

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

McGINN, SMITH & CO., INC.,
McGINN, SMITH ADVISORS, LLC,
McGINN, SMITH CAPITAL HOLDINGS CORP.,
FIRST ADVISORY INCOME NOTES, LLC,
FIRST EXCELSIOR INCOME NOTES, LLC
FIRST INDEPENDENT INCOME NOTES, LLC,
THIRD ALBANY INCOME NOTES, LLC,
TIMOTHY M. McGINN, AND DAVID L. SMITH,
LYNN A. SMITH, GEOFFREY R. SMITH, Trustee
of the David L. and Lynn A. Smith Irrevocable Trust
U/A 8/04/04, GEOFFREY R. SMITH, LAUREN
T. SMITH, and NANCY McGINN,

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

Defendants,

LYNN A. SMITH and NANCY McGINN,

Relief Defendants, and

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

Intervenor.

EXPERT REPORT OF JOHN D'ALEO PURSUANT TO RULE 26

Introduction and Background

My name is John D'Aleo. I have been asked to prepare this Expert Report by counsel to Lynn Smith pursuant to Federal Rule of Civil Procedure 26(a)(2). I have previously testified in the above-captioned matter at the preliminary injunction proceeding held in June of 2010.

I am a Certified Public Account and have been the President of Devonshire Business Consulting, Inc. since 1993. I specialize in tax, business and financial planning.

Prior to founding Devonshire Business Consulting, Inc. I was a partner at the accounting firm Pricewatercoopers in New York City from 1968 to 1980. I received my Certified Public Accounting license in 1972 from the State of New York.

I have prepared a summary and compilation of the deposits and withdrawals of the assets in the Lynn A. Smith's individual brokerage account over the lifetime of the account. I have examined various bank records, checks, and promissory notes in connection with the account. In other words, I have traced the flow of funds going in and coming out of Lynn Smith's brokerage account from 1999 through 2010.

Subject Matter of the Report

This report is limited to an analysis of the transaction in question relating to the individual brokerage account in the name of Lynn A. Smith, 2 Rolling Brook Drive, Saratoga Springs, New York, 12866. The account number is RMR-040916. The account is held at Dinosaur Securities, LLC, 404 Park Avenue South, New York, New York 10016. This report is focused on the transactions that are being questioned by the Securities and Exchange Commission in the Second Amended Complaint dated June 8, 2011. The materials I relied on in making this report include:

- The Preliminary Injunction transcript in the above captioned matter previously held on June 10-11, 2010.
- Relief Defendant, Lynn A. Smith Preliminary Injunction Hearing Exhibits 14 and 15.
- Lynn Smith brokerage account statements from July 31, 1999 to March 31, 2010.
- Motion for Temporary Restraining Order filed by Securities and Exchange Commission. (Attachments: Memorandum of Law, Declaration of Israel Maya,

Declaration of Lara Shalov Mehraban, Declaration of Roseann Daniello, and Exhibits 1-67).

Factual Summary

Plaintiff, the United States Securities and Exchange Commission (SEC), commenced this action against defendants McGinn, Smith & Co., Inc., McGinn, Smith Advisors, LLC, McGinn, Smith Capital Holdings Corp., First Advisory Income Notes, LLC, First Excelsior Income Notes, LLC, First Independent Income Notes, LLC, Third Albany Income Notes, LLC, Timothy McGinn, and David Smith, alleging various violations of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, and the Investment Company Act of 1940. (See Second Am. Compl. ¶¶ 139-165, Dkt. No. 334). The SEC has asserted an additional claim of fraudulent conveyance under the New York Debtor and Creditor Law against defendants Timothy McGinn, David Smith, Lynn Smith, Nancy McGinn, Lauren Smith, and Geoffrey Smith, individually and as Trustee of the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04. (See *id.* at ¶¶ 169-73; see also Feb. 14, 2011 Substitution Order, Dkt. No. 281).

Lynn Smith and Nancy McGinn were allegedly named as relief defendants, for receiving and retaining fraudulently and illegally obtained proceeds, of which the SEC seeks disgorgement. (See Sec. Am. Compl. ¶¶ 166-68, Dkt. No. 334). The SEC alleges that during the period of the defendants' fraudulent conduct, Lynn Smith "received more than \$1.8 million from [David] Smith and the McGinn Smith Entities," including "\$375,000 in December 2007; \$325,000 in June and July 2009; \$100,000 in March 2010...\$185,000 in October 2006 and May 2007[;]...[and] many other payments from McGinn Smith Entities." (Sec. Am. Compl. ¶¶ 81, 107-08, Dkt. No. 334). The SEC further alleges that Lynn Smith maintained a brokerage account at McGinn, Smith & Co.,

Inc., which she “allowed [David] Smith, [Timothy] McGinn and the McGinn Smith Entities to draw upon...for business and personal needs without restrictions, and [which] served as a de facto financing arm for [David] Smith and [Timothy] McGinn and the McGinn Smith Entities during the period of the fraud.” (Id. at ¶ 109). “L[ynn] Smith allowed [David] Smith to use the Stock Account as a personal line of credit to further his personal and professional interests. In 2003, David Smith “deposited significant personal assets into the Stock Account, including cash of \$38,430, the proceeds of a trust amounting to \$326,304, and a note receivable totaling \$410,000.” (Id. at ¶ 113.). Based on these alleged activities, the SEC claims that:

Relief Defendant[] L[ynn] Smith...[was a] recipient[], without consideration, of proceeds of the fraudulent and illegal sales of securities alleged[;]...profited from such receipt or from the fraudulent and illegal sales of securities alleged...by obtaining illegal proceeds under circumstances in which it is not just, equitable, or conscionable for them to retain the illegal proceeds[;]...[and has] been named as a Relief Defendant for the amount of proceeds by which [she] has been unjustly enriched as a result of the fraudulent scheme or illegal sales transactions.

(Id. at ¶ 167.). Consequently, the SEC demands that “L. Smith...disgorge any ill-gotten gains.” Which she may have received in her individual brokerage account. (Id. at ¶ 18.)

Conclusions

I have prepared an analysis of the flow of funds in and out of the Lynn A. Smith individual brokerage account. See, Appendix “B”. In reaching my conclusions, I have drawn on over forty-five years of experience and knowledge as a Certified Public Accountant, and in my vast experience in tax return preparation and consulting services for individuals and businesses. As I examine additional materials and perform further analyses, I reserve the right to revise and supplement my opinions.

I am able to resolve the origin and nature of the transactions placed in question by the Securities and Exchange Commission as it relates to Lynn Smith’s brokerage account.

In reaching this conclusion, it is my opinion that Lynn Smith gave consideration for the money that was deposited into Lynn Smith's brokerage account from the various McGinn Smith entities.

Basis of Conclusions

My testimony from the Preliminary Injunction hearing held on June 10-11, 2010, provides the basis and summary of my conclusion. However, as it relates to each specific transaction in question by the SEC, I hereby submit as follows:

1. An April 13, 2006 statement from Lynn Smith's brokerage account indicates a check received for \$4,500. An October 4, 2006 statement also indicates a similar deposit for \$85,000, which correlates with a check provided to Lynn Smith from Tim McGinn for a partial repayment of a loan.
2. In my analysis of the brokerage account transactions, I also took notice of a promissory note for \$970,000 dated October 15, 2004 signed by Tim McGinn addressed to Lynn Smith which is also consistent with the dates of Lynn Smith's brokerage statement that indicated a deposit equal to the amount of \$970,000.
3. On May 14, 2007 another promissory note for \$100,000 was deposited in Lynn Smith's brokerage account. The promissory note was also signed by Tim McGinn and the memo states "loan".
4. As it relates to the bridge loan made by Lynn Smith from the assets in her brokerage account on November 29, 2007 to McGinn Smith Funding, the December, 2007 brokerage statement indicates the bridge loan being repaid through a wire transfer. Specifically, on December 21, 2007 a deposit of \$380,000 was made into Lynn Smith's brokerage account. This transaction was further complicated because the repayment of the bridge loan originally

went to David Smith's account at M&T Bank on December 12, 2007 in error. After David Smith discovered the error, he transferred \$380,000 to Lynn Smith's account on December 21, 2007.

5. As it relates to the \$38,430.46 transfer on February 4, 2009 into Lynn Smith's brokerage account, there was no question that the funds belonged to David Smith. He simply deposited the \$38,430.46 into his wife's account.
6. The next transfer in question occurred on February 20, 2009 and was a deposit from David Smith in the amount of \$326,304.11. The only knowledge that I have as it relates to this transfer resulted from a conversation I had with Lynn Smith. I was informed that this transfer had something to do with the estate planning transfers among the parties, and that was the way the information was reported in the exhibits to the preliminary injunction hearing.
7. As it relates to a transaction on June 10, 2009 from TDMM Cable Funding in the amount of \$160,800, it is in connection to the repayment of a loan for \$366,000 that was originally made on June 5, 2009. Additionally, the deposit into Lynn Smith's brokerage account on July 30, 2009 from TDMM Cable Trust in the amount of \$175,000 was also in connection with a partial repayment of the \$366,000 loan. The loan is illustrated through a June 5, 2009 promissory note in the amount of \$366,000.
8. As it relates to the deposit into Lynn Smith's brokerage account on March 18, 2010 in the amount of \$100,000, it was made as a repayment of a loan made to TDMM Benchmark on March 16, 2010.

Since the majority of the money deposited into Lynn Smith's brokerage account was primarily the repayment of various bridge loans to McGinn Smith entities, Lynn

Smith gave valuable consideration in exchange for the amount of the repayment and did not receive "ill-gotten gains".

Appendix A: My Curriculum Vitae

Appendix B: Relief Defendant Exhibits 14, and 15 from the Preliminary Injunction Hearing held on June 10-11, 2010.

DATED: May 5, 2014

By: John D'Aleo, CPA
JOHN D'ALEO, CPA

APPENDIX A

JOHN D'ALEO, CPA
Devonshire Business Consulting, Inc.
10 Chesterfield Drive
Voorheesville, New York 12186-9200

Education:

St. John's University, June, 1968
Bachelor of Business Administration- Major in accounting

Bernard M. Baruch College (City University of New York), March, 1973
Master of Business Administration

Professional Experience:

1968- 1993: Tax Partner-PricewaterhouseCoopers (formerly Coopers & Lybrand); New York City and Albany, New York offices

1993- Present: President-Devonshire Business Consulting, Inc., firm specializing in tax, business and financial planning

Professional Certification & Affiliations:

Certified Public Accountant (Licensed in New York State-March,1973)

Member: American Institute of Certified Public Accountants

Member: New York State Society of Certified Public Accountants

Miscellaneous:

Member of continuing professional education and training policy & steering committees at Coopers & Lybrand-New York City office

Participation at continuing annual professional education certification training required by New York State Department of Education

APPENDIX B

Draft 5/12/2010

Funds Received into Lynn Smith's Accounts

Footnote #/	Date	Transaction	Funds To Lynn Smith	Lynn Smith's Account Number	Lynn Smith's Bank or B-D	Notes
1	1/12/2006	Check received	\$6,301.00	40916	NFS	
1	1/12/2006	Check received	\$10,000.00	40916	NFS	
1	2/6/2006	Check received	\$4,246.58	40916	NFS	
2	4/13/2006	Check received	\$4,500.00	350912	NFS	Cash Contribution prior yr IRA
3	10/4/2006	Check received	\$85,000.00	40916	NFS	
4	1/10/2007	Check received	\$26,000.00	40916	NFS	
5	4/8/2007	Check received	\$5,000.00	350912	NFS	Cash Contribution prior yr IRA
1	5/14/2007	Check received	\$4,200.00	40916	NFS	
6	5/14/2007	Check received	\$100,000.00	40916	NFS	
7	12/20/2007	Check received	\$380,000.00	40916	NFS	
1	1/5/2010	Check received	\$525.00	40916	NFS	
1	1/5/2010	Check received	\$708.33	40916	NFS	
1	1/5/2010	Check received	\$1,329.17	40916	NFS	
		Total	\$627,810.08			

Draft 5/12/2010

Funds Received into Lynn Smith's Accounts

Date	Transaction	Account	Account Number	Bank or B-D	Funds To Lynn Smith	Lynn Smith's Account Number	Lynn Smith's Bank or B-D
2/4/2009	Transfer	Capital Center Credit Corp.	18178	NFS	\$38,430.48	██████████0916	NFS
3/3/2006		McGinn Smith & Company	4734	M&T Bank	\$20,000.00	██████████0916	NFS
1/16/2009	Check received	Pine St Prin			\$166,020.00	██████████0916	NFS
1/16/2009	Check received	Pine St Fin Invd Cap			\$62,257.00	██████████0916	NFS
2/20/2009	Transfer	Smith, David	2208	NFS	\$326,304.11	██████████0916	NFS
6/10/2009		TMM Cable Funding	9077	Mercantile	\$160,800.00	██████████0916	NFS
3/18/2010		TMM Cable Funding	3077	Mercantile	\$100,000.00	██████████0916	NFS
7/30/2009		TMM Cable Jr. Trust 09	14139	Mercantile	\$175,000.00	██████████0916	NFS
				Total	\$1,048,811.57		

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Draft 6/12/2010

Lynn Smith
Bank of America
Account # 35287
Funds Received

Date	Source	Source Account Number	Source Bank	Deposits	Notes
1/12/2010	McGinn Smith Advisors LLC	589	M&T	\$5,000.00	
	McGinn Smith Advisors LLC Total			\$5,000.00	
7/15/08	McGinn Smith Payroll, Smith David	4734	M&T Bank	\$7,898.80	ck 2439
8/3/2009	McGinn Smith Payroll, Smith David			\$7,898.80	
8/14/2009	McGinn Smith Payroll, Smith David			\$7,898.80	
9/2/2009	McGinn Smith Payroll, Smith David			\$7,898.80	
9/15/2009	McGinn Smith Payroll, Smith David			\$8,234.85	
10/2/2009	McGinn Smith Payroll, Smith David			\$8,888.56	
10/15/2009	McGinn Smith Payroll, Smith David			\$8,888.56	
11/5/2009	McGinn Smith Payroll, Smith David			\$8,888.56	
12/17/2009	McGinn Smith Payroll, Smith David			\$8,888.56	
12/31/2009	McGinn Smith Payroll, Smith David			\$8,888.56	
1/15/2010	McGinn Smith Payroll, Smith David			\$6,775.38	
1/29/2010	McGinn Smith Payroll, Smith David			\$6,775.38	
2/18/2010	McGinn Smith Payroll, Smith David			\$6,775.38	
3/2/2010	McGinn Smith Payroll, Smith David			\$6,775.38	
4/8/2010	McGinn Smith Payroll, Smith David			\$17,731.08	
	McGinn Smith Payroll, Smith David			\$129,098.67	
10/28/2009	Smith, David	9885	M&T	\$4,000.00	ck 2211
11/18/2009	Smith, David	9885	M&T	\$200.00	ck 2248
12/4/2009	Smith, David	85	M&T	\$2,000.00	ck 2283
	Smith, David Total			\$6,200.00	
	Smith, David & Lynn Total			\$260.00	
	Smith, Lynn Total			\$60,000.00	
12/7/2008	Smith, David	985	M&T	\$2,600.00	ck 2275
	Smith, David Total			\$2,600.00	
	Grand Total			\$203,048.67	

Footnote #

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- [1] Information to document source or use of funds is not currently available.
- [2] Deposit relates to prior year contribution to IRA.
- [3] Partial repayment of loans to Tim McGinn. Copy of check from Tim McGinn attached.
- [4] Payment is for annual interest received by Dave Smith for loans made to GPV Associates in some period prior to 2000 which were deposited in account of Lynn Smith. Copy of page from general ledger for this entity, prepared and obtained by accountant for GPV Associates, is attached.
- [5] Deposit relates to prior year contribution to IRA.
- [6] Partial repayment of loans to Tim McGinn. Copy of check from Tim McGinn attached.
- [7] Relates to repayment of "bridge loan" in the amount of \$375,000 made 11/29/07 to McGinn Smith Funding LLC. Copy of 11/07 Lynn Smith brokerage statement showing wire transfer out is attached. Repayment including interest for a total of \$376,438 was deposited, in error, in the M&T Bank account of David Smith on 12/17/07 (copy of statement attached). Copy of McGinn Smith Funding LLC statement (attached) shows incoming wire receipt of \$375,000 on 11/29/07 and outgoing wire on 12/17/07 to account of David Smith in the amount of \$375,438. Repayment rounded up to \$380,000 made to Lynn Smith on 12/21/07 evidenced by debit to D. Smith account (statement attached) and credit to account of Lynn Smith.
- [8] Relates to final distribution from Capital Center Credit Corp. to David Smith which was deposited in account of Lynn Smith. Documentation for this transaction is not currently available.
- [9] Relates to partial retirement of 9% 5 year notes due 12/31/09 of Pine Street Capital Partners, LLC.
- [10] Partial return of equity capital of Pine Street Capital Partners, LLC which agrees to amount reported on Form 1065, Schedule K-1 (copy attached)
- [11] Relates to estate planning transfers between spouses.
- [12] Relates to partial repayments of a \$366,000 loan on 6/5/09 to TDMM Cable Funding evidenced by copy of 6/09 statement attached showing wire transfers out of \$50,000 and \$316,000. Copy of unsigned loan document attached. Partial repayments of \$160,800 and \$175,000. Copies of 6/09 and 7/09 statements attached.
- [13] Relates to repayment on loan made to TDMM Benchmark on 3/16/10. Copy of 3/10 statement (attached) shows outgoing wire transfer. Copy of 3/10 statement from Mercantile Bank shows incoming wire from Lynn Smith on 3/16/10 and repayment via "outgoing wire transfer-NFS" on 3/18/10.
- [14] Deposit of payroll of David Smith. No documentation of source of funds currently available.
- [15] Relates to three transfers from L. Smith brokerage account to her checking account. 11/13/09 - \$15,000; 2/16/10 - \$20,000 and 3/25/11 - \$25,000.

McGinnSmith & Company, Inc.

Account Number: ██████████ 10916
 Account Name: SMITH
 Statement Date: 11/01/2007 to 11/30/2007

Core Funds Purchased

Settlement Date	Account Type	Transaction	Description	Quantity	Amount
11/30/07	CASH	REINVESTMENT	PRIME FUND - CAPITAL RESERVES CLASS REINVESTED @ \$1.00	6,359.52	(\$6,359.52)

Net Core Funds Purchased (\$6,359.52)

Core Funds Sold

Settlement Date	Account Type	Transaction	Description	Quantity	Amount
11/21/07	CASH	YOU SOLD	PRIME FUND - CAPITAL RESERVES CLASS @ 1	(5,159)	\$5,159.00
11/28/07	CASH	YOU SOLD	PRIME FUND - CAPITAL RESERVES CLASS @ 1	(388,856)	\$389,856.00

Net Core Funds Sold \$375,015.00

NET CORE FUND ACTIVITY \$388,655.48

ADDITIONS AND WITHDRAWALS

Other Additions and Withdrawals

Date	Account Type	Transaction	Description	Quantity	Amount	Total Cost Basis	Realized Gain (Loss)
11/29/07	CASH	WIRE TRANS TO BANK	WD375000.00				
Net Other Additions and Withdrawals						(375,000.00)	(375,000.00)

TO MS FUNDING

NET ADDITIONS AND WITHDRAWALS (\$375,000.00)

INCOME AND EXPENSES

Taxable Income

Date	Account Type	Transaction	Description	Quantity	Amount
11/30/07	CASH	DIVIDEND RECEIVED	PRIME FUND - CAPITAL RESERVES CLASS DIVIDEND RECEIVED		\$6,359.52

Net Taxable Income \$6,359.52

Account carried with National Financial Services LLC, Member NYSE, SIPC



ACCOUNT NO.	ACCOUNT TYPE
9965	WORRY FREE CHECKING

STATEMENT PERIOD	PAGE
NOV.17-DEC.17,2007	1 OF 1

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DAVID L SMITH
99 PINE ST
ALBANY NY 12207-2776

ALBANY

ACCOUNT SUMMARY

BEGINNING BALANCE	DEPOSITS & OTHER ADDITIONS		CHECKS PAID		OTHER SUBTRACTIONS		CURRENT INTEREST PD	ENDING BALANCE
	NO.	AMOUNT	NO.	AMOUNT	NO.	AMOUNT		
19,843.54	5	505,438.00	7	39,141.77	4	48.00	0.00	486,091.77

ACCOUNT ACTIVITY

POSTING DATE	TRANSACTION DESCRIPTION	DEPOSITS, INTEREST & OTHER ADDITIONS	CHECKS & OTHER SUBTRACTIONS	DAILY BALANCE
11-17-07	BEGINNING BALANCE			\$19,843.54
11-20-07	INCOMING FEDWIRE FUNDS TRANSFER MCGINN SMITH FUNDING LLC	25,000.00		
11-20-07	WIRE TRANSFER FEE		12.00	
11-20-07	CHECK NUMBER 1944		736.58	44,094.96
11-21-07	CHECK NUMBER 1946		438.00	
11-21-07	CHECK NUMBER 1947		330.79	43,326.17
11-30-07	CHECK NUMBER 1950		4,662.00	38,664.17
12-03-07	CHECK NUMBER 1949		6,188.15	32,476.02
12-04-07	INCOMING FEDWIRE FUNDS TRANSFER MCGINN SMITH FUNDING LLC	18,000.00		
12-04-07	WIRE TRANSFER FEE		12.00	50,464.02
12-05-07	CHECK NUMBER 1948		23,823.40	26,640.62
12-12-07	CHECK NUMBER 1951		2,962.85	23,677.77
12-14-07	DEPOSIT	1,000.00		24,677.77
12-17-07	INCOMING FEDWIRE FUNDS TRANSFER MCGINN SMITH FUNDING LLC	376,438.00		
12-17-07	INCOMING FEDWIRE FUNDS TRANSFER MCGINN SMITH FUNDING LLC	85,000.00		
12-17-07	WIRE TRANSFER FEE		12.00	
12-17-07	WIRE TRANSFER FEE		12.00	486,091.77
	ENDING BALANCE			\$486,091.77

CHECKS PAID SUMMARY

1944	11-20-07	736.58	1946*	11-21-07	438.00	1947	11-21-07	330.79
1948	12-05-07	23,823.40	1949	12-03-07	6,188.15	1950	11-30-07	4,662.00
1951	12-12-07	2,962.85						

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TIMOTHY MCGINN

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MCGINN SMITH FUNDING LLC
99 HINE ST
ALBANY NY 12207

Page: 1
DATE: 12-26-07

760601636 REGAL PREMIER MONEY MARKET

Previous Balance	11-28-07	77,941.10
+Deposits/Credits		4,820,200.00
-Checks/Debits		4,473,084.84
-Service Charge		.00
+Interest Paid		1,186.01
New Balance		425,942.27
Days in Statement Period	30	

INTEREST SUMMARY

Interest Earned From 11/27/07 Through 12/26/07	
Days in Period	30
Interest Earned	1,186.01
Annual Percentage Yield Earned	4.24 %
Interest Paid this Year	5,055.03
Interest Withheld this Year	.00

DESCRIBED DEBITS AND CREDITS	DEBIT	DEPOSIT
DATE DESCRIPTION		
11-27 CREDIT MEMO		304000.00
11-27 CREDIT MEMO		200000.00
11-27 CREDIT MEMO		135000.00
11-27 WIRE TRANSFER FEE	20.00	
11-27 OUTGOING WIRE TRANSFER	790276.04	
STEWART'S SHOPS CORP.		
11-29 INCOMING WIRE TRANSFER		375000.00
LYNN A SMITH		
11-29 WIRE TRANSFER FEE	20.00	
11-30 CREDIT MEMO		50000.00
11-30 WIRE TRANSFER FEE	20.00	
11-30 OUTGOING WIRE TRANSFER	350000.00	
FIRSTLINE SECURITY INC.		
12-04 CREDIT MEMO		35700.00
12-04 CREDIT MEMO		30500.00
12-04 DEBIT MEMO	39100.00	
12-04 WIRE TRANSFER FEE	20.00	
12-04 WIRE TRANSFER FEE	20.00	
12-04 OUTGOING WIRE TRANSFER	27301.00	
TIMOTHY MCGINN		
12-04 OUTGOING WIRE TRANSFER	18000.00	
DAVID L SMITH		
12-06 WIRE TRANSFER FEE	20.00	
12-06 OUTGOING WIRE TRANSFER	26000.00	
MCGINN SMITH ALAN TRADING LLC		
12-07 CREDIT MEMO		25000.00
12-07 OVERDRAFT ITEM FEE	34.00	
INSUFFICIENT FUNDS		

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MCGINN SMITH FUNDING LLC
 59 SINE ST

Page: 2
 DATE: 12-26-07

12-11	INCOMING WIRE TRANSFER		3000000.00
	STEWARTS SNOWS CORP		
12-11	WIRE TRANSFER FEE	20.00	
12-11	WIRE TRANSFER FEE	20.00	
12-11	WIRE TRANSFER FEE	20.00	
12-11	OUTGOING WIRE TRANSFER	2125000.00	
	VERIFIER CAPITAL LLC		
12-11	OUTGOING WIRE TRANSFER	1500.00	
	MARLENE BRUSTLE		
12-13	DEBIT MEMO		
12-17	CREDIT MEMO	110000.00	
12-17	CREDIT MEMO		350000.00
12-17	WIRE TRANSFER FEE	20.00	93000.00
12-17	WIRE TRANSFER FEE	20.00	
12-17	WIRE TRANSFER FEE	20.00	
12-17	OUTGOING WIRE TRANSFER	20.00	
	DAVID L SMITH	376438.00	←
12-17	OUTGOING WIRE TRANSFER	83000.00	
	DAVID L SMITH		
12-17	OUTGOING WIRE TRANSFER	60000.00	
	TIMOTHY M MCGINN		
12-19	DEBIT MEMO	45000.00	
12-19	WIRE TRANSFER FEE	20.00	
12-19	WIRE TRANSFER FEE	20.00	
12-19	OUTGOING WIRE TRANSFER	150000.00	
	MCGINN SMITH & CO INC		
12-19	OUTGOING WIRE TRANSFER	26000.00	
	MCGINN SMITH ALBANY TRADING LLC		
12-20	DEBIT MEMO	13035.00	
12-20	WIRE TRANSFER FEE	20.00	
12-20	OUTGOING WIRE TRANSFER	25000.00	
	THIRD ALBANY INCOME NOTES LLC		
12-21	WIRE TRANSFER FEE	70.00	
12-21	OUTGOING WIRE TRANSFER	5000.00	
	MARLENE BRUSTLE		
12-26	EXCESSIVE CHECK CHARGE FEE	80.00	
12-26	INT BMT		1186.01

DAILY BALANCE SUMMARY

Date	Balance	Date	Balance	Date	Balance
11-26	77641.10	11-27	126345.06	11-29	501325.06
11-30	1305.06	12-04	3064.06	12-06	22953.94-
12-07	2010.06	12-11	875450.06	12-13	765450.06
12-17	688952.06	12-19	467912.06	12-20	429836.26
12-21	424836.26	12-26	423942.27		



ACCOUNT NO.	ACCOUNT TYPE
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STATEMENT PERIOD	PAGE
DEC.18-2008-JAN.17,2008	1 OF 1

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DAVID L SMITH
99 PINE ST
ALBANY NY 12207-2776

ALBANY

ACCOUNT SUMMARY

BEGINNING BALANCE	DEPOSITS & OTHER ADDITIONS		CHECKS PAID		OTHER SUBTRACTIONS		CURRENT INTEREST PD	ENDING BALANCE
	NO.	AMOUNT	NO.	AMOUNT	NO.	AMOUNT		
486,091.77	3	110,700.00	13	550,313.35	1	12.00	0.00	46,466.42

ACCOUNT ACTIVITY

POSTING DATE	TRANSACTION DESCRIPTION	DEPOSITS, INTEREST & OTHER ADDITIONS	CHECKS & OTHER SUBTRACTIONS	DAILY BALANCE
12-18-07	BEGINNING BALANCE			3486,091.77
12-20-07	CHECK NUMBER 1952		772.84	
12-20-07	CHECK NUMBER 1954		209.00	485,109.93
12-21-07	CHECK NUMBER 1955		380,000.00	
12-21-07	CHECK NUMBER 1956		62,000.00	43,109.93
12-24-07	CHECK NUMBER 1953		3,065.54	40,044.39
12-27-07	INCOMING FEDWIRE FUNDS TRANSFER LYNN A SMITH	80,450.00		
12-27-07	WIRE TRANSFER FEE		12.00	
12-27-07	CHECK NUMBER 1962		50,000.00	
12-27-07	CHECK NUMBER 1960		14,750.00	55,732.39
12-28-07	CHECK NUMBER 1961		15,700.00	
12-28-07	CHECK NUMBER 1958		6,188.15	33,844.24
12-31-07	CHECK NUMBER 1957		3,626.00	30,218.24
01-02-08	DEPOSIT	26,000.00		56,218.24
01-14-08	DEPOSIT	4,250.00		60,468.24
01-15-08	CHECK NUMBER 1963		5,307.26	
01-16-08	CHECK NUMBER 1967		4,027.56	51,133.42
01-17-08	CHECK NUMBER 1964		4,667.00	46,466.42
	ENDING BALANCE			46,466.42

CHECKS PAID SUMMARY

1952	12-20-07	772.84	1953	12-24-07	3,065.54	1954	12-20-07	209.00
1955	12-21-07	380,000.00	1956	12-21-07	62,000.00	1957	12-31-07	3,626.00
1958	12-28-07	6,188.15	1960*	12-27-07	14,750.00	1961	12-28-07	15,700.00
1962	12-27-07	50,000.00	1963	01-16-08	5,307.26	1964	01-17-08	4,667.00
1967*	01-16-08	4,027.56						

This is a copy of the customer statement. The original has been mailed to the address of record.

McGinnSmith & Company, Inc.

Account Number: 0016

Account Name: SMITH

Statement Date: 12/31/2007 to 12/31/2007

NET CORE FUND ACTIVITY (\$305,229.05)

ADDITIONS AND WITHDRAWALS

Deposits		Account Type	Transaction	Description	Quantity	Amount	Realized Gain (Loss)
12/27/07	CASH	PAYMENT RECEIVED	CHECK RECEIVED			\$300,000.00	
Net Deposits						\$300,000.00	
Other Additions and Withdrawals		Account Type	Transaction	Description	Quantity	Amount	Realized Gain (Loss)
12/27/07	CASH	WIRE TRANS TO BANK	WDRTR6448			(\$80,450.00)	
Net Other Additions and Withdrawals						(\$80,450.00)	

NET ADDITIONS AND WITHDRAWALS \$219,550.00

INCOME AND EXPENSES

Taxable Income

Date	Account Type	Transaction	Description	Quantity	Amount
12/31/07	CASH	DIVIDEND RECEIVED	STORM FUND - CAPITAL RESERVES		\$5,004.05
			UNDIVIDED RECEIVED		

Net Taxable Income \$5,004.05

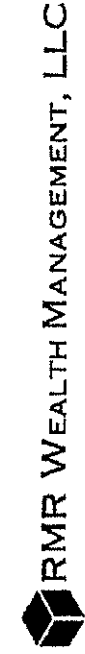
Total Income \$5,004.05

NET INCOME AND EXPENSES \$5,004.05

MISCELLANEOUS ACCOUNT ACTIVITY

Date	Account Type	Transaction	Description	Quantity	Amount
12/27/07	CASH	JOURNALED	WIRE FEE		(\$18.00)

NET MISCELLANEOUS ACCOUNT ACTIVITY (\$18.00)



YOUR FINANCIAL CONSULTANT SHOULD BE AWARE THAT RMR WEALTH MANAGEMENT, LLC, OFFERS INVESTMENT THROUGH DISCRETIONARY ACCOUNTS. RMR WEALTH MANAGEMENT, LLC IS NOT AN ADVISOR OR FINANCIAL INSTITUTION. RMR WEALTH MANAGEMENT, LLC IS NOT AN ADVISOR OR FINANCIAL INSTITUTION.

Account Number: ██████████0916
 Account Name: SMITH
 Statement Date: 03/01/2010 to 03/31/2010

ADDITIONS AND WITHDRAWALS

Date	Account Type	Transaction	Description	Quantity	Amount	Realized Gain (Loss)
03/18/10	CASH	WIRE TRANS FROM BANK	WRT1715088		\$100,000.00	
Net Deposits					\$100,000.00	

Other Additions and Withdrawals

Date	Account Type	Transaction	Description	Quantity	Amount	Total Cost Basis	Realized Gain (Loss)
03/18/10	CASH	WIRE TRANS TO BANK	WD4080873		(\$100,000.00)		
03/18/10	CASH	WIRE TRANS TO BANK	WD4080960		(\$20,000.00)		
03/23/10	CASH	WIRE TRANS TO BANK	WD4071310		(\$25,000.00)		
Net Other Additions and Withdrawals					(\$145,000.00)		

NET ADDITIONS AND WITHDRAWALS

(\$45,000.00)

INCOME AND EXPENSES

Taxable Income

Date	Account Type	Transaction	Description	Quantity	Amount
03/31/10	CASH	DIVIDEND RECEIVED	PRIME FUND - CAPITAL RESERVES CLASS DIVIDEND RECEIVED		\$2.24
Net Taxable Income					\$2.24

Total Income

\$2.24

Account Fees

Date	Account Type	Transaction	Description	Quantity	Amount
03/01/10	CASH	FEE PAID	SAFEEKEEPING FEE CUSIP 185758204		(\$5.00)
Net Account Fees					(\$5.00)



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TIMOTHY MCGINN

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002/006



IDMM CABLE FUNDING LLC
 99 PINE STREET
 ALBANY NY 12207

February 28, 2010 - March 31, 2010		Account Number		Page 1 of 2	
		9077		3 enclosures	
FREE BUS CHK-TREASURY SERVICE			Summary		
Previous Balance	+ Deposits Credits	- Checks Debits	- Service Charges	+ Interest Credits	New Balance
119.19	202,375.00	202,409.00	46.00	0.00	39.19

31 Days in Statement Period

Deposits

Date	Description	Amount
03-04	PHN XFER FR DDA 007600643083	2,375.00
03-16	INCOMING WIRE TRANSFER LYNN A SMITH	100,000.00
03-16	CUSTOMER DEPOSIT	100,000.00
Total Deposits		\$202,375.00

Checks

Date	Number	Amount	Date	Number	Amount
03-05	1003	1,875.00	03-08	1004	500.00
Total Checks		\$2,375.00			



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TIMOTHY MCGINN

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003/005

TMM CABLE FUNDING LLC
99 PINE STREET

Account Number ██████████9077

Described Debits

Page 2 of 2

<i>Date</i>	<i>Description</i>	<i>Amount</i>
03-16	FORCE PAY-NSF/UNC/HL	100,000.00
03-16	RETURN ITEM FEE	34.00
	Inefficient funds	
	NSF/OD Effective Date 03/15/10	
03-18	OUTGOING WIRE TRANSFER	100,000.00
	NFS	
03-31	SERVICE CHG	46.00
Total Described Debits		\$200,080.00

Daily Balance Summary

<i>Date</i>	<i>Balance</i>	<i>Date</i>	<i>Balance</i>
02-28 Beginning Balance	119.19	03-16	100,885.19
03-04	2,494.19	03-18	85.19
03-05	619.19	03-31 Ending Balance	39.19
03-08	119.19		

Schedule K-1
(Form 1065)

2009

Final K-1 Amended K-1 OMB No. 1545-0099

Department of the Treasury
Internal Revenue Service

For calendar year 2009, or tax
year beginning _____
ending _____

Partner's Share of Income, Deductions,
Credits, etc.

▶ See separate instructions.

Part I Information About the Partnership	Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items												
A Partnership's employer identification number 8744	1 Ordinary business income (loss) 0.												
B Partnership's name, address, city, state, and ZIP code PINE STREET CAPITAL PARTNERS., LP 99 PINE STREET ALBANY, NY 12207	2 Net rental real estate income (loss)												
C IRS Center where partnership filed return OGDEN, UT	3 Other net rental income (loss)												
D <input type="checkbox"/> Check if this is a publicly traded partnership (PTP)	4 Guaranteed payments												
Part II Information About the Partner	5 Interest income 182,288.												
E Partner's identifying number -8058	6a Ordinary dividends												
F Partner's name, address, city, state, and ZIP code LYNN SMITH 2 ROLLING BROOK DRIVE SARATOGA SPRINGS, NY 12866	6b Qualified dividends												
G <input type="checkbox"/> General partner or LLC member-manager <input checked="" type="checkbox"/> Limited partner or other LLC member	7 Royalties												
H <input checked="" type="checkbox"/> Domestic partner <input type="checkbox"/> Foreign partner	8 Net short-term capital gain (loss) -60,683.												
I What type of entity is this partner? <u>INDIVIDUAL</u>	8a Net long-term capital gain (loss) 1,046.												
J Partner's share of profit, loss, and capital	8b Collectibles (28%) gain (loss)												
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Beginning</th> <th>Ending</th> </tr> </thead> <tbody> <tr> <td>Profit</td> <td>8.3006225%</td> <td>12.7560911%</td> </tr> <tr> <td>Loss</td> <td>8.3006225%</td> <td>12.7560911%</td> </tr> <tr> <td>Capital</td> <td>8.3006225%</td> <td>12.7560911%</td> </tr> </tbody> </table>		Beginning	Ending	Profit	8.3006225%	12.7560911%	Loss	8.3006225%	12.7560911%	Capital	8.3006225%	12.7560911%	9a Unrecaptured sec 1250 gain
	Beginning	Ending											
Profit	8.3006225%	12.7560911%											
Loss	8.3006225%	12.7560911%											
Capital	8.3006225%	12.7560911%											
K Partner's share of liabilities at year end	10 Net section 1231 gain (loss) A 247,338. B 65,176.												
Nonrecourse \$	11 Other income (loss) A* 65,050.												
Qualified nonrecourse financing \$	12 Section 179 deduction												
Recourse \$ 4,243.	13 Other deductions H 32,540.												
L Partner's capital account analysis:	K* STMT												
Beginning capital account \$ 852,284.	L* 682.												
Capital contributed during the year \$ 773,353.	14 Self-employment earnings (loss) A 0.												
Current year increase (decrease) \$ 90,721.													
Withdrawals & distributions \$ 62,258.													
Ending capital account \$ 1,654,100.													
M Did the partner contribute property with a built-in gain or loss? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No													
If "Yes", attach statement (see instructions)													

For IRS Use Only

*See attached statement for additional information.

This is a copy of the customer statement. The original has been mailed to the address of record.

McGinnSmith & Company, Inc.

Account Number: 00915
 Account Name: SMITH

Statement Date: 08/01/2009 to 06/30/2009

Core Funds Purchased

Settlement Date	Account Type	Transaction	Description	Quantity	Amount
08/03/09	CASH	REINVESTMENT	PRIME FUND - CAPITAL RESERVES CLASS REINVESTED @ \$1.00	4.84	(\$4.04)

Net Core Funds Purchased

(\$109,386.94)

Core Funds Sold

Settlement Date	Account Type	Transaction	Description	Quantity	Amount
06/05/09	CASH	YOU SOLD	PRIME FUND - CAPITAL RESERVES CLASS @	(3,461,000)	\$304,000.00
06/05/09	CASH	YOU SOLD	PRIME FUND - CAPITAL RESERVES CLASS @ 1	(10,015)	\$10,015.00

Net Core Funds Sold

\$376,015.00

NET CORE FUND ACTIVITY

\$206,628.06

ADDITIONS AND WITHDRAWALS

Date	Account Type	Transaction	Description	Quantity	Amount
08/10/09	CASH	WIRE TRANS FROM BANK	WIRE TRANS FROM BANK		\$180,000.00
					\$180,000.00

Net Deposits

\$180,000.00

Other Additions and Withdrawals

Date	Account Type	Transaction	Description	Quantity	Amount	Total Cost Basis	Realized Gain (Loss)
08/05/09	CASH	WIRE TRANS TO BANK	WIRE TRANS TO BANK		(\$20,000.00)		
08/05/09	CASH	WIRE TRANS TO BANK	WIRE TRANS TO BANK		(\$16,000.00)		
08/05/09	CASH	WIRE TRANS TO BANK	WIRE TRANS TO BANK		(\$10,000.00)		

Net Other Additions and Withdrawals

(\$36,000.00)

NET ADDITIONS AND WITHDRAWALS

(\$216,200.00)

This is a copy of the customer statement. The original has been mailed to the address of record.

McGinnSmith & Company, Inc.

Account Number: ██████████ 0916
 Account Name: SMITH

Statement Date: 07/01/2008 to 07/31/2009

Account Type	Description	Quantity	Amount
07/0009 CASH	WIRE TRANS FROM BANK WFC0607244		\$176,000.00
Net Deposits			\$176,000.00

NET ADDITIONS AND WITHDRAWALS

INCOME AND EXPENSES

Taxable Income

Date	Account Type	Transaction	Description	Quantity	Amount
07/02/08	Taxable Dividends CASH	DIVIDEND RECEIVED	MCGINN SMITH & COMPANY LTD PER 1987 ADJ RATE PRORATED DIVIDEND BY MCGINN SMITH & CO LTD		\$1,134.36
07/27/08	CASH	DIVIDEND RECEIVED	GENERAL RESERVE		\$400.00
07/27/08	MARGIN	DIVIDEND RECEIVED	GENERAL RESERVE		\$1,000.00
07/31/08	CASH	DIVIDEND RECEIVED	PRIME FUND RESERVE CLASS DIVIDEND RECEIVED		\$1.56
08/20/08	Taxable Interest CASH	INTEREST	PINE STREET CAPITAL PARTNERS LP PROM NT 8.00% 7/31/2008 BASED ON MGMT'S UNADJUSTED EST OF NET ASSETS INTEREST		\$3,484.01

Net Taxable Income

Total Income

NET INCOME AND EXPENSES

\$11,103.25
 \$11,103.25
 \$11,103.25

This is a copy of the customer statement. The original has been mailed to the address of record.

McGinnSmith & Company, Inc.

Account Number: 0816
 Account Name: SMITH
 Statement Date: 08/07/2009 to 08/30/2009

Settlement Date	Account Type	Transaction	Description	Quantity	Amount
08/08/09	CASH	REINVESTMENT	PRIME FUND - CAPITAL RESERVES CLASS REINVESTED @ \$1.00	4.84	(\$4.84)
Net Core Funds Purchased					
					(\$105,300.94)
Core Funds Sold					
Settlement Date	Account Type	Transaction	Description	Quantity	Amount
08/08/09	CASH	YOU SOLD	PRIME FUND-CAPITAL RESERVES CLASS @ 1	(366,030)	\$366,030.00
08/08/09	CASH	YOU SOLD	PRIME FUND - CAPITAL RESERVES CLASS @ 1	(10,016)	\$10,016.00
Net Core Funds Sold					\$376,046.00

NET CORE FUND ACTIVITY
 \$209,598.06

Date	Account Type	Transaction	Description	Quantity	Amount
08/08/09	CASH	WIRE TRANS TO BANK	WIRE TRANS TO BANK		\$100,000.00
Net Deposits					\$100,000.00

Date	Account Type	Transaction	Description	Quantity	Amount	Total Cost Basis	Realized Gain (Loss)
08/08/09	CASH	WIRE TRANS TO BANK	WIRE TRANS TO BANK		(\$50,000.00)		
08/08/09	CASH	WIRE TRANS TO BANK	WIRE TRANS TO BANK		(\$310,000.00)		
08/08/09	CASH	WIRE TRANS TO BANK	WIRE TRANS TO BANK		(\$10,000.00)		
Net Other Additions and Withdrawals					(\$370,000.00)		

NET ADDITIONS AND WITHDRAWALS
 (\$215,200.00)

PROMISSORY NOTE

June 5, 2009

\$366,000.00

Albany, New York

For value received, the undersigned, TDMM Cable Funding, LLC, a Florida limited liability company (the "Borrower"), promises to pay to the order of Lynn Smith, (the "Lender"), the principal amount of Three Hundred Sixty Six Thousand and 00/100 Dollars (\$366,000.00) on or July 6, 2009 (the "Maturity Date"), as set forth below, together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full.

The interest rate shall be fixed at twenty-four percent (24.0%) per annum (the "Interest Rate").

Principal and interest shall be payable at 2 Rolling Brook Drive, Saratoga Springs, New York 12866, or at such other place as the Lender may designate in writing, in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed in a 360-day year.

There shall be no prepayment premium in the event of any prepayment. In the event of a prepayment the Borrower shall pay interest to the Lender in the amount of one-half of one percent (0.5%) per week for each week, or any part of any week, that this Note remains unpaid.

At the option of the Lender, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation or undertaking of the Borrower to the Lender, hereunder or otherwise, including failure to pay in full and when due any installment of principal or interest, or of any endorser or guarantor of any liability, obligation or undertaking, hereunder or otherwise, to the Lender, or default under any other loan document delivered by the Borrower, any endorser or guarantor, or in connection with the loan evidenced by this Note and the continuance thereof for ten (10) days after the due date; (2) failure of the Borrower to maintain aggregate collateral security value satisfactory to the Lender and the Borrower fails to cure such failure within ten (10) days after written notice is given to the Borrower by the Lender; (3) default of any material liability, obligation or undertaking of the Borrower or of any endorser or guarantor hereof to any other party and the Borrower fails to cure such default within ten (10) days after written notice is given to the Borrower by the Lender; (4) if any statement, representation or warranty heretofore, now or hereafter made in connection with the loan evidenced by this Note, or in any supporting financial statement of the Borrower or of any endorser or guarantor hereof shall be determined by the Lender to have been false in any material respect when made; (5) if the Borrower or any endorser or guarantor is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or of any endorser or guarantor hereof and, if any of the Borrower or any endorser or guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any endorser or guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any endorser or guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any endorser or guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any endorser or guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Lender of a writ in which the Lender is named as trustee of the Borrower or of any endorser or guarantor hereof; (9) a judgment or judgments for the payment of money shall be rendered against the Borrower or any endorser or guarantor hereof, and

any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any endorser or guarantor hereof which shall remain unsatisfied and in effect for any period of ten (10) consecutive days without a stay of execution; (11) the termination of any guaranty hereof; (12) the occurrence of such a material adverse change in the condition or affairs (financial or otherwise) of the Borrower or of any endorser, guarantor or other surety for any obligation of the Borrower to the Lender, or the occurrence of any other event or circumstance, such that the Lender, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any endorser or guarantor hereof to the Lender has been or may be impaired.

Any payments received by the Lender on account of this Note shall, at the Lender's option, be applied first, to any costs, expenses or charges then owed to the Lender by the Borrower; second, to accrued and unpaid interest; and third, to the unpaid principal balance hereof. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Lender may determine. The Borrower hereby authorizes the Lender to charge any deposit account which the Borrower may maintain with the Lender for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder.

The Borrower represents to the Lender that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.

The Borrower and each endorser and guarantor hereof grant to the Lender a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Lender to the Borrower and each endorser or guarantor hereof and any cash, securities, instruments or other property of the Borrower and each endorser and guarantor hereof in the possession of the Lender, whether for safekeeping or otherwise, or in transit to or from the Lender (regardless of the reason the Lender had received the same or whether the Lender has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and any endorser and guarantor hereof to the Lender and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any endorser or guarantor hereof to the Lender at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the.

No delay or omission on the part of the Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Lender, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every endorser or guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally,

including any defense based on impairment of collateral. To the maximum extent permitted by law, the Borrower and each endorser and guarantor of this Note waive and terminate any homestead rights and/or exemptions respecting any premises under the provisions of any applicable homestead laws.

The Borrower and each endorser and guarantor of this Note shall indemnify, defend and hold the Lender and her heirs, administrators, personal representatives, assigns and attorneys harmless against any claim brought or threatened against the Lender by the Borrower, by any endorser or guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Lender's relationship with the Borrower or any endorser or guarantor hereof (each of which may be defended, compromised, settled or pursued by the Lender with counsel of the Lender's selection, but at the expense of the Borrower and any endorser and/or guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Lender.

The Borrower and each endorser and guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 4.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 10 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the Lender's other remedies on account thereof), a late charge equal to 5.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each endorser and guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Lender and its successors, endorsees and assigns.

The liabilities of the Borrower and any endorser or guarantor of this Note are joint and several; provided, however, the release by the Lender of the Borrower or any one or more endorsers or guarantors shall not release any other person obligated on account of this Note. Any and all present and future debts of the Borrower to any endorser or guarantor of this Note are subordinated to the full payment and performance of all present and future debts and obligations of the Borrower to the Lender. Each reference in this Note to the Borrower, any endorser, and any guarantor, is to such person individually and also to all such persons jointly. No person obligated on account of this Note may seek contribution from any other person also obligated, unless and until all liabilities, obligations and indebtedness to the Lender of the person from whom contribution is sought have been satisfied in full. The release or compromise by the Lender of any collateral shall not release any person obligated on account of this Note.

The Borrower and each endorser and guarantor hereof each authorizes the Lender to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note may be made by the Lender, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

This Note shall be governed by the laws of the State of New York.

The Borrower and each endorser and guarantor of this Note each irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in New York over any suit, action or proceeding arising out of or relating to this Note. Each of the Borrower and each endorser and guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each of the Borrower

and each endorser and guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's, endorser's or guarantor's address shown below or as notified to the Lender and (ii) by serving the same upon the Borrower(s), endorser(s) or guarantor(s) in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Borrower or such endorser or guarantor.

THE BORROWER, EACH ENDORSER AND GUARANTOR AND THE LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY OF THE OBLIGATIONS OF THE BORROWER, EACH ENDORSER AND GUARANTOR TO THE LENDER, AND ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER, EACH ENDORSER AND GUARANTOR AND THE LENDER EACH CERTIFIES THAT NEITHER THE LENDER NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

Executed as an instrument under seal on the date first above written.

Witness:

Borrower:
TDMM Cable Funding, LLC

By: Timothy M. McGinn
Title: Managing Member


MSA-040916
TIMOTHY M. MCGINN
99 PINE ST.
ALBANY, NY 12207

16-A 2058
220

8041

DATE Oct. 4, 2004

PAY TO THE ORDER OF Lynn Anne Smith \$ 85,000.00
Eighty five thousand and 00/100 DOLLARS

 M&T Bank
MEMO not + pers. Timothy M. McGinn
⑆022000046⑆ 8041 ⑆0008500000


MSA-040916
TIMOTHY M. MCGINN
99 PINE ST
ALBANY, NY 12207

10-4 2056
220

8287

DATE *May 10, 2007*

PAY TO THE ORDER OF *Lynn Smith* \$ *100,000.00*
One Hundred thousand and 00/100 DOLLARS *MS Select*

 **M&T Bank**
ALBANY, NY

MEMO *Loan* *Timothy M. McGinn*

⑆022000046⑆ [REDACTED] ⑆8287⑆ ⑆00100000000⑆

PROMISSORY NOTE

\$970,000.00

Albany, New York
October 15, 2004

FOR VALUE RECEIVED, the undersigned, TIMOTHY M. MCGINN, an individual, having an office at 99 Pine Street, 3rd Floor, Albany, New York 12207 hereinafter designated as the Borrower, does hereby promise to pay to the order of LYNN A. SMITH, an individual residing at 2 Rolling Drive, Saratoga Springs, New York 12866, hereinafter designated as the Lender, the principal sum of Nine Hundred Seventy Thousand and 00/100 Dollars (\$970,000.00), plus interest at the rate of prime rate plus 1% per year, which sum the Borrower herein covenants to pay to the Lender on demand.

Any payments received hereunder shall be applied first to the payment of interest and the balance in reduction of principal. Interest will be computed on the basis of a 360 day year, but will be charged for the actual number of days within the period for which interest is being charged, at a fixed rate of prime rate plus 1%.

The whole of the principal sum, or any part thereof, shall become due and payable if default be made in any payment under the Promissory Note for a period of fifteen (15) days.

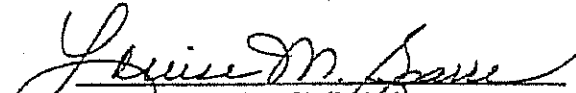
Presentment for payment, demand, protest, notice of protest and notice of dishonor are hereby waived.

SIGNED AND SEALED as of the 15th day of October 2004.

By: 
Timothy M. McGinn

State of New York)
County of Albany)ss:

On the 15th of October in the year 2004 before me, the undersigned, personally appeared Timothy M. McGinn personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.


Signature and Office of individual
Taking acknowledgement

LOUISE M. SPARRE
NOTARY PUBLIC
MY COMMISSION EXPIRES
016P8077359 EXP 7-8-2006