, tax assessments, liabilities, demands, contracts, agreements, judgments, at law and in equity, whether in existence now or which may accrue in the future, arising out of or related to the David L. Smith & Lynn A. Smith Irrevocable Trust dated August 4, 2004 with Thomas J. Urbelis, Trustee, including but not limited to, financial transactions and obligations with National Financial Services LLC, McGinn Smith & Co., Inc., and any and all other financial institutions and government authorities.

David L. Smith 4/5/08 Lynn A. Smith 4/5/08
David L. Smith Date Lynn A. Smith Date



Thomas J. Urbelis

From: System Administrator
To: gsmith@rmrwm.com
Sent: Thursday, April 22, 2010 8:57 AM
Subject: Undeliverable: David and Lynn Smith Trust

Your message did not reach some or all of the intended recipients.

Subject: David and Lynn Smith Trust
Sent: 4/22/2010 8:56 AM

The following recipient(s) could not be reached:

gsmith@rmrwm.com on 4/22/2010 8:57 AM

There was a SMTP communication problem with the recipient's email server. Please contact your system administrator.
<uf-fs.uf-law.int #5.5.0 smtp;550 invalid mailbox>

EXHIBIT 27

5/6/09
Sent to A/T Dept
Fed Ex
7965 8396 0679

Account Number



7

National Financial Services Alternative Investments Addendum and Custody Agreement

1 Account Information

Primary Account Holder Name David L. Smith & Lynn A. Smith

Entity/Business/Trust Name David L. Smith & Lynn A. Smith Tru. Tr. w/a 5/6/09

Social Security Number or Taxpayer ID Number 916311

Joint Account Holder/Trustee/Authorized Individual (if any) Thomas J. Urhelis TTEE

2 Addendum to Agreement

This is an addendum to the Customer Agreement ("Addendum") between you and National Financial Services LLC ("NFS") and, if applicable, Fidelity Management Trust Company (collectively, "Fidelity"), governing the Account referenced above ("Account"). By signing below, you hereby direct Fidelity to custody certain publicly or non-publicly traded alternative investment assets ("Alternative Investments"), which you, or your broker/dealer, may from time to time direct Fidelity to hold, purchase, or redeem, in your Account. If you wish to hold, purchase, or redeem the Alternative Investments in more than one account, you must complete a separate Alternative Investments Addendum and Custody Agreement for each account.

Fidelity agrees to hold Alternative Investments in your Account solely in accordance with the terms and conditions of this Addendum, the Customer

Agreement and, if applicable, the Premium Select® IRA Custodial Agreement and Disclosure Statement, Premium Select SIMPLE IRA Custodial Agreement and Disclosure Statement, Premium Select Roth IRA Custodial Agreement and Disclosure Statement, and Premium Select® Retirement Plan and Trust Agreement (collectively, "Premium Select IRA Custodial Agreement and Trust Disclosure Statement or Premium Select Retirement Plan and Trust Agreement") governing your Account. Fidelity reserves the right to accept or reject the custody of any Alternative Investment at any time for any reason in its sole discretion, including those Alternative Investments it has previously accepted.

3 Scope and Allocation of Responsibilities

a. Your Responsibilities

You acknowledge that you and your broker/dealer will have the sole responsibility for the investment, review, and management of the Alternative Investments. You and your broker/dealer take full responsibility for determining the appropriateness and suitability of the Alternative Investments and for reviewing the terms of all offering and disclosure documents and agreements relating or pertaining to the Alternative Investments, and for monitoring the Alternative Investments for any conversion or exercise options or other corporate actions. You and your broker/dealer are also responsible for monitoring your Account statements to confirm the accuracy of any information relating to the Alternative Investments and the required payment due to you or from you relating to the Alternative Investments.

If the Account is an IRA, money purchase or profit sharing plan, other than a Premium Select IRA, or Premium Select Retirement Plan, you and your broker/dealer assume full responsibility for ensuring that all securities and/or property held in such IRAs, money purchase plans, or profit sharing plans are held in accordance with the terms and conditions of the governing IRA Custodial Agreement or applicable retirement plan documents.

If the Account is an IRA, money purchase or profit sharing plan, you acknowledge that you assume full responsibility for reviewing the terms of the investment to ensure that maintaining the Alternative Investments in an IRA, money purchase or profit sharing plan does not and will not constitute a prohibited transaction as defined under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code ("IRC"), and related regulations, interpretations and guidance and is otherwise in compliance with all applicable laws, rules and regulations. With respect to your IRA, money purchase or profit sharing plan, you agree (and with each instruction to hold or purchase Alternative Investments in an IRA, money purchase or profit sharing plan it is in compliance with all applicable laws, rules and regulations, including the IRC

and ERISA. In addition, you represent that you assume full responsibility for satisfying applicable IRS minimum distribution requirements, notwithstanding the unique liquidity and valuation challenges applicable to Alternative Investments.

b. Fidelity's Responsibilities

You acknowledge that Fidelity shall implement instructions it receives from you and/or your broker/dealer to hold, purchase, or redeem the Alternative Investments. Fidelity is not responsible for determining the appropriateness or suitability of the Alternative Investments or any other investments in your Account. Any documentation regarding the Alternative Investments required by Fidelity will be used solely for internal operational purposes. Fidelity shall not undertake to review or assume responsibility for the terms and conditions or contents set forth in such documentation, including, but not limited to, appropriateness or suitability, restrictions of ownership, rights of transfer, financial statements, or the adequacy of disclosure or compliance with applicable laws, rules and regulations.

You acknowledge that Fidelity shall have no responsibilities with respect to the Alternative Investments other than:

- (i) to hold the Alternative Investments in nominee's name or, if applicable, in your name;
- (ii) to purchase or redeem the Alternative Investments in accordance with your and/or your broker/dealer's instructions, subject to satisfaction of Fidelity's custody requirements;
- (iii) to reflect the Alternative Investments on Account statements in such form as Fidelity may deem appropriate;
- (iv) to credit the Account with any earnings or principal payments received with regard to the Alternative Investments;
- (v) when required by law, to forward to you any issuer communications received by Fidelity with respect to the Alternative Investments; and

3 Scope and Allocation of Responsibilities (Continued)

- (i) to perform the duties of the IRA Custodian or Trustee of the money purchase or profit sharing plan in accordance with the terms of the Premier Select IRA Custodial Agreement and Disclosure Statement or Premier Select Retirement Plan and Trust Agreement governing your Account, as applicable.

You further acknowledge that Fidelity shall have no responsibility for monitoring the Alternative Investments to ensure compliance with their respective terms, for taking any actions to collect on any amount owed to you or for otherwise enforcing your rights with respect to the Alternative Investments. If your Account is a Premier Select IRA or Premier Select Retirement Plan and the Alternative Investments generate unrelated business taxable income, you understand and acknowledge that Fidelity is not a fiduciary with respect to the Account and will not prepare any returns or perform any tax reporting required as a result of liability incurred for tax on unrelated business taxable income.

4 Valuation and Reporting of Alternative Investments

a. General Terms

You acknowledge and agree: (1) that Alternative Investments that are not publicly traded generally lack a liquid market and that the value of such Alternative Investments may be difficult to ascertain; and (2) that any estimated value reflected on your Account statement is for informational purposes only, may not be current, and may be significantly different than the actual net asset value or the liquidation value of such Alternative Investments. If the Account is a Premier Select IRA or Premier Select Retirement Plan, you further acknowledge and understand that Fidelity, as Custodian of your Premier Select IRA or as Trustee of your Premier Select Retirement Plan, is required to provide a report of certain transactions, as well as the fair market value of your Account in accordance with IRS requirements, as applicable.

b. Source of Valuation and Reporting

Alternative Investments shall be valued and displayed as follows:

- If Alternative Investments are publicly traded, Fidelity will display the market price on your Account statement per its normal practices.
- If a valuation is not readily ascertainable through its normal pricing practices, Fidelity will request valuation from a third-party pricing vendor that Fidelity deems appropriate in its sole discretion.
- If a valuation is not ascertainable through a third-party pricing vendor, Fidelity will, either directly or through your broker/dealer, request a valuation from the general partner, manager or issuer in a form and manner acceptable to Fidelity.

Fidelity shall have no responsibility for, nor does Fidelity review or guarantee the accuracy of, any valuation, even if the valuation was obtained from a third-party pricing vendor selected by Fidelity. Fidelity will not confirm, review or otherwise evaluate any Alternative Investments valuations. You further understand if your Account is a Premier Select IRA or Premier Select Retirement Plan that Fidelity may be required to value the Alternative Investments prior to a distribution from such Account and that such valuation may delay any requested distributions from your Account, including minimum required distributions.

5 Fees

You acknowledge that Fidelity is accepting custody of the Alternative Investments as an accommodation to your express instructions to hold the Alternative Investments in your Account as indicated above. To compensate Fidelity for processing and other costs associated with Alternative Investments, you agree to pay Fidelity certain fees as set forth below. These fees are in addition to the standard commissions and account fees applicable to your Account as described in the Account Application, Account Agreement or related documentation.

All Customer Fees associated with the Alternative Investments, as defined below, will be debited from your Account. If you wish to have the Customer Fees debited from a secondary non-retirement Brokerage Account, please provide the Account number below:

Account Number: 677

a. Customer Fees Applicable to Alternative Investments

Transfers / Re-registrations	\$20.00 per transaction
Annual Alternative Investment Custody and Valuation Fee	\$20.00 per position (Maximum charge of \$60.00 per account / 3 positions)

Please note: Customer Fees outlined above will not apply to products that contract to pay an ongoing fee to Fidelity for shareholder services it provides on behalf of the product. Fidelity reserves the right to modify the list of products it makes available without such Customer Fees.

If a secondary non-retirement Brokerage Account is not provided, such fees will be debited from your Account. By signing this form, you hereby instruct NPS (and in the case of an Account that is a Premier Select IRA or Premier Select Retirement Plan—NPS as agent for Fidelity Management Trust Company) to deduct the above mentioned Customer Fees from your Account. You may terminate this fee deduction authorization any time upon written notice to Fidelity. Such termination shall not affect any obligation or liability arising prior to termination. Upon termination of this fee deduction authorization, any applicable fees will be deducted from the account(s) holding the position(s).

6 Acknowledgement of Risk

To induce Fidelity to custody the Alternative Investments, you hereby acknowledge and agree that Fidelity will use its best efforts in connection with performing the functions requested herein and that Fidelity assumes no responsibility whatsoever for validity, accuracy or enforceability of the documents evidencing ownership of the Alternative Investments. You acknowledge that investing in publicly or non-publicly traded securities, including the Alternative Investments in your Account, can be very risky. You acknowledge that you and your broker/dealer are responsible for

determining the nature, potential value, and suitability of the Alternative Investments. Fidelity has not provided any advisory guidance on the suitability of the Alternative Investments for you, your Account, or value of the Alternative Investments. You acknowledge that certain Alternative Investments may not be covered by SIPC or by any additional insurance coverage in excess of SIPC otherwise made available by NPS.

7 Indemnification and Hold Harmless

By signing below, you hereby agree to indemnify and hold Fidelity, its affiliates, and their respective officers, directors, employees and agents, and their respective successors and assigns, harmless from and against any and all losses, liabilities, demands, claims and expenses, attorneys' fees, and taxes arising out of any actions by Fidelity, you, or your agents in connection herewith, which are not caused by Fidelity's gross negligence or willful misconduct. You further agree to indemnify and hold Fidelity harmless from any consequences of your investment in the Alternative Investments, including, but not limited to, financial failure of any kind, information errors provided to Fidelity by the issuer, its officers or employees, or any valuation

services, or any misfeasance, fraud or misappropriation of funds by the publicly or non-publicly traded entity, its officers, employees or agents. You also agree to indemnify and hold Fidelity harmless from any and all consequences relating to the valuation of the Alternative Investments, including, but not limited to, claims arising out of valuations provided to Fidelity by a third-party pricing vendor, general partner, manager, issuer or any other pricing entity. This provision shall survive the termination of the Addendum and shall be binding upon, and inure to the benefit of, each party's respective successor, assign, heirs, and personal representatives.

8 Termination

You acknowledge that this Addendum and Custody Agreement may be terminated by either party at any time upon written notice to the other parties on the Addendum. In the event of termination, all parties will cooperate in the prompt transition of such Alternative Investments to

another custodian of your choice and the terms of Section 5 (Fees), Section 6 (Acknowledgment of Risk) and Section 7 (Indemnification and Hold Harmless) shall survive with respect to any Alternative Investments held by Fidelity at the time of termination.

9 Acknowledgement and Signature(s)

By signing below, you hereby acknowledge that you have read, understood, and agree to be bound by the terms and conditions in this Addendum. You acknowledge that you have been advised by Fidelity to consult a tax advisor before completing any transaction involving the Alternative Investments. You have not received any tax advice from Fidelity and understand that the transaction is neither allowed nor disallowed by the IRC. By signing below, you hereby instruct Fidelity to debit the applicable

fee from your Account. You may terminate the fee deduction authorization at any time upon written notice to Fidelity. Such termination shall not effect any obligation of liability arising prior to termination. You also agree to pay all fees as described in Section 5.

Should any adverse consequences result from any transaction involving the Alternative Investments, you will not hold Fidelity responsible in any way. This agreement is binding on successors and assigns.

Primary Account Holder Signature/
Premiere Select Retirement Plan
Participant

Thurgood, Trustee

Date 12-27-2008

Joint Account Holder Signature

Date

Joint Account Holder Signature

Date

For Premiere Select Retirement Plan Account Holders

If the account referenced in Section 1 of this Addendum is a Premiere Select Retirement Plan Account, then the Employer administering the Premiere Select Retirement Plan must also sign below. By signing below, you hereby acknowledge that you have read, understood, and agree to be bound by the terms and conditions in this Addendum. You acknowledge that you assume full responsibility for reviewing the terms and conditions of the documents for the Alternative Investment and you ensure: 1) that all securities held in the Account are in accordance with the terms and conditions of the Premiere Select Retirement Plan and Trust Agreement governing the Account; 2) that maintaining the Alternative Investment does not constitute a prohibited transaction as defined under ERISA and the IRC and related regulations, interpretations and guidance; 3) that holding the Alternative Investment is in compliance with applicable laws, rules and regulations, including IRC and ERISA; and 4) that you understand your obligation to operate the plan in accordance with plan documents, including the plan requirement to apply minimum distribution requirements, notwithstanding the unique liquidity and valuation challenges applicable to Alternative Investments.

Employer Signature

Date

EXHIBIT 28

From: Mcquade, David <mcquaded@mcginnsmith.com>
Sent: Monday, April 13, 2009 7:24 PM (GMT)
To: Smith, David <smithd@mcginnsmith.com>
Subject: Smith Trust LOA.doc
Attach: Smith Trust LOA.doc

size=2>Dave,

size=2>

Please have Tom Urbels sign this LOA. I'm sure Georgia can fax it to him and then he can fax it back.

Then it just needs to be filed.

size=2>

FYI - I have your checks!!!

size=2>

Dave
McQuade

size=2>



MGS Email 0358952

April 13, 2009

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

Re: [REDACTED] 671 Thomas Urbelis Trustee; David L. Smith & Lynn A. Smith
Irrev Trust U/A 8/4/04

Dear Sirs,

Please accept this letter as your authorization to issue two checks from the above account as follows:

\$32,987.00 payable to "United States Treasury"
\$8,570.00 payable to "New York State Income Tax"

Thank you for your prompt attention to this matter.

Sincerely,

Thomas Urbelis - Trustee

MGS Email 0358953

EXHIBIT 29

April 22, 2010

FedEx

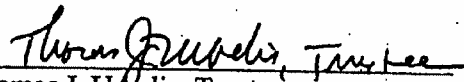
David and Lynn Smith
2 Rolling Brook Drive
Saratoga Springs, NY 12866

RE: David A. & Lynn A. Smith
Irrevocable Trust U/A dated August 4, 2004

Dear Dave and Lynn:

I hereby resign as Trustee of the above-referenced Trust. This resignation shall take effect on May 27, 2010.

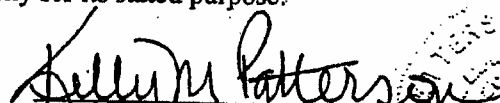
Very truly yours,


Thomas J. Urbelis, Trustee
6 Eastman Road
Andover, MA 01810

Commonwealth of Massachusetts

Suffolk, ss.

On this 22nd day of April, 2010, before me, the undersigned notary public, personally appeared Thomas J. Urbelis proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document in my presence and acknowledged to me that he signed it voluntarily for its stated purpose.


Kelly M. Patterson, Notary Public
My Commission Expires: 3/1/13



KELLY M. PATTERSON
Notary Public
Commonwealth of Massachusetts
My Commission Expires
March 1, 2013



FedEx. US Airbill
Express
8571 0111 1927

1 From: **From your local post office** Sender's FedEx
Date: **4-22-10** Account Number

Sender's Name: **Thomas J. Urbeltis** Phone ()

Company: _____

Address: **6 Eastman Road**

City: **Andover** State: **MA** Zip: **01810**

2 Your Internal Billing Reference: **OPTIONAL**

3 To: Recipient's Name: **David & Lynn Smith** Phone ()

Company: _____

Recipient's Address: **2 Rolling Brook Drive**

City: **Saratoga Springs** State: **NY** Zip: **12866**



Sender's Copy

4a. Express Package Service
 FedEx Priority Overnight
 FedEx Standard Overnight
 FedEx First Overnight

4b. Express Freight Service
 FedEx Day Freight
 FedEx 2Day Freight
 FedEx 3Day Freight

5. Packaging
 FedEx
 FedEx Mailer
 FedEx Tube
 FedEx Box
 Other

6. Special Handling
 SATURDAY Delivery
 HOLIDAY Delivery
 HAZARDOUS Materials
 FRESH Produce
 FRESH Flowers
 FRESH Bakery
 FRESH Meat
 FRESH Fish
 FRESH Dairy
 FRESH Eggs
 FRESH Bread
 FRESH Fruit
 FRESH Vegetables
 FRESH Herbs
 FRESH Mushrooms
 FRESH Nuts
 FRESH Seeds
 FRESH Spices
 FRESH Oils
 FRESH Condiments
 FRESH Beverages
 FRESH Snacks
 FRESH Toys
 FRESH Games
 FRESH Books
 FRESH Magazines
 FRESH Newspapers
 FRESH Periodicals
 FRESH Comics
 FRESH Music
 FRESH Video
 FRESH Audio
 FRESH Software
 FRESH Hardware
 FRESH Tools
 FRESH Appliances
 FRESH Electronics
 FRESH Furniture
 FRESH Home Decor
 FRESH Garden Supplies
 FRESH Pet Supplies
 FRESH Baby Supplies
 FRESH School Supplies
 FRESH Office Supplies
 FRESH Travel Supplies
 FRESH Sports Equipment
 FRESH Outdoor Equipment
 FRESH Winter Gear
 FRESH Summer Gear
 FRESH Seasonal Decor
 FRESH Holiday Decor
 FRESH Party Supplies
 FRESH Wedding Supplies
 FRESH Event Supplies
 FRESH Miscellaneous

7. Signature
 Sender
 Recipient
 Third Party
 Credit Card
 Cash/Check

8. NEW Residential Delivery Signature Options: Signature
 Signature
 Signature
 Signature

9. Total Packages: **10** Total Weight: **10** Total Declared Value: **10**

10. Signature: **520**

RETAIN THIS COPY FOR YOUR RECORDS.



Detailed Results

Tracking no.: 857101111927

Select time format: 12H

Delivered

Delivered
Signed for by: Signature not required

Shipment Dates

Ship date Apr 22, 2010
Delivery date Apr 23, 2010 10:31 AM

Destination

Proof of Delivery

Shipment Facts

Service type Standard Envelope Delivered to Residence

Shipment Travel History

Select time zone: Local Scan Time

All shipment travel activity is displayed in local time for the location

Date/Time	Activity	Location	Details
Apr 23, 2010 10:31 AM	Delivered		Left at front door. Package delivered to recipient address - release authorized
Apr 23, 2010 8:04 AM	On FedEx vehicle for delivery	MENANDS, NY	
Apr 23, 2010 7:02 AM	At local FedEx facility	MENANDS, NY	
Apr 23, 2010 3:00 AM	Departed FedEx location	NEWARK, NJ	
Apr 22, 2010 11:45 PM	Arrived at FedEx location	NEWARK, NJ	
Apr 22, 2010 8:15 PM	Left FedEx origin facility	SOUTH BOSTON, MA	
Apr 22, 2010 2:02 PM	Picked up	BOSTON, MA	Tendered at FedEx Kinko's, now FedEx Office

EXHIBIT 30

Thomas J. Urbelis

From: Brian Mayer [bmayer@rmrwm.com]
Sent: Thursday, April 15, 2010 2:02 PM
To: Thomas J. Urbelis
Subject: April 15- LOA
Attachments: April 15- LOA.doc

Thomas:

Please sign and fax back to 212-202-6097.

Thank you.

Brian T. Mayer
Managing Partner
RMR Wealth Management, LLC
One Battery Park Plaza
New York, NY 10004
P: 212-785-4377
F: 212-202-6097
bmayer@rmrwm.com

4/22/2010

