

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

FIRST EXCELSIOR INCOME NOTES LLC

\$1,000,000 Minimum Offering
\$20,000,000 Maximum Offering

5.0% Secured Senior Notes due 2005
7.5% Secured Senior Subordinated Notes due 2007
10.25% Secured Junior Notes due 2009

We are offering up to \$20 million aggregate principal amount of our 5.0% secured senior notes due 2005 (the "original senior notes"), 7.5% secured senior subordinated notes due 2007 (the "original senior subordinated notes") and 10.25% secured junior notes due 2009 (the "junior notes" and together with the senior notes (as defined below) and the senior subordinated notes (as defined below), the "notes"). Upon the maturity of the original senior notes, we may continue to issue additional senior notes (the "additional senior notes" and together with the original senior notes, the "senior notes") with a one-year maturity date and an interest rate of the then current prime rate +1% up to one year prior to the maturity date of the original senior subordinated notes, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed \$20 million. The original senior notes will mature on January 30, 2005 and any additional senior notes will mature on January 30, 2006 or 2007, respectively. Similarly, upon the maturity of the original senior subordinated notes, we may continue to issue additional senior subordinated notes (the "additional senior subordinated notes" and together with the original senior subordinated notes, the "senior subordinated notes") with a two-year maturity date and an interest rate of 7.5%, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed \$20 million. The original senior subordinated notes will mature on January 30, 2007 and any additional senior subordinated notes will mature on January 30, 2009. The junior notes will mature on January 30, 2009. We will pay interest on the notes quarterly on the 30th day of April, July, October and January, commencing on April 30, 2004. The notes are secured by all of the various public and/or private investments that we may acquire, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our asset portfolio (individually an "Investment" and collectively, the "Investments"), and any cash proceeds from the offering that are not used to acquire an Investment, after deducting commissions, fees and expenses. The senior subordinated notes and the junior notes are subordinated in right of payment to the senior notes. Additionally, the junior note holders' right to payment is subordinated in right of payment to the senior subordinated note holders. At our option, we may redeem a pro rata portion of the notes upon the removal, whether voluntary or involuntary, of an Investment from our portfolio.

The notes will be sold through McGinn, Smith & Co., Inc., which is acting as our placement agent for the notes. No public market exists with respect to the notes.

The notes are not certificates of deposit or similar obligations of, and are not guaranteed or insured by, any depository institution, the Federal Deposit Insurance Corporation or any other governmental or private fund or entity. Investing in the notes involves a high degree of risk. See "Risk Factors", beginning on page 5, for a discussion of risks that you should consider before making a decision to invest in the notes.

THE NOTES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE OR FOREIGN SECURITIES LAWS, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE OR FOREIGN SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DOCUMENT OR ENDORSED THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL. THE NOTES ARE OFFERED BY VIRTUE OF EXEMPTIONS PROVIDED BY SECTION 4(2) OF THE SECURITIES ACT, REGULATION D PROMULGATED UNDER THE SECURITIES ACT, CERTAIN STATE AND FOREIGN SECURITIES LAWS AND CERTAIN RULES AND REGULATIONS PROMULGATED PURSUANT THERETO. THE NOTES MAY NOT BE RESOLD OR OTHERWISE TRANSFERRED UNLESS WE RECEIVE AN OPINION OF COUNSEL OR OTHER DOCUMENTATION ACCEPTABLE TO US AND OUR COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED, OR THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE AND FOREIGN SECURITIES LAWS.

	Per note	Total
Offering price.....	100%	100%
Placement agent commissions.....	2%	2%
Proceeds to First Excelsior Income Notes LLC, before expenses.....	98%	98%

McGinn, Smith & Co., Inc. has agreed, as our placement agent, to offer the notes on a "best efforts, all or none" basis with respect to the minimum offering of \$1,000,000, and on a "best efforts" basis thereafter until the earlier of the termination of the offering or the completion of the maximum offering.

We will issue the notes in certificated form. We expect that delivery of the notes will be made in Albany, New York on or about February 23, 2004. McGinn, Smith Capital Holdings Corp. will act as trustee for the notes. See "Affiliated Transactions."

McGINN, SMITH & CO., INC.

The date of this Private Placement Memorandum is January 16, 2004.

**GOVERNMENT
EXHIBIT**

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NOTICE TO INVESTORS

The information contained in this private placement memorandum (the "memorandum") is not complete and its contents may differ from that of memoranda designed to conform to the requirements applicable to registration statements under United States securities laws. The notes are being offered only to "accredited investors", as that term is defined by Regulation D under the Securities Act, and the rules and regulations thereunder, who directly or through their advisors have the expert knowledge to evaluate information and data and whose potential investment is sufficiently large to justify the utilization by them of the access being granted them to other information. Prospective investors will be granted access to all reasonably available, relevant data concerning First Excelsior Income Notes LLC and are urged to request whatever documents or material they believe will be useful in making their investment decision. Potential investors should base their investment decision on their own analysis of all information they deem to be relevant.

The information presented herein was prepared by us and is being furnished by McGinn, Smith & Co., Inc., the placement agent, solely for use by prospective investors in connection with this offering. The placement agent has not independently verified the information contained herein or otherwise made any further investigation of First Excelsior Income Notes LLC and makes no representation or warranty, express or implied, as to the accuracy or completeness of such information. Neither we nor the placement agent make any representation or warranty, express or implied, as to our future performance.

BECAUSE THE NOTES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR ANY STATE OR FOREIGN SECURITIES LAWS, THEY MAY NOT BE RESOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THE RESALE, TRANSFER OR OTHER DISPOSITION IS REGISTERED UNDER THE SECURITIES ACT OR ANY APPLICABLE STATE AND FOREIGN SECURITIES LAWS OR AN EXEMPTION THEREFROM IS AVAILABLE. No public market exists with respect to any of our securities, including the notes. Investors should be aware that they may be required to bear the risks of this investment for an indefinite period.

This memorandum does not constitute an offer to sell or a solicitation of an offer to buy any of our securities to any person in any jurisdiction in which such offer or solicitation is unlawful. This offering is not being made to, nor will subscriptions be accepted from or on behalf of, any person in any jurisdiction in which the making or acceptance thereof would not be in compliance with the laws of such jurisdiction. We may, however, in our sole and absolute discretion, take such action as we deem necessary to make the offering in any such jurisdiction and extend the offering to offerees in such jurisdiction.

This memorandum is submitted to prospective investors on a confidential basis and is for their informational use solely in connection with the offering described herein. The disclosure of any of the information contained herein or its use for any other purpose except with our prior written consent is prohibited. This memorandum may not be reproduced, in whole or in part, and it is accepted with the understanding that it will be returned on request if the recipient does not purchase the securities offered hereby or if the recipient's subscription is not accepted or if the offering is terminated.

This memorandum supercedes any documents previously supplied to prospective investors concerning us and the terms and conditions of the offering being made hereby. This memorandum contains summaries of the contents of certain agreements and other documents. Reference should be made to these agreements and documents for complete information concerning the rights and obligations of the parties thereto and the matters described therein. Subject to any applicable restrictions as to confidentiality, all of these agreements and documents shall be made available upon request.

No person has been authorized to make any representations concerning this offering, and no person other than the placement agent has been authorized to furnish any information, other than as set forth in this memorandum, and, if made or given, these other representations or information must not be relied upon by prospective investors.

Prospective investors are not to construe the contents of this memorandum as legal, tax or investment advice. Each prospective investor should consult its advisors as to legal, tax, financial and related matters concerning an investment in the notes. Without limiting the generality of the foregoing, prospective investors outside the United States should consult their legal, tax or financial advisers in order to ascertain the tax consequences of buying, holding and receiving proceeds from the notes.

Neither the delivery of this memorandum nor any sale made hereunder shall, under any circumstances, create any implication that the information herein is correct as of any time subsequent to the date hereof or that there has not been any change in the information contained herein or in our affairs since the date hereof.

The notes are offered subject to our acceptance of subscriptions and other conditions as set forth in this memorandum. We reserve the right in our discretion to reject any subscription in whole or in part or to allot to any investor less than the aggregate principal amount of the notes subscribed for, and to withdraw, cancel or modify the offering at any time without notice.

This memorandum does not constitute an offer of or an invitation by or on behalf of the issuer to subscribe or purchase any notes and may not be used for the purpose of an offer to, or a solicitation by, anyone in any circumstances in which such offer or solicitation is not authorized or lawful. The distribution of this document and the offering of the notes in certain jurisdictions may be restricted by law. Persons who obtain this document are required by the issuer to inform themselves about and to observe any such restrictions. No action is being taken to permit a public offering of the notes or the distribution of this document in any jurisdiction where action would be required for such purposes.

NOTICE TO NEW HAMPSHIRE RESIDENTS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, 1955, AS AMENDED, WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

NOTICE TO FLORIDA RESIDENTS

THE SECURITIES REFERRED TO HEREIN WILL BE SOLD TO, AND ACQUIRED BY, THE HOLDER IN A TRANSACTION EXEMPT UNDER SECTION 517.061(11) OF THE FLORIDA SECURITIES ACT. THE SECURITIES BEING OFFERED HAVE NOT BEEN REGISTERED UNDER SAID ACT IN THE STATE OF FLORIDA. IN ADDITION, ALL FLORIDA RESIDENTS SHALL HAVE THE PRIVILEGE OF VOIDING THE PURCHASE WITHIN THREE (3) DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE ISSUER, AN AGENT OF THE ISSUER, OR AN ESCROW AGENT OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER, WHICHEVER OCCURS LATER.

NOTICE TO PENNSYLVANIA RESIDENTS

UNDER PROVISIONS OF THE PENNSYLVANIA SECURITIES ACT OF 1972, EACH PENNSYLVANIA RESIDENT SHALL HAVE THE RIGHT TO WITHDRAW HIS ACCEPTANCE WITHOUT INCURRING ANY LIABILITY TO THE SELLER, UNDERWRITER (IF ANY) OR ANY PERSON, WITHIN TWO (2) BUSINESS DAYS FROM THE DATE OF RECEIPT BY THE ISSUER OF HIS WRITTEN BINDING CONTRACT OR PURCHASE OR IN THE CASE OF A TRANSACTION IN WHICH THERE IS NO WRITTEN BINDING CONTRACT OF PURCHASE, WITHIN TWO BUSINESS DAYS AFTER HE MAKES THE INITIAL PAYMENT FOR THE SECURITIES BEING OFFERED.

NOTICE TO NEW YORK INVESTORS

THIS PRIVATE PLACEMENT MEMORANDUM HAS NOT BEEN FILED WITH OR REVIEWED BY THE ATTORNEY GENERAL OF THE STATE OF NEW YORK PRIOR TO ITS ISSUANCE AND USE. THE ATTORNEY GENERAL OF THE STATE OF NEW YORK HAS NOT PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THIS PRIVATE PLACEMENT MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS AND DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN.

NOTICE TO NEW JERSEY RESIDENTS

THIS PRIVATE PLACEMENT MEMORANDUM HAS NOT BEEN FILED OR REVIEWED BY THE NEW JERSEY BUREAU OF SECURITIES OR THE DEPARTMENT OF LAW AND PUBLIC SAFETY OF THE STATE OF NEW JERSEY PRIOR TO ITS ISSUANCE AND USE. NEITHER THE ATTORNEY GENERAL OR THE STATE OF NEW JERSEY BUREAU OF SECURITIES HAS PASSED ON OR ENDORSED THE MERITS OF THIS MEMORANDUM (OR THE PRIVATE OFFERING CONTAINED HEREIN). ANY REPRESENTATIONS TO THE CONTRARY ARE UNLAWFUL. ALL PROCEEDS OF THE OFFERING WILL BE HELD IN TRUST BY THE COMPANY FOR THE BENEFIT OF THE PURCHASERS OF NOTES TO BE USED ONLY FOR THE PURPOSES SET FORTH UNDER THE CAPTION "USE OF PROCEEDS".

NOTICE TO CONNECTICUT RESIDENTS

THE SECURITIES REFERRED TO IN THIS MEMORANDUM WILL BE SOLD PURSUANT TO THE EXEMPTION SET OUT IN SECTION 36-490(B)(9) OF THE CONNECTICUT UNIFORM SECURITIES ACT. THE SECURITIES HAVE NOT BEEN REGISTERED UNDER SAID ACT IN THE STATE OF CONNECTICUT. THE SECURITIES CANNOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE BANKING COMMISSIONER OF THE STATE OF CONNECTICUT, NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

NOTICE TO MASSACHUSETTS RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE MASSACHUSETTS UNIFORM SECURITIES ACT OR THE SECURITIES ACT OF 1933, AS AMENDED, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

NOTICE TO CALIFORNIA RESIDENTS

THE SALE OF THE SECURITIES DESCRIBED IN THIS MEMORANDUM HAVE NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR THE RECEIPT OF CONSIDERATION THEREFORE PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE THEREOF IS EXEMPT UNDER APPLICABLE LAW. THE COMPANY IS RELYING ON THE EXEMPTION FROM SUCH QUALIFICATION PROVIDED BY SECTION 25102(f) OF THE CALIFORNIA CORPORATIONS CODE.

NOTICE TO OHIO RESIDENTS

THESE SECURITIES ARE BEING OFFERED IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE OHIO SECURITIES ACT. THE SECURITIES CANNOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR IN A TRANSACTION WHICH IS OTHERWISE IN COMPLIANCE WITH SUCH ACT. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COMMISSIONER OF THIS STATE NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This memorandum includes "forward-looking statements". All statements other than statements of historical facts included in this memorandum may constitute forward-looking statements. In addition, forward-looking statements generally can be identified by the use of forward-looking terminology such as "may", "will", "expect", "intend", "estimate", "anticipate", "believe" or "continue" or the negatives thereof or variations thereon or similar terminology. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we can give no assurance that such expectations will prove to have been correct. Important factors such as those discussed in the "Risk Factors" section could cause actual results to differ materially from our expectations. All subsequent written and oral forward-looking statements attributable to us, the placement agent or any other persons acting on our behalf are expressly qualified in their entirety by this paragraph. These forward-looking statements speak only as of the date of this memorandum. We expressly disclaim any obligation or undertaking to disseminate any updates or revisions to any forward-looking statement contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

ADDITIONAL INFORMATION

We have retained McGinn, Smith & Co., Inc. to act as our placement agent in connection with arranging the private placement of the notes. With respect to the minimum offering of \$1,000,000, McGinn, Smith & Co., Inc., as our placement agent, has agreed to offer the notes on a "best efforts, all or none" basis, and on a "best efforts" basis thereafter until the earlier of the termination of the offering or the completion of the maximum offering. The placement agent will act as primary contact for, and will be available to consult with, any prospective investor who receives this document.

We undertake to make available to every investor, during the course of the offering and prior to sale, the opportunity to ask questions of and receive answers from us concerning the terms and conditions of the offering and to obtain any appropriate additional information necessary to verify the accuracy of the information contained in this document or for any other purpose relevant to a prospective investment in the notes offered hereby.

All communications or inquiries relating to the notes should be directed to the following individual at McGinn, Smith & Co., Inc.:

David L. Smith
President
McGinn, Smith & Co., Inc.
Capital Center, 5th Floor
99 Pine Street
Albany, New York 12207
Phone: 518-449-5131
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SUMMARY

This summary highlights selected information from this memorandum and may not contain all the information that may be important to you. The following summary is qualified in its entirety by the more detailed information appearing elsewhere in this memorandum. You should read the entire memorandum before making an investment decision. Unless the context otherwise requires, all references to "FEIN", "we", "us" or "our" refer to First Excelsior Income Notes LLC.

FEIN

First Excelsior Income Notes LLC ("FEIN") is a newly formed, single purpose limited liability company. We were organized in New York in 2004.

Our sole and managing member is McGinn, Smith Advisors, LLC, a New York limited liability company. McGinn, Smith Advisors, LLC is a wholly-owned subsidiary of McGinn, Smith Holdings, LLC, a New York limited liability company and an affiliate of this offering's placement agent, McGinn, Smith & Co., Inc.

Our principal offices are located at Capital Center, 5th Floor, 99 Pine Street, Albany, New York, 12207 and our telephone number is (518) 449-5131.

Business

FEIN has been formed to identify and acquire various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio (individually an "Investment" and collectively, the "Investments"). We may acquire such Investments directly, or from our managing member or an affiliate of us or our managing member that has purchased the Investment. If the Investment is purchased from our managing member or any affiliate, we will not pay above the price paid by our managing member or such affiliate for the Investment, other than to reimburse our managing member or such affiliate for its costs and any discounts that it may have received by virtue of a special arrangement or relationship. In other words, if we purchase an Investment from our managing member or any affiliate, we will pay the same price for the Investment that we would have paid if we had directly purchased the Investment. We may also purchase securities from issuers in offerings for which McGinn, Smith & Co., Inc. is acting as underwriter or placement agent and for which McGinn, Smith & Co., Inc. will receive a commission. We may retain the Investments beyond the term of the notes, sell such Investments during the term of the notes or offer the notes to preferred investors. If an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes, we may, at our option, redeem a pro rata portion of the notes. See "Description of the Notes – Redemption at the Option of FEIN".

Our profitability is largely determined by the difference, or "spread," between the effective rate we pay on the Investments we acquire and the full rate of return received on such Investments.

The Offering

The following summary is not intended to be complete. For a more detailed description of the notes, see "Description of the Notes."

Issuer	First Excelsior Income Notes LLC
Amount of Offering	Up to \$20 million in three tranches: a minimum of \$2.5 million and up to \$5 million to senior note holders; a minimum of \$2.5 million and up to \$5 million to senior subordinated note holders; and a minimum of \$10 million and up to \$15 million to junior note holders
Placement Agent	McGinn, Smith & Co., Inc.
Trustee	McGinn, Smith Capital Holdings Corp.
Securities Offered	5.0% Secured Senior Notes due 2005 (the "original senior notes"), 7.5% Secured Senior Subordinated Notes due 2007 (the "original senior

subordinated notes”) and 10.25% Secured Junior Notes due 2009 (the “junior notes” and together with the senior notes (as defined below) and senior subordinated notes (as defined below), the “notes”). Upon the maturity of the original senior notes, we may continue to issue additional senior notes (the “additional senior notes” and together with the original senior notes, the “senior notes”) with a one-year maturity date and an interest rate of the then current prime rate +1% up to one year prior to the maturity date of the original senior subordinated notes, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed \$20 million. Similarly, upon the maturity of the original senior subordinated notes, we may continue to issue additional senior subordinated notes (the “additional senior subordinated notes” and together with the original senior subordinated notes, the “senior subordinated notes”) with a two-year maturity date and an interest rate of 7.5%, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed \$20 million. The notes are secured promises to pay issued by us. By purchasing a note, you are lending money to us. The notes represent our obligation to repay your loan with interest.

Security	All of the various public and/or private investments that we may acquire, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio (individually an “Investment” and collectively, the “Investments”), and any cash proceeds from the offering that are not used to acquire an Investment, after deducting commissions, fees and expenses.
First Closing	Occurs upon the receipt of \$1 million aggregate principal amount from the sale of the notes.
Escrow Account	All subscription proceeds will be held in an escrow account and no subscription agreement will be accepted until the minimum proceeds requirement is met for the first closing.
Method of Purchase	Prior to your purchase of notes, you will be required to complete a subscription agreement that will set forth the principal amount of your purchase and certain other information regarding your ownership of the notes.
Minimum Subscription	Minimum aggregate principal amount of \$25,000 for each of the senior notes, senior subordinated notes and junior notes.
Offering Price	100% of the principal amount per note.
Maturity	January 30, 2005 for the original senior notes and January 30, 2006 or 2007, respectively, for any additional senior notes. January 30, 2007 for the original senior subordinated notes, and January 30, 2009 for the additional senior subordinated notes, if any. January 30, 2009 for the junior notes.
Interest Rate	The notes will accrue interest from the date of the first closing at the following rates per year: 5.0% for the original senior notes and the then current prime rate + 1% for any additional senior notes; 7.5% for the original senior subordinated notes and any additional senior subordinated notes; and 10.25% for the junior notes.
Interest Payment Dates	Quarterly on the 30 th day of April, July, October and January, commencing on April 30, 2004

Principal Payment.....	Unless we choose to redeem a pro rata portion of the notes upon the removal, whether voluntary or involuntary, of an Investment from our asset portfolio, we will not pay principal over the term of the notes. See "Description of the Notes – Redemption at the Option of FEIN". We are obligated to pay the entire principal balance of the outstanding notes upon maturity.
Payment Method.....	Principal and interest payments will be made by whatever means you indicate in your subscription agreement, including by an electronic funds transfer to a depository account you designate in your subscription documents.
Redemption at Maturity	Unless we choose to redeem a pro rata portion of the notes, the notes may only be redeemed at, and not prior to, Maturity.
Optional Redemption.....	At the option of FEIN, a pro rata percentage of the notes may be redeemed if an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes. See "Description of the Notes – Redemption at the Option of FEIN".
Ranking.....	The senior subordinated notes and junior notes are subordinate in right of payment to the senior notes, and the junior notes are additionally subordinate in right of payment to the senior subordinated notes.
Use of Proceeds	If all the notes are sold, we would expect to receive approximately \$19,550,000 of net proceeds from this offering after deducting the placement agent's commissions and estimated offering expenses payable by us. We intend to use the net proceeds to acquire Investments. Assuming we received the maximum amount of the offering, we will not invest more than 25% of the net proceeds of the offering in any single Investment. See "Use of Proceeds."
Absence of Public Market.....	There is no existing or public market for the notes. We cannot provide you with any assurance as to: ● the liquidity of any market that may develop for the notes; ● your ability to sell or pledge your notes; or ● the prices at which you will be able to sell your notes.
Transfer Restrictions.....	The notes are subject to significant restrictions on resale. We have not registered, and do not plan to register, the notes under the Securities Act or any state securities laws and you may not offer or sell the notes except under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.
Plan of Distribution	We are offering the notes without registration under the Securities Act in reliance upon an exemption afforded by Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act.

McGinn, Smith & Co., Inc., as our placement agent, will solicit offers to purchase the notes, for which it will receive commissions equal to 2% of the purchase price of the notes. With respect to the minimum offering of \$1,000,000, McGinn, Smith & Co., Inc., as our placement agent, has agreed to offer the notes on a "best efforts, all or none" basis, and on a "best efforts" basis thereafter until the earlier of the termination of the offering or the completion of the maximum offering. The offering period will extend until the earlier of (i) the sale of all of the notes, or (ii) June 30, 2004, provided that we

have retained the right, in our discretion, and our placement agent has agreed in that event, to extend the offering period for up to six additional months.

Suitability Requirements.....The risks associated with an investment in the notes and the lack of liquidity makes this investment suitable only for an investor who has substantial net worth, no need for liquidity with respect to this investment and who can bear the economic risk of a complete loss of the investment. In addition, the investment is suitable only for an investor who has sufficient knowledge and experience in financial and business matters and investments in organizations such as FEIN to enable the investor to evaluate the merits and risk associated with a purchase of the notes. Subscriptions will be accepted only from "accredited investors," as that term is defined in Regulation D promulgated under the Securities Act.

Risk Factors

See "Risk Factors", immediately following this summary, for a discussion of risks relating to an investment in the notes.

RISK FACTORS

Before you invest in the notes, you should carefully consider these risk factors, as well as the other information contained in this memorandum.

Risk Factors Relating to the Notes

The Notes May Not Be A Suitable Investment for All Investors. *The notes may not be a suitable investment for you, and we advise you to consult your investment, tax and other professional financial advisors prior to purchasing notes.*

The risks described below set forth many of the risks associated with the purchase of notes. In addition to those risks, the characteristics of the notes, including maturity, interest rate and lack of liquidity, may not satisfy your investment objectives or otherwise be a suitable investment for you. This may be based on your ability to withstand a loss of interest or principal or other aspects of your financial situation, including your income, net worth, financial needs, investment risk profile, return objectives, investment experience and other factors. For instance, prior to purchasing any notes, you should consider your investment allocation with respect to the amount of your contemplated investment in the notes in relation to your other investment holdings and the diversity of those holdings.

The Notes Will Not Be Registered Under The Securities Act And You May Not Be Able To Sell The Notes Quickly, Or At All. *Your ability to liquidate your investment is limited because of transfer restrictions and the lack of a trading market.*

The notes are being offered without registration under the Securities Act in reliance upon an exemption afforded by Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act. We have no plans or intention to register the notes. As a result, there are significant restrictions on your ability to sell or otherwise transfer the notes and we cannot assure you that you will be able to sell the notes quickly, or at all. Therefore, the notes are suitable for purchase only by investors who are capable of bearing the economic risks of holding the notes for an indefinite period of time. Due to the non-transferable nature of the notes and the lack of a market for the sale of the notes, you might be unable to sell, pledge or otherwise liquidate your investment. See "Description of the Notes."

You Will Have Only Limited Protection Under The Indenture. *The indenture governing the notes contains only limited restrictions on our activities and only limited events of default, and thus, provides only limited protection to you.*

The indenture governing the notes contains limited restrictions on our activities. Because there are only very limited restrictions and limited events of default under the indenture, we will not be required to maintain any ratios of assets to debt in order to increase the likelihood of timely payments to you under the notes. See "Description of the Notes - Events of Default."

The Senior Subordinate Note Holders And Junior Note Holders Lack Priority In Payment On The Notes. *The senior subordinated note holders' and junior note holders' right to receive payments on the notes is subordinated in right of payment to the senior note holders.*

The senior subordinated notes and junior notes will be subordinated to the prior payment in full of the senior notes. The junior notes will also be subordinated in right of payment to the senior subordinated notes. The senior note holders will have priority over up to 25% of our secured assets over the senior subordinated and junior note holders, and the senior note holders and senior subordinated note holders will have priority over up to 50% of our secured assets over the junior note holders. Because of the subordination provisions of the notes, in the event of our bankruptcy, liquidation or dissolution, our assets would be available to make payments to the senior subordinated note holders and the junior note holders only after all payments had been made on the senior notes, and to the junior note holders only after all payments had been made on the senior subordinated notes. Sufficient assets may not remain after all such senior note payments have been made to make any payments to the senior subordinated notes and the junior notes, including payments of interest when due or principal upon maturity. Likewise, sufficient assets may not remain after all senior subordinated note payments have been made to make any payments to the junior notes, including payments of interest when due or principal upon maturity.

The Secured Assets May Be Inadequate To Repay The Notes. *If an Investment is redeemed, prepaid, liquidated or sold, there may be insufficient security for you to collect upon in an event of default.*

Your security interest is in the pool of Investments as a whole, not a particular Investment, and in any cash proceeds from the offering that are not used to acquire an Investment, after deducting commissions, fees and expenses. Even though the proceeds from your purchase of a note may be used to acquire a particular Investment, specific notes are not limited to or payable from a particular Investment. All notes in the same tranche will be equably and ratably secured by all of our Investments. We are not restricted in the indenture from selling any of the Investments that we acquire. Although we have the option to redeem a portion of the notes upon the removal, whether voluntary or involuntary, of an Investment from our asset portfolio, we are not required to do so. Therefore, in an event of default, your security interest in the Investments may be insufficient for you to be repaid on the notes.

The Notes Will Have No Insurance Or Guarantee. *There is no insurance or guarantee for our obligation to make payments on the notes, so you will have to rely on our cash flow from operations and the Investments for the repayment of principal and payment of interest.*

The notes are not certificates of deposit or similar obligations of, and are not guaranteed or insured by, any depository institution, the Federal Deposit Insurance Corporation, or any other governmental or private fund or entity. Therefore, if you invest in the notes, you will have to rely on our cash flow from operations and the Investments for repayment of principal at maturity and payment of interest when due. The senior notes will have priority over the Investments. If, after the payment of the senior notes, the Investments and cash flow from operations and other sources of funds are not sufficient to pay the senior subordinated notes and junior notes, then the senior subordinated note holders and junior note holders may lose all or part of their investment. Likewise, if, after the payment of the senior subordinated notes, the Investments and cash flow from operations and other sources of funds are not sufficient to pay the junior notes, then the junior note holders may lose all or part of their investment.

Risk Of Redemption At The Option Of FEIN. *Redemption by us prior to maturity may result in reinvestment risk to you.*

If an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes, we have the option to redeem a pro rata portion of the notes prior to their stated maturity upon 10 days written notice to you. For those notes that are redeemed, 100% of the principal amount plus accrued but unpaid interest up to the redemption date will be paid. Any such redemption may have the effect of reducing the income or return on investment that you may receive in an investment in the notes by reducing the term of the investment. In addition, you may not be able to reinvest the proceeds of any such redemption for the remainder of the original term of the notes at an interest rate comparable to the rate paid on the notes. See "Description of the Notes - Redemption at the Option of FEIN."

The Trustee May Experience A Conflict Of Interest. *The trustee under the indenture governing the notes is an affiliate of our managing member, acts as our servicing agent, acts as the collateral agent under the security agreement, and represents all three tranches of notes.*

The trustee is McGinn, Smith Capital Holdings Corp., which is an affiliate of our managing member, McGinn, Smith Advisors, LLC and of our placement agent, McGinn, Smith & Co., Inc. In addition, we have retained McGinn, Smith Capital Holdings Corp. to act as our servicing agent. Furthermore, pursuant to a security agreement between FEIN and McGinn, Smith Capital Holdings Corp., as collateral agent, McGinn, Smith Capital Holdings Corp. will hold the security interest on the Investments on behalf of the note holders. In the event that you feel that you are not adequately represented by the trustee and/or the collateral agent in an event of default, holders of 25% of the aggregate principal amount of all notes outstanding may vote to remove the trustee and/or the collateral agent and elect a successor trustee and/or collateral agent.

The trustee under the indenture and the collateral agent under the security agreement will represent all three tranches of notes. The note holders of a particular tranche of notes may feel that the trustee and/or the collateral agent have a conflict of interest when it acts in a way that favors one tranche of notes over another tranche of notes. In that event, holders of 25% of the aggregate principal amount of notes in a particular tranche may vote to remove the trustee and/or the collateral agent with respect to that tranche of notes and appoint a successor trustee and/or collateral agent to represent that tranche of notes.

Risk Factors Relating to FEIN

FEIN Is A Newly-Formed Limited Liability Company. *We have no historical financial information or results of operations on which you can base your investment decision.*

FEIN was organized in New York in 2004. We have no historical financial statements or results of operations. As a result, you have no historical data on which to base your estimation of our likelihood success in achieving our business and financial goals.

We May Be Unable To Finance Our Operations. *If we are unable to generate a sufficient cash flow, our results of operations and financial condition would be materially and adversely affected and we may be unable to make payments on the notes.*

We require a substantial amount of cash liquidity to operate our business. Among other things, we use such cash liquidity to:

- pay incentive commissions to our managing member's salesmen at the rate of 2% of the aggregate principal amount of the notes per year over the term of the notes;
- pay our managing member a portfolio management fee of 1% of the aggregate principal amount of the notes per year over the term of the notes;
- pay our servicing agent a fee for administering the notes of 0.25% of the aggregate principal amount of the notes per year over the term of the notes;
- satisfy working capital requirements and pay operating expenses, including accounting and legal expenses that we estimate to equal 0.25% of the aggregate principal amount of the notes per year; and
- pay interest expense.

Our cash flow is wholly dependent on our ability to find and acquire suitable Investments. We cannot assure you that our business strategy will succeed or that we will achieve our anticipated financial results. We may not be able to find such opportunities and our ability to generate cash flow depends on market and other factors beyond our control. These factors include:

- the current economic and competitive conditions; and
- any delays in implementing any strategic projects we may have.

Depending upon the outcome of one or more of these factors, we may not be able to generate sufficient cash flow from operations to satisfy all of our obligations, including the notes. If we are unable to pay our debts, we will be required to pursue one or more alternative strategies, such as selling assets, or refinancing or restructuring our indebtedness. These alternative strategies may not be feasible at the time or prove adequate.

We Are Subject To Rate Fluctuations. *Rate fluctuations between instruments may materially and adversely affect our results of operations, financial condition and cash flows and our ability to make payments on the notes.*

Our profitability is largely determined by the difference, or "spread," between the effective rate we pay on the Investments we acquire and the full rate received on such Investments. We may not be able to receive the same rate of return on all of our Investments. If one of our Investments is redeemed, prepaid, liquidated or sold prior to maturity, we may not be able to find a comparable Investment to replace it that would generate the same yields.

We Will Be Adversely Affected When Investments Are Prepaid Or Defaulted. *If an Investment is prepaid or experiences a default, our results of operations, financial condition and cash flows and our ability to make payments on the notes could be materially and adversely affected.*

Our results of operations, financial condition, cash flows and liquidity, and consequently our ability to make payments on the notes, depend, to a material extent, on the performance of the Investments that we purchase. A portion of

the Investments that we acquire may default or prepay. We bear the risk of losses resulting from payment defaults and may not realize the full value of our investment. Our income can also be adversely affected by prepayment of an Investment in our portfolio. Our revenue is based on a percentage of the outstanding principal balance of an Investment in our portfolio. If an Investment is prepaid or charged-off, then our revenue will decline while our servicing costs may not decline proportionately.

We Depend On Our Managing Member And On Key Personnel. *The success of our operations depends on our managing member and on certain key personnel.*

Our future operating results depend in significant part upon the continued service of our managing member, to which we pay 1% of the aggregate principal amount of the notes per year over the term of the notes to act as our portfolio manager and give us investment advice. We rely solely on the expertise of our managing member to make the proper investment decisions to generate cash flow.

Our future operating results also depend in part upon our ability to attract and retain qualified management, technical, and sales and support personnel for our operations. Competition for such personnel is intense. We cannot assure you that we will be successful in attracting or retaining such personnel. The loss of any key employee, the failure of any key employee to perform in his or her current position or our inability to attract and retain skilled employees, as needed, could materially and adversely affect our results of operations, financial condition and cash flows.

Our Industry Is Competitive. *Increased competition could materially and adversely affect our operations and profitability.*

We may have to compete with other investors. These competitors may have greater financial resources than we do or have better relationships or offer other forms of financing or services not provided by us. Our ability to compete successfully depends largely upon establishing and maintaining relationships in the investment community and acquiring suitable Investments.

We May Be Harmed By Adverse Economic Conditions. *Adverse economic conditions could materially and adversely effect our revenues and cash flows.*

A prolonged downturn in the economy could have a material adverse impact upon us, our results of operations and our ability to implement our business strategy. Similarly, adverse economic conditions or other factors might adversely affect the performance of our Investments, including the level of delinquencies, which could materially and adversely affect our results of operation, financial condition and cash flows and our ability to perform our obligations under the notes. These economic conditions could result in severe reductions in our revenues or the cash flows available to us and adversely affect our ability to make payments on the notes.

We Are Subject To Regulations. *Failure to materially comply with all laws and regulations applicable to us could materially and adversely affect our ability to operate our business and our ability to make payments on the notes.*

We believe that we are in compliance in all material respects with all such laws and regulations, and that such laws and regulations have had no material adverse effect on our ability to operate our business. However, we will be materially and adversely affected if we fail to comply with:

- applicable laws and regulations;
- changes in existing laws or regulations;
- changes in the interpretation of existing laws or regulations; or
- any additional laws or regulations that may be enacted in the future.

USE OF PROCEEDS

If all of the notes are sold, we would expect to receive approximately \$19,550,000 of net proceeds from this offering after deducting the 2% placement agent commission and other offering expenses payable by us.

We intend to use the net proceeds to acquire various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio (individually an "Investment" and collectively, the "Investments"). Assuming we received the maximum amount of the offering, we will not invest more than 25% of the proceeds of this offering in any single Investment. All subscription proceeds will be held in an escrow account and no subscription agreement will be accepted until the minimum proceeds requirement is met for the first closing. Once we achieve the minimum amount required for the first closing, we will begin to acquire Investments.

We may acquire such Investments directly, or from our managing member or an affiliate of us or our managing member that has purchased the Investment. If the Investment is purchased from our managing member or any affiliate, we will not pay above the price paid by our managing member or such affiliate for the Investment, other than to reimburse our managing member or such affiliate for its costs and any discounts that it may have received by virtue of a special arrangement or relationship. In other words, if we purchase an Investment from our managing member or any affiliate, we will pay the same price for the Investment that we would have paid if we had directly purchased the Investment. We may also purchase securities from issuers in offerings for which McGinn, Smith & Co., Inc. is acting as underwriter or placement agent and for which McGinn, Smith & Co., Inc. will receive a commission. We may retain the Investments beyond the term of the notes, sell such Investments during the term of the notes or offer the notes to preferred investors. If an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes, we may, at our option, redeem a pro rata portion of the notes. See "Description of the Notes – Redemption at the Option of FEIN".

CAPITALIZATION

Our sole member is our managing member, McGinn, Smith Advisors, LLC, which holds 100% of the membership interest in FEIN.

BUSINESS

FEIN has been formed to acquire various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio (individually an "Investment" and collectively, the "Investments"). We may acquire such Investments directly, or from our managing member or an affiliate of us or our managing member that has purchased the Investment. If the Investment is purchased from our managing member or any affiliate, we will not pay above the price paid by our managing member or such affiliate for the Investment, other than to reimburse our managing member or such affiliate for its costs and any discounts that it may have received by virtue of a special arrangement or relationship. In other words, if we purchase an Investment from our managing member or any affiliate, we will pay the same price for the Investment that we would have paid if we had directly purchased the Investment. We may also purchase securities from issuers in offerings for which McGinn, Smith & Co., Inc. is acting as underwriter or placement agent and for which McGinn, Smith & Co., Inc. will receive a commission.

Our profitability is largely determined by the difference, or "spread," between the effective rate we pay on the Investments we acquire and the full rate of return received on such Investments.

MANAGEMENT

We are solely managed by our managing member, McGinn, Smith Advisors, LLC, a New York limited liability company. McGinn, Smith Advisors, LLC was formed in 2003. McGinn, Smith Advisors, LLC is a wholly-owned subsidiary of McGinn, Smith Holdings, LLC, a New York limited liability company and an affiliate of this offering's placement agent, McGinn, Smith & Co., Inc.

DESCRIPTION OF THE NOTES

The following statements with respect to the notes are not complete and are qualified in all respects by the provisions of the indenture, copies of which are available from FEIN upon request. See "Additional Information."

General. We will issue the notes under a indenture between First Excelsior Income Notes LLC and McGinn, Smith Capital Holdings Corp., as trustee (the "trustee"), in a private transaction that is not subject to the registration requirements of the Securities Act. The terms and conditions of the notes include those stated in the indenture. The following is a summary of some, but not all, provisions of the notes and the indenture. For a complete understanding of the notes, you should review the definitive terms and conditions contained in the actual notes and the indenture, which include definitions of certain terms used below. The indenture, and not this description, defines your rights as holders of the notes. Copies of the form of the notes and the indenture are available from us at no charge upon request.

We are offering up to \$20 million aggregate principal amount of our 5.0% secured senior notes due 2005 (the "original senior notes"), 7.5% secured senior subordinated notes due 2007 (the "original senior subordinated notes") and 10.25% secured junior notes due 2009 (the "junior notes" and together with the senior notes (as defined below) and the senior subordinated notes (as defined below), the "notes"). Upon the maturity of the original senior notes, we may continue to issue additional senior notes (the "additional senior notes" and together with the original senior notes, the "senior notes") with a one-year maturity date and an interest rate of the then current prime rate +1% up to one year prior to the maturity date of the original senior subordinated notes, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed \$20 million. Similarly, upon the maturity of the original senior subordinated notes, we may continue to issue additional senior subordinated notes (the "additional senior subordinated notes" and together with the original senior subordinated notes, the "senior subordinated notes") with a two-year maturity date and an interest rate of 7.5%, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed \$20 million.

The notes are secured by all of the various public and/or private investments that we may acquire, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our asset portfolio (individually an "Investment" and collectively, the "Investments"), and any cash proceeds from the offering that are not used to acquire an Investment, after deducting commissions, fees and expenses. Even though the proceeds from your purchase of a note may be used to acquire a particular Investment, specific notes are not limited to or payable from a particular Investment. All notes in the same tranche will be equally and ratably secured by all of our Investments. The senior subordinated notes and junior notes will be subordinated in right of payment to the prior payment in full of the senior notes. Additionally, the junior notes will be subordinated in right of payment to the prior payment in full of the senior subordinated notes. The notes are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation or any other agency or company.

If not earlier redeemed, the original senior notes will mature on January 30, 2005 and any additional senior notes will mature on January 30, 2006 or 2007, respectively. If not earlier redeemed, the original senior subordinated notes will mature on January 30, 2007 and any additional senior subordinated notes will mature on January 30, 2009. If not earlier redeemed, the junior notes will mature on January 30, 2009. We will pay interest on the notes quarterly on the 30th day of April, July, October and January, commencing on April 30, 2004.

You may determine the amount (minimum \$25,000 plus integral multiples of \$5,000) of the notes you would like to purchase when you subscribe. See "- Denomination" below. If your subscription is rejected by us, all funds deposited will be promptly returned to you without any interest. Investors whose subscriptions for notes have been accepted and anyone who subsequently acquires notes in a qualified transfer are referred to as "holders" or "registered holders" in this memorandum and in the indenture.

We may modify or supplement the terms of the notes described in this memorandum from time to time in a supplement to the indenture and this memorandum. Except as set forth under "- Amendment, Supplement And Waiver" below, any modification or amendment will not affect notes outstanding at the time of such modification or amendment.

Denomination. You may purchase notes in the minimum principal amount of \$25,000 plus integral multiples of \$5,000. You will determine the original principal amount of each note you purchase when you subscribe.

First Closing. The first closing will occur once a minimum of \$1million aggregate principal amount of the notes is purchased.

Term. The original senior notes will mature on January 30, 2005 and any additional senior notes will mature on January 30, 2006 or 2007, respectively. The original senior subordinated notes will mature on January 30, 2007 and any additional senior subordinated notes will mature on January 30, 2009. The junior notes will mature on January 30, 2009.

Interest Rate. The original senior notes will accrue interest at an annual rate of 5% and any additional senior notes will accrue interest at an annual rate of the then current prime rate +1%. The original senior subordinated notes and the additional senior subordinated notes will accrue interest at the annual rate of 7.5%. The junior notes will accrue interest at an annual rate of 10.25%.

Computation of Interest. We will compute interest on notes on the basis of an actual calendar year. Interest will compound daily and accrue from the date of the first closing.

Interest Payment Dates. Interest will be paid quarterly on the 30th day of April, July, October and January, commencing on April 30, 2004, to the person in whose name the note is registered at the close of business on the 30th day of the month preceding the month in which the interest payment date occurs. Your last interest payment will be made on the maturity date. Any interest not paid on an interest payment date will be paid at maturity.

Place and Method of Payment. We will pay principal and interest on the notes through our paying agent, by whatever means is chosen by you in your subscription agreement, including the use of an electronic funds transfer to a depository account you specify in your subscription documents.

Servicing Agent. We have engaged McGinn, Smith Capital Holdings Corp., an affiliate of our managing member, McGinn, Smith Advisors, LLC, and of our placement agent, McGinn, Smith & Co., Inc., to act as our servicing agent for the notes. The responsibilities as servicing agent will involve the performance of certain administrative and customer service functions for the notes that we are responsible for performing as the issuer of the notes. For example, the servicing agent will serve as our registrar and transfer agent and paying agent and will manage all aspects of the customer service function for the notes, including handling all phone inquiries, meeting with investors, processing subscription agreements, distributing our annual statement of operations upon request by a note holder, and dealing with any administrative tax matters with regards to the notes. In addition the servicing agent will provide us with monthly reports and analysis regarding the status of the notes and the amount of notes that remain available for purchase, if any.

As compensation for the services as servicing agent, we will pay the servicing agent an annual fee equal to 0.25% of the aggregate principal amount of the notes so long as the servicing agent is engaged. Such ongoing fee will be paid quarterly.

You may contact our servicing agent as follows with any questions about the notes:

McGinn, Smith Capital Holdings Corp.
Capital Center, 5th Floor
99 Pine Street
Albany, New York 12207
Attn: David L. Smith
Tel: 518-449-5131
Fax: 518-449-4894
E-Mail: smithd@mcginnsmith.com

On each interest payment date, the servicing agent will credit interest due on each account and make such payments to the holders.

Our servicing agent, McGinn, Smith Capital Holdings Corp., an affiliate of our managing member McGinn, Smith Advisors, LLC and of our placement agent, McGinn, Smith & Co., Inc., is also the trustee under the indenture governing the notes and the collateral agent under the security agreement. As a result, McGinn, Smith Capital Holdings Corp. may experience a conflict of interest between its role as our servicing agent on the one hand and as the trustee and collateral agent for the note holders on the other hand. See "Risk Factors – Risk Factors Relating to the Notes – The Trustee May Experience a Conflict of Interest."

Subscriptions. Each subscriber will be required to complete an investor questionnaire in the form attached to this memorandum and submit an executed subscription agreement in the form attached to this memorandum. Each prospective investor must deliver with his or her subscription agreement a check in the full amount of the purchase price for the notes for which he or she has subscribed. The checks shall be made payable to "CharterOne Bank, FSB, Escrow Agent for First Excelsior Income Notes LLC", and upon receipt shall be deposited into an escrow account maintained by the placement agent with CharterOne Bank, FSB for the benefit of the investors (the "escrow account"). The proceeds of sale of the notes will remain in the escrow account until a subscription has been accepted by us and the placement agent, or until a subscription is rejected, at which time the amount of such subscription will be returned to the investor without interest. Subscriptions will be accepted only after satisfaction of the minimum offering amount and completion of the first closing. All such funds shall continue to be the property of the subscribers and shall be held in trust for their benefit until the subscribers receive their notes. We may reject any subscription for notes in our sole discretion.

Redemption at the Option of FEIN. If an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes, we have the right, at our option, to redeem a pro rata portion of the notes prior to their stated maturity upon 10 days written notice to you. For example, if an Investment that comprises 20% of our secured assets is no longer owned by us, we may redeem 20% of the notes pro rata across all tranches and all note holders within each tranche. The notes that are redeemed will be redeemed at 100% of the principal amount plus accrued but unpaid interest up to but not including the redemption date without any penalty or premium. The holder has no right to require us to prepay or repurchase any note prior to its maturity date.

Payment upon Maturity. On the maturity date, we will pay the holder the principal amount and any accrued and unpaid interest.

Transfers. The notes are subject to significant restrictions on resale. We have not registered, and do not plan to register, the notes under the Securities Act or any state securities laws. You may not offer or sell the notes except (i) with an opinion of counsel or other documentation acceptable to us that the transfer is exempt from, or not subject to, the registration requirements of the Securities Act, or (ii) under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Security. The notes are secured by all of the various public and/or private investments that we may acquire, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our asset portfolio (individually an "Investment" and collectively, the "Investments"), and any cash proceeds from the offering that are not used to acquire an Investment, after deducting commissions, fees and expenses. Even though the proceeds from your purchase of a note may be used to acquire a particular Investment, specific notes are not limited to or payable from a particular Investment. All notes in the same tranche will be equably and ratably secured by all of our Investments.

Subordination. The indebtedness evidenced by the senior subordinated notes and the junior notes, and any interest thereon, are subordinated in right of payment to the senior notes. The indenture does not prevent holders of the senior notes from disposing of, or exercising any other rights with respect to, any or all of the collateral securing the senior notes. See "Risk Factors - Risk Factors Relating to the Notes - The Senior Subordinate Note Holders and Junior Note Holders Lack Priority in Payment on the Notes." Likewise, the indebtedness evidenced by the junior notes, and any interest thereon, are subordinated in right of payment to the senior subordinated notes. The indenture does not prevent holders of the senior subordinated notes from disposing of, or exercising any other rights with respect to, any or all of the collateral securing the senior subordinated notes. The notes are not guaranteed by any of our subsidiaries, affiliates or control persons.

In the event of any liquidation, dissolution or any other winding up of us, or of any receivership, insolvency, bankruptcy, readjustment, reorganization or similar proceeding under the U.S. Bankruptcy Code or any other applicable federal or state law relating to bankruptcy or insolvency, no payment may be made on the senior subordinated notes and junior notes until all the senior notes have been paid in full, and no payment may be made on the junior notes until all the senior notes and senior subordinated notes have been paid in full. If any of the above events occurs, holders of the senior notes may also submit claims on behalf of holders of the senior subordinated and junior notes and retain the proceeds for their own benefit until they have been fully paid, and any excess will be turned over to the holders of the senior subordinated notes and junior notes. If any distribution is nonetheless made to holders of the senior subordinated notes or junior notes, the money or property distributed to them must be paid over to the holders of the senior notes to the extent necessary to pay the senior notes in full.

In the event and during the continuation of any default in the payment of principal of or interest on the senior notes, we will not make any payment, direct or indirect, on the senior subordinated and junior notes unless and until (i) the default has been cured or waived or has ceased to exist or (ii) the end of the payment blockage period. Any payment blockage period will commence on the date the trustee receives written notice of default from a holder of the senior notes and will end on the earlier of (a) 179 days after the trustee's receipt of the notice of default; (b) the trustee's receipt of a valid waiver of default from the holders of the senior notes; or (c) the trustee's receipt of a written notice from the holders of the senior notes terminating the payment blockage period.

Consolidation, Merger or Sale. The indenture generally permits a consolidation or merger between us and another entity. It also permits the sale or transfer by us of all or substantially all of our property and assets. These transactions are permitted if:

- we survive such merger or consolidation;
- such consolidation, merger or transfer is with one of our affiliates;
- the resulting or acquiring entity, if other than us, is organized and existing under the laws of a domestic jurisdiction and expressly assumes all of our responsibilities and liabilities under the indenture, including the payment of all amounts due on the notes and performance of the covenants in the applicable indenture; and
- immediately after the transaction, and giving effect to the transaction, no event of default under the indenture exists.

If we consolidate or merge with or into any other entity or sell or lease all or substantially all of our assets, according to the terms and conditions of the indenture, the resulting or acquiring entity will be substituted for us in the indenture with the same effect as if it had been an original party to the indenture. As a result, such successor entity may exercise our rights and powers under the indenture, in our name and we will be released from all our liabilities and obligations under the indenture and under the notes.

Events Of Default. The indenture provides that each of the following constitutes an event of default:

- a failure to pay interest on a note within 30 days after the due date for such payment (whether or not prohibited by the subordination provisions of the indenture);
- failure to pay principal on a note within 30 days after the due date for such payment (whether or not prohibited by the subordination provisions of the indenture);
- our failure to observe or perform any material covenant or our breach of any material representation or warranty, but only after we have been given notice of such failure or breach and such failure or breach is not cured within 60 days after our receipt of notice;
- certain events of bankruptcy, insolvency, liquidation or reorganization with respect to us, whether voluntary or involuntary; and
- any security interest granted to the Trustee on behalf of the Note Holders on any material portion of the Investments shall cease to be valid and effective.

If any event of default occurs and is continuing (other than an event of default involving certain events of bankruptcy or insolvency with respect to us) for a particular tranche of notes, the trustee or the holders of at least a majority in aggregate principal amount of the then outstanding notes for such tranche may declare the unpaid principal and any accrued interest on the notes to be due and payable immediately. In the case of an event of default arising from certain events of bankruptcy or insolvency, with respect to us, all outstanding notes will become due and payable without further action or notice.

Holders of the notes may not enforce the indenture or the notes except as provided in the indenture. Subject to certain limitations, holders of a majority in principal amount of the then outstanding notes for a particular tranche of notes

may direct the trustee in its exercise of any trust or power. The trustee may withhold from holders of the notes notice of any continuing default or event of default (except a default or event of default relating to the payment of principal or interest) if the trustee in good faith determines that withholding notice would have no material adverse effect on the holders.

The holders of a majority in aggregate principal amount of the notes then outstanding for a particular tranche of notes by notice to the trustee may, on behalf of all holders of such tranche, waive any existing default or event of default and its consequences under the indenture, except a continuing default or event of default in the payment of interest on, or the principal of, a note.

Amendment, Supplement And Waiver. Except as provided in this memorandum or the indenture, the terms of the notes then outstanding may be amended or supplemented with the consent of the holders of at least a majority in aggregate principal amount of the notes affected by such amendment or supplement, and any existing default or compliance with any provision of the indenture or the notes may be waived with the consent of the holders of a majority in aggregate principal amount of the notes affected.

Notwithstanding the foregoing, an amendment or waiver will not be effective with respect to the notes held by a holder who has not consented if it has any of the following consequences:

- reduces the principal of or changes the fixed maturity of any note or alters the redemption provisions or the price at which we shall offer to redeem the note;
- reduces the rate of or changes the time for payment of interest on any note;
- makes any note payable in money other than that stated in the notes;
- makes any change in the provisions of the indenture relating to waivers of past defaults or the rights of holders of notes to receive payments of principal of or interest on the notes;
- makes any change to the subordination provisions of the indenture that has a material adverse effect on holders of notes; or
- makes any change in the foregoing amendment and waiver provisions.

Notwithstanding the foregoing, without the consent of any holder of the notes, we and the trustee may amend or supplement the indenture or the notes:

- to cure ambiguity, defect or inconsistency;
- to provide for assumption of our obligations to holders of the notes in the case of a merger, consolidation or sale of all or substantially all of our assets;
- to provide for additional certificates; or
- to make any change that would provide any additional rights or benefits to the holders of the notes or that does not materially adversely affect the legal rights under the indenture of any such holder.

The Trustee. McGinn, Smith Capital Holdings Corp. has agreed to be the trustee for all of the notes under the indenture, and to hold the security interest on the Investments on behalf of all of the note holders as collateral agent under the security agreement. McGinn, Smith Capital Holdings Corp. is an affiliate of our managing member, McGinn, Smith Advisors, LLC, and of our placement agent, McGinn, Smith & Co., Inc., and has been engaged to act as our servicing agent. Because of the trustee's and collateral agent's affiliation with our managing member and its role as our servicing agent, you may not feel that you are adequately represented by the trustee and/or the collateral agent in an event of default. In that instance, holders of 25% of the aggregate principal amount of all notes outstanding may vote to remove the trustee and/or the collateral agent and replace it with a successor trustee and/or collateral agent.

As earlier stated, the trustee and the collateral agent represent all three tranches of note holders. As a result, a conflict of interest may arise in situations where one tranche of note holders wishes the trustee or the collateral agent to act

in a way that is not beneficial to another tranche of note holders. If such conflict arises, holders of 25% of the aggregate principal amount of notes for a particular tranche may remove the trustee and/or the collateral agent with respect to that tranche and appoint a successor trustee and/or collateral agent with respect to that tranche pursuant to the procedures set forth in the indenture and the security agreement, as applicable.

Subject to certain exceptions, the holders of a majority in aggregate principal amount of notes for a particular tranche of notes will have the right to direct the time, method and place of conducting any proceeding or exercising any remedy available to the trustee. The indenture provides that in case an event of default specified in the indenture shall occur and not be cured, the trustee will be required, in the exercise of its power, to use the degree of care of a reasonable person in the conduct of his own affairs.

Subject to such provisions, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any holder of notes, unless the holder shall have offered to the trustee security and indemnity satisfactory to it against any loss, liability or expense.

Resignation or Removal of The Trustee. The trustee may resign at any time, may be removed by the holders of 25% of the aggregate principal amount of all outstanding notes, or may be removed by the holders of 25% of the aggregate principal amount of notes of a particular tranche with respect to that tranche. In addition, upon the occurrence of contingencies relating generally to the insolvency of the trustee or the trustee's ineligibility to serve as trustee, we may remove the trustee or a court of competent jurisdiction may remove the trustee. However, no resignation or removal of the trustee may become effective until a successor trustee has accepted the appointment as provided in the indenture.

Reports To Trustee. We will provide to the trustee reports containing any information reasonably requested by the trustee. These reports may include information on each note outstanding during the preceding quarter, including outstanding principal balance, interest credited and paid, transfers made, any redemption and interest rate paid.

No Personal Liability of Our or Our Servicing Agent's Directors, Officers, Employees, Members and Stockholders. None of our or our servicing agent's directors, officers, employees, incorporators, members or stockholders will have any liability for any of our obligations under the notes, the indenture or for any claim based on, in respect to, or by reason of, these obligations or their creation. Each holder of the notes waives and releases these persons from any liability. The waiver and release are part of the consideration for issuance of the notes. We have been advised that the waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Securities and Exchange Commission that such a waiver is against public policy.

Service Charges. Our servicing agent may assess service charges for changing the registration of any note to reflect a change in name of the holder or transfers (whether by operation of law or otherwise) of a note by the holder to another person.

Reports. At the request of the holder, our servicing agent will provide to the holders of the notes our annual statement of the operations consisting of a balance sheet and income statement.

Variations By State. We may offer different securities and vary the terms and conditions of the offer (including, but not limited to, different interest rates and service charges for all notes) depending upon the state where the purchaser resides.

Liquidity. There is not currently a public market for the notes, and we do not expect that a public market for the notes will develop.

Satisfaction and Discharge of Indenture. The indenture shall cease to be of further effect upon the payment in full of all of the outstanding notes and upon deposit with the trustee of funds sufficient for the payment in full of all of the outstanding notes.

PLAN OF DISTRIBUTION

McGinn, Smith & Co., Inc., as our placement agent, will solicit offers to purchase the notes, for which it will receive commissions equal to 2% of the purchase price of the notes. With respect to the minimum offering of \$1,000,000, McGinn, Smith & Co., Inc., as our placement agent, has agreed to offer the notes on a "best efforts, all or none" basis, and on a "best efforts" basis thereafter until the earlier of the termination of the offering or the completion of the maximum

offering. The offering period will extend until the earlier of (i) the sale of all of the notes, or (ii) June 30, 2004, provided that we have retained the right, in our discretion, and our placement agent has agreed in that event, to extend the offering period for up to six additional months. The placement agent is not obligated to purchase any of the notes. We have agreed to indemnify the placement agent and certain affiliated persons with respect to certain liabilities, including certain liabilities under the Securities Act. We also have agreed to reimburse the placement agent for reasonable expenses, including legal fees of its counsel. Affiliates of the placement agent may purchase a portion of the notes offered hereby.

The following table summarizes the compensation we will pay the placement agent for its services in selling the notes:

Form of Compensation

Total commissions	\$400,000(1)
Reimbursement of expenses	\$ 50,000

(1) Assumes the sale of 100% of aggregate principal amount of notes offered.

The placement agent agreement provides for reciprocal indemnification between us and the placement agent, including the placement agent's and our officers, directors and controlling persons, against civil liabilities in connection with this offering, including certain liabilities under the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted pursuant to such indemnification provisions, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

We are offering the notes without registration under the Securities Act in reliance upon an exemption afforded by Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act.

The foregoing is a summary of the material provisions relating to selling and distribution of the notes in the placement agent agreement.

OWNERSHIP STRUCTURE AND PRINCIPAL EQUITY HOLDERS

History

First Excelsior Income Notes LLC, a New York limited liability company, was formed in 2004 for the purpose of identifying and acquiring various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our asset portfolio (individually an "Investment" and collectively, the "Investments").

Principal Equity Holders of FEIN

First Excelsior Income Notes LLC is solely owned by our managing member, McGinn, Smith Advisors, LLC, a New York limited liability company. McGinn, Smith Advisors, LLC is a wholly-owned subsidiary of McGinn, Smith Holdings, LLC, a New York limited liability company and an affiliate of this offering's placement agent, McGinn, Smith & Co., Inc.

Key Governance Provisions

Management of FEIN is vested in our managing member. Our managing member has authority to take all actions necessary or appropriate in connection with the operation and financing of FEIN. The managing member is solely responsible for finding suitable Investments and is paid an annual fee of 1% of the aggregate principal amount of the notes to make such decisions and manage our portfolio.

Indemnification of Managing Member

Our articles of operation provide that FEIN will indemnify and hold harmless our managing member from any loss or damage, including attorney's fees incurred by such managing member, relating to any action taken, or failed to be taken,

on behalf of FEIN so long as the managing member acted in good faith. The managing member is not entitled to be indemnified from any liability for fraud, bad faith, willful misconduct or gross negligence.

AFFILIATED TRANSACTIONS

Our managing member is McGinn, Smith Advisors, LLC, a New York limited liability company. McGinn, Smith Advisors, LLC is a wholly-owned subsidiary of McGinn, Smith Holdings, LLC, a New York limited liability company and an affiliate of this offering's placement agent, McGinn, Smith & Co., Inc. David L. Smith, who is 50% owner of our servicing agent, McGinn, Smith Capital Holdings Corp., and the President and Chief Executive Officer of our placement agent, McGinn, Smith & Co., Inc., is the principal officer of McGinn, Smith Advisors, LLC. We will pay our managing member 1% of the aggregate principal amount of the notes per year over the term of the notes to act as our portfolio manager and give us investment advice. In addition, we will pay incentive commissions to our managing member's salesmen at the rate of 2% of the aggregate principal amount of the notes per year over the term of the notes. We may acquire Investments from our managing member or an affiliate of our managing member that has purchased the Investments. If the Investment is purchased from our managing member or any affiliate, we will not pay above the price paid by our managing member or such affiliate for the Investment, other than to reimburse our managing member or such affiliate for its costs and any discounts that it may have received by virtue of a special arrangement or relationship. In other words, if we purchase an Investment from our managing member or any of its affiliates, we will pay the same price for the Investment that we would have paid if we had purchased the Investment directly. We may also purchase securities from issuers in offerings for which McGinn, Smith & Co., Inc. is acting as underwriter or placement agent and for which McGinn, Smith & Co., Inc. will receive a commission.

Our servicing agent, McGinn, Smith Capital Holdings Corp., is an affiliate of our managing member, McGinn Smith Advisors, LLC, and of our placement agent, McGinn, Smith & Co., Inc. McGinn, Smith Capital Holdings Corp. is 50% owned by David L. Smith, principal officer of our managing member, McGinn, Smith Advisors, LLC, and President and Chief Executive Officer of our placement agent, McGinn, Smith & Co., Inc. We will pay our servicing agent a fee for administering the notes in the amount of 0.25% of the aggregate principal amount of the notes per year over the term of the notes.

The trustee under the indenture governing the notes and the collateral agent holding the security interest on the Investments on behalf of the note holders under the security agreement is also McGinn, Smith Capital Holdings Corp., an affiliate of our managing member, McGinn Smith Advisors, LLC, and of our placement agent, McGinn, Smith & Co., Inc. McGinn, Smith Capital Holdings Corp. is 50% owned by David L. Smith, principal officer of our managing member, McGinn, Smith Advisors, LLC, and President and Chief Executive Officer of our placement agent, McGinn, Smith & Co., Inc.

INVESTOR SUITABILITY REQUIREMENTS

General

An investment in the notes involves significant risks and is suitable only for persons of adequate financial means who have no need for liquidity with respect to their investment and who can bear the economic risk of a complete loss of their investment. This offering is made in reliance on exemptions from the registration requirements of the Securities Act and applicable state and foreign securities laws and regulations.

The suitability standards discussed below represent minimum suitability standards for prospective investors. The satisfaction of such standards by a prospective investor does not necessarily mean that the notes are a suitable investment for such prospective investor. Prospective investors are encouraged to consult their personal financial advisors to determine whether an investment in the notes is appropriate. We may reject subscriptions, in whole or in part, in our sole discretion.

We will require each investor to represent in writing that, among other things, (i) by reason of the investor's business or financial experience, or that of the investor's professional advisor, the investor is capable of evaluating the merits and risks of an investment in the notes and of protecting its own interests in connection with the transaction; (ii) the investor is acquiring the notes for its own account, for investment only and not with a view toward the resale or distribution thereof; (iii) the investor is aware that the notes have not been registered under the Securities Act or any state or foreign securities laws and that transfer thereof is restricted by the Securities Act, applicable state or foreign securities laws and the absence of a market for the notes; and (iv) such investor meets the suitability requirements set forth below.

Suitability Requirements

Each investor must represent in writing that it qualifies as an "accredited investor" as such term is defined in Rule 501(a) of Regulation D under the Securities Act, and must demonstrate the basis for such qualification. To be an accredited investor, an investor must fall within any of the following categories at the time of the sale of the notes to that investor:

- a bank as defined in Section 3(a)(2) of the Securities Act, or a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in its individual or fiduciary capacity, a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; an insurance company as defined in Section 2(13) of the Securities Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(48) of that Act; a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of the Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940,
- an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; a corporation; a Massachusetts or similar business trust; or a partnership; in each case, not formed for the specific purpose of acquiring the notes and with total assets in excess of \$5,000,000;
- a manager, member or executive officer of FEIN;
- a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of such person's purchase of the notes, exceeds \$1,000,000;
- a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- a trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the notes, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of Regulation D; or
- any entity in which all of the equity owners are accredited investors.

In order to meet the conditions for exemptions from the registration requirements under the securities laws of certain jurisdictions, investors who are residents of such jurisdictions may be required to meet additional suitability requirements.

WHERE YOU CAN FIND MORE INFORMATION

Upon request of a prospective investor, we will make available to such investor the opportunity to ask questions of and receive answers from us concerning the terms and conditions of the offering. Further, we will, subject to confidentiality agreements and other considerations, obtain and make available additional information reasonably requested by such investor to the extent we possess such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of any of the information concerning the terms and conditions of the offering or any of the transactions referred to herein.

Copies of our certificate of formation, operating agreement and certain other documents referred to in this memorandum are available from the placement agent upon request.

EXHIBIT A
FORM OF INVESTOR QUESTIONNAIRE

PURCHASER QUESTIONNAIRE FOR INDIVIDUALS

FIRST EXCELSIOR INCOME NOTES LLC
(A New York Limited Liability Company)

The offering is being made pursuant to Regulation D under the Securities Act of 1933 (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment;

(ii) the undersigned is acquiring the Notes for investment purposes only and not with a view towards resale; and

(iii) the undersigned is aware that this offering will involve Notes for which no resale market exists, thereby requiring this investment to be maintained for the stated term of each Note.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the questionnaire hereby agrees that the Company may present this questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Notes to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Company in connection with the sale of the Notes.

Please complete this questionnaire as thoroughly as possible and sign, date and return to the Company c/o McGinn, Smith & Co., Inc., Capital Center, 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name: _____

Home Address: _____

Date of Birth: _____

Social Security No.: _____

Occupation: _____

Business Address: _____

Business Telephone: _____

Home Telephone: _____

Communications should be sent to:

Home Address _____ or Business Address _____

1. What is your approximate net worth?

_____ \$50,000 - \$100,000
_____ \$100,000 - \$250,000
_____ \$250,000 - \$500,000
_____ \$500,000 - \$1,000,000
_____ Greater than \$1,000,000

2. Did your individual income exceed \$200,000.00 in 2002 and 2003, or did your joint income with your spouse exceed \$300,000.00 in each of those years?

Yes _____ No _____

3. If the answer to #2 above is "yes", do you expect to reach the same income level in 2004?

Yes _____ No _____

4. What was your approximate gross income for calendar year 2003?

_____ \$25,000 - \$100,000
 _____ \$100,000 - \$200,000
 _____ \$200,000 - \$300,000
 _____ \$300,000 - \$500,000
 _____ Greater than \$500,000

5. What will your approximate gross income be for calendar year 2004?

_____ \$25,000 - \$100,000
 _____ \$100,000 - \$200,000
 _____ \$200,000 - \$300,000
 _____ \$300,000 - \$500,000
 _____ Greater than \$500,000

6. I understand that in order to qualify as a purchaser of Notes, I must have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Company or I must engage an attorney, accountant or other financial advisor for the purpose of this particular transaction.

I hereby represent, by initialing on the Representation A or Representation B line below, that:

- A. I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Notes and will not require a Purchase Representative.

Representation A. _____

- B. I have relied upon the advice of the following Purchaser Representative(s) in evaluating the merits and risks of an investment in the Notes:

Representation B. _____

 Name

 Name

 Relationship

 Relationship

To the best of my information and belief, the above information is accurate and complete in all respects. I agree to notify the Company promptly of any changes which occur prior to sale of the Notes.

Purchaser:

Date:

 Name (printed)

 Signature

CONFIDENTIAL

PURCHASER QUESTIONNAIRE FOR CORPORATIONS AND PARTNERSHIPS

**FIRST EXCELSIOR INCOME NOTES LLC
(A New York Limited Liability Company)**

The offering is being made pursuant to Regulation D under the Securities Act of 1933 (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) that the Offeree and its Offeree Representative(s), together, have such knowledge and experience in financial and business matters, that they are capable of evaluating the merits and risks of the prospective investment and that the Offeree is able to bear the economic risk of the invest.

The purpose of this Questionnaire is to assist FIRST EXCELSIOR INCOME NOTES LLC (the "Company") in complying with the above requirement.

Please contact McGinn, Smith & Co, Inc., Capital Center, 5th Floor, 99 Pine Street, Albany, New York 12207 (518-449-5131) if you have any questions in answering this questionnaire.

If the answer to any questions is "None" or "Not Applicable", please so state.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the Questionnaire hereby agrees that the Company may present this Questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Notes to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Company in connection with the sale of the Notes.

Please complete this Questionnaire as thoroughly as possible and sign, date and return one (1) copy to the Company c/o McGinn, Smith & Co., Inc., Capital Center, 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name of Organization: _____

Business Address: _____

Business Telephone: _____

Federal ID Number: _____

1. Was the organization formed for the specific purpose of acquiring the Company's Notes?

Yes _____ No _____

2. Does the organization possess total assets in excess of \$5,000,000?

Yes _____ No _____

3. Does each equity owner of the organization:

A. Have a net worth, exclusive of home, furnishings, and automobiles, of at least \$1,000,000?

Yes _____ No _____

B. Have an individual net income in excess of \$200,000 in 2002 and 2003, or joint income with that person's spouse in excess of \$300,000 in each of those years, and have a reasonable expectation of reaching the same income level in 2004?

Yes _____ No _____

4. I am aware that the Notes proposed to be offered will not be readily marketable or transferable.

Yes _____ No _____

5. The organization can afford the complete loss of its investments in the Notes and has no need for liquidity in this investment.

Yes _____ No _____

6. Stated below are the organization's previous investments in similar securities and other private placements during the past five years:

7. I understand that, unless the organization satisfies certain criteria, in order to qualify as a purchaser of Notes, I must have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Company or I must engage an attorney, accountant or other financial advisor for the purpose of this particular transaction.

I hereby represent, by initialing on the Representation A or Representation B line below, that:

A. I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Notes and will not require a Purchase Representative.

Representation A. _____

B. I have relied upon the advice of the following Purchaser Representative(s) in evaluating the merits and risks of an investment in the Notes:

Representation B. _____

Name

Name

Relationship

Relationship

To the best of my information and belief, the above information is accurate and complete in all respects. I agree to notify the Company promptly of any changes which occur prior to sale of the Company's Notes.

Purchaser:

Date:

Print Name of Organization

By:
Title

FIRST EXCELSIOR INCOME NOTES LLC

The information contained herein is being furnished to FIRST EXCELSIOR INCOME NOTES LLC (the "Company") in order to facilitate a determination as to whether the undersigned may act as a Purchaser Representative, as such term is used in Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"), in connection with the proposed offer and sale by the Company of its Notes. The answers below are correct, and the Trustee is entitled to rely on them in making the foregoing determination.

REPRESENTATIONS

I represent, warrant and covenant to you that:

(a) the information contained herein is complete and accurate and may be relied upon by you in determining whether I may act as a Purchaser Representative pursuant to Regulation D in connection with offers and sales of the Notes;

(b) I will notify you immediately of any material change in any of such information occurring within ninety (90) days of the close of sale of the Notes to the Purchaser;

(c) (i) I have been designated, or will be designated, pursuant to the Purchaser Questionnaire of each Purchaser, as the Purchaser Representative of such Purchaser, in connection with evaluating the merits and risks of his prospective investment in the Notes;

(ii) I have disclosed or will disclose, to each Purchaser, in writing, prior to the designation referred to above, any material relationship between me or my affiliates and the Company, which now exists or is mutually understood to be contemplated, or which has existed at any time during the previous two (2) years, and any compensation received as a result of such relationship, including any compensation received in connection the offering of Notes herein; and

(iii) I will deliver to each of you a counterpart of the disclosure statement referred to in (ii) above, and such other documents or information as each of you may request relating to the performance by me of my duties as a Purchaser Representative.

(Attach additional sheets if required)

1. Name: _____

Age: _____

Social Security No.: _____

2. Names of offerees I am representing:

3. Firm name: _____

Empl. Iden. No.: _____

Position: _____

Nature of Duties: _____

Business Address: _____

Business telephone number: (_____) _____

4. Prior occupations or positions during the past five years:

5. Description of prior experience in advising clients with respect to investments, including a description of the types of investments, the dollar amounts involved, and the number of years of experience which you have in financial, business and tax oriented matters:

General Investments (specify)

Private Placements (specify)

Other Investments (specify)

6. The Professional licenses or registrations (including bar admissions, accounting licenses, real estate brokerage licenses, broker-dealer or investments advisory registrations) held by me are as follows:

Registration	Year Received	Is License or Registration Still Effective?

7. My educational background, including degrees obtained and date of attendance:

8. (a) Neither I nor any of my affiliates now have or have had any material relationship with the Company or any of its affiliates, are not affiliates of the Company, and no such relationship is contemplated in the future, except as follows:

(b) The amounts of compensation received or to be received as a result of the material relationship(s) described in Item 8(a)(including any compensation received or to be received in connection with this transaction) are as follows:

9. Neither I nor any of my affiliates own beneficially any interest in the Company except as follows:

10. I have received and read the Company's Private Placement Memorandum dated January 16, 2004 and Exhibits thereto and have reviewed it with the Offeree.

11. Other comments or disclosures:

Purchaser Representative Signature

Type Purchaser Representative Name

Firm Name

Street Address

City and State

(_____) _____
Telephone

Acknowledgement of Investor(s)

I acknowledge receipt of the foregoing disclosures this _____ day of _____, 2004, and this represents my acknowledgment in writing to the Company that I have read the foregoing and desire that the above stated person serve as my Purchaser Representative with respect to the offering of the Company's Notes.

Investor's Signature

Investor's Signature

Investor's Signature

EXHIBIT B

FORM OF SUBSCRIPTION AGREEMENT

READ CAREFULLY BEFORE SIGNING

**SUBSCRIPTION AGREEMENT FOR THE PURCHASE OF
NOTES OF FIRST EXCELSIOR INCOME NOTES LLC**

The undersigned hereby subscribes for \$ _____ principal amount of ____ (A) 5.0% Secured Senior Notes Due 2005 ("Original Senior Notes"); for \$ _____ principal amount of ____ (B) 7.5% Secured Senior Subordinated Notes Due 2007 ("Original Senior Subordinated Notes"); for \$ _____ principal amount of ____ (C) 10.25% Secured Junior Notes Due 2009 ("Junior Notes"); for \$ _____ principal amount of ____ (D) One-year Secured Senior Notes Due 2006/2007 at an interest rate of the then current prime rate + 1% ("Additional Senior Notes" and together with the Original Senior Notes, the "Senior Notes"); or for \$ _____ principal amount of ____ (E) Two-year 7.5% Secured Senior Subordinated Notes Due 2009 ("Additional Senior Subordinated Notes" and together with the Original Senior Subordinated Notes, the "Senior Subordinated Notes"; the Senior Notes, Senior Subordinated Notes and Junior Notes are collectively called the "Notes") of **First Excelsior Income Notes LLC** (the "Company") at a purchase price equal to the principal amount of Notes being subscribed for (the "Offering").

The Company is offering up to \$20,000,000 principal amount of Notes to purchasers who qualify as "accredited investors" as the term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"), through McGinn, Smith & Co., Inc. ("MS"). The entire purchase price is due and payable upon the execution of this Subscription Agreement, and shall be paid by check, subject to collection, or by wire transfer, made payable to the order of "CharterOne Bank, FSB, Escrow Agent for First Excelsior Income Notes LLC." CharterOne Bank, FSB, the escrow agent (the "Escrow Agent"), shall disburse the proceeds in accordance with the terms of the Escrow Agreement between the Company and the Escrow Agent, which are consistent with the terms of this Agreement. The Company shall have the right to reject this subscription in whole or in part.

Prospective Investors should retain their own professional advisors to review and evaluate the economic, tax and other consequences of an investment in the Company.

THE SECURITIES OFFERED PURSUANT TO A CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM DATED JANUARY 16, 2004, AND EXHIBITS ATTACHED THERETO (COLLECTIVELY, THE "OFFERING MATERIALS"), HAVE NOT BEEN FILED OR REGISTERED WITH OR APPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "COMMISSION"), NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE OFFERING MATERIALS. NO STATE SECURITIES LAW ADMINISTRATOR HAS PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR THE ADEQUACY OF THE OFFERING MATERIALS. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

IT IS INTENDED THAT THE SECURITIES OFFERED HEREBY WILL BE MADE AVAILABLE ONLY TO ACCREDITED INVESTORS, AS DEFINED IN RULE 501 OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE SECURITIES OFFERED HEREBY ARE BEING OFFERED PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS FOR NON-PUBLIC OFFERING. SUCH EXEMPTIONS LIMIT THE NUMBER AND TYPES OF INVESTORS TO WHICH THE OFFERING WILL BE MADE AND RESTRICT SUBSEQUENT TRANSFER OF THE INTERESTS.

CONFIDENTIAL INFORMATION

THE INFORMATION CONTAINED IN THE MEMORANDUM IS CONFIDENTIAL AND PROPRIETARY TO THE COMPANY AND BEING SUBMITTED TO PROSPECTIVE INVESTORS SOLELY FOR SUCH INVESTORS' CONFIDENTIAL USE WITH THE EXPRESS UNDERSTANDING THAT, WITHOUT THE PRIOR WRITTEN PERMISSION OF THE COMPANY, SUCH PERSONS WILL NOT RELEASE THIS DOCUMENT OR DISCUSS THE INFORMATION CONTAINED HEREIN OR MAKE REPRODUCTIONS OF OR USE THIS MEMORANDUM FOR ANY PURPOSE OTHER THAN EVALUATING A POTENTIAL INVESTMENT IN THE SECURITIES.

THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT UNDER APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

WE DRAW YOUR ATTENTION TO THE ANTI-FRAUD PROVISIONS OF THE FEDERAL AND STATE SECURITIES LAWS, PARTICULARLY RULE 10b-5 UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, WHICH PROHIBITS THE PURCHASE OR SALE OF SECURITIES ON THE BASIS OF MATERIAL NON-PUBLIC INFORMATION. IN LIGHT OF THESE PROVISIONS, INCLUDING RULE 10b-5, WE ADVISE YOU THAT, IF YOU ARE IN POSSESSION OF MATERIAL INFORMATION RELATING TO THE COMPANY WHICH YOU KNOW OR HAVE REASON TO KNOW IS NON-PUBLIC, YOU SHOULD NOT PURCHASE OR SELL OR CAUSE TO BE PURCHASED OR SOLD ANY OF THE COMPANY'S SECURITIES. IN ADDITION, YOU SHOULD NOT DISCLOSE ANY OF SUCH INFORMATION UNLESS AND UNTIL SUCH INFORMATION HAS BEEN PUBLICLY DISCLOSED.

THE MEMORANDUM CONSTITUTES AN OFFER ONLY TO THE OFFEREE TO WHOM THE MEMORANDUM IS INITIALLY DISTRIBUTED AND DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY BY ANYONE IN ANY COUNTRY OR STATE IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED, OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SOLICITATION. THE COMPANY AND THE PLACEMENT AGENT RESERVE THE RIGHT TO ACCEPT OR REJECT ANY SUBSCRIPTION FOR SECURITIES, IN WHOLE OR IN PART, OR TO ALLOT TO ANY PROSPECTIVE INVESTOR FEWER THAN THE NUMBER OF SECURITIES SUCH INVESTOR DESIRES TO PURCHASE.

IN DECIDING WHETHER TO PURCHASE SECURITIES, EACH INVESTOR MUST CONDUCT AND RELY ON ITS OWN EVALUATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED IN MAKING AN INVESTMENT DECISION WITH RESPECT TO THE SECURITIES. PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY, OR ANY PROFESSIONAL ASSOCIATED WITH THE OFFERING, AS LEGAL OR TAX ADVICE. THE OFFEREE AUTHORIZED TO RECEIVE THE MEMORANDUM SHOULD CONSULT ITS OWN TAX COUNSEL, ACCOUNTANT OR BUSINESS ADVISOR, RESPECTIVELY, AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING ITS PURCHASE OF THE SECURITIES.

THE INFORMATION PRESENTED HEREIN WAS PREPARED BY THE COMPANY AND IS BEING FURNISHED SOLELY FOR USE BY PROSPECTIVE INVESTORS IN CONNECTION WITH THE OFFERING. THE INFORMATION CONTAINED IN THIS MEMORANDUM HAS BEEN SUPPLIED BY THE COMPANY AND HAS BEEN INCLUDED HEREIN IN RELIANCE ON THE COMPANY. THIS MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS, BELIEVED BY

THE COMPANY TO BE ACCURATE, BUT REFERENCE IS HEREBY MADE TO SUCH DOCUMENTS FOR COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES THERETO. COPIES OF SUCH DOCUMENTS ARE AVAILABLE AT THE OFFICES OF THE COMPANY. ALL OF SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THIS REFERENCE.

EXCEPT AS OTHERWISE INDICATED, THE MEMORANDUM SPEAKS AS OF THE DATE HEREOF. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY SALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGES IN THE AFFAIRS OF THE COMPANY AFTER THE DATE HEREOF.

NO GENERAL SOLICITATION WILL BE CONDUCTED AND NO OFFERING LITERATURE OR ADVERTISING IN ANY FORM WILL OR MAY BE EMPLOYED IN THE OFFERING OF THE NOTES, EXCEPT FOR THIS MEMORANDUM (INCLUDING AMENDMENTS OR SUPPLEMENTS HERETO) AND THE DOCUMENTS SUMMARIZED HEREIN. NO PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION NOT CONTAINED IN THIS MEMORANDUM OR THE DOCUMENTS SUMMARIZED HEREIN AND, IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON.

BY ACCEPTING DELIVERY OF ANY OFFERING MATERIAL, THE OFFEREE AGREES (I) TO KEEP CONFIDENTIAL THE CONTENTS THEREOF, AND NOT TO DISCLOSE THE SAME TO ANY THIRD PARTY OR OTHERWISE USE THE SAME FOR ANY PURPOSE OTHER THAN EVALUATION BY SUCH OFFEREE OF A POTENTIAL PRIVATE INVESTMENT IN THE COMPANY, AND (II) TO RETURN THE SAME TO THE PLACEMENT AGENT IF (A) THE OFFEREE DOES NOT SUBSCRIBE TO PURCHASE ANY SECURITIES, (B) THE OFFEREE'S SUBSCRIPTION IS NOT ACCEPTED, OR (C) THE OFFERING IS TERMINATED OR WITHDRAWN. THE COMPANY WILL MAKE AVAILABLE TO ANY PROSPECTIVE INVESTOR, PRIOR TO THE CLOSING, THE OPPORTUNITY TO ASK QUESTIONS OF AND TO RECEIVE ANSWERS FROM REPRESENTATIVES OF THE COMPANY CONCERNING THE COMPANY OR THE TERMS AND CONDITIONS OF THE OFFERING AND TO OBTAIN ANY ADDITIONAL RELEVANT INFORMATION TO THE EXTENT THE COMPANY POSSESSES SUCH INFORMATION OR CAN OBTAIN IT WITHOUT UNREASONABLE EFFORT OR EXPENSE. INVESTORS AGREE TO ADVISE THE COMPANY IN WRITING IF THEY ARE RELYING UPON ANY SUCH INFORMATION.

FOR RESIDENTS OF ALL STATES

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATIONS TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

THE UNDERSIGNED ACKNOWLEDGES THAT THE NOTES HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE, THAT THE NOTES ARE BEING PURCHASED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, NOR WITH THE INTENTION OF SELLING, TRANSFERRING OR OTHERWISE DISPOSING OF ALL OR ANY PART OF SUCH NOTES FOR ANY PARTICULAR PRICE, OR AT ANY PARTICULAR TIME, OR UPON THE HAPPENING OF ANY PARTICULAR EVENT OR CIRCUMSTANCES, EXCEPT SELLING, TRANSFERRING, OR DISPOSING OF SAID NOTES MADE IN FULL COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE SECURITIES ACT, THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSION THEREUNDER, AND APPLICABLE STATE SECURITIES LAWS; AND THAT SUCH NOTES MUST BE HELD INDEFINITELY UNLESS THE NOTES ARE SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT, OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE, AND WILL REQUIRE AN OPINION OF COUNSEL THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OR SUCH STATE SECURITIES LAWS.

1. The undersigned represents, warrants, and agrees as follows:

(a) The undersigned agrees that this Agreement is and shall be irrevocable.

(b) The undersigned has carefully read the Offering Materials, all of which the undersigned acknowledges have been provided to the undersigned. The undersigned has been given the opportunity to ask questions of, and receive answers from, the Company concerning the terms and conditions of this Offering and the Offering Materials and to obtain such additional written information, to the extent the Company possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of same as the undersigned desires in order to evaluate the investment. The undersigned further acknowledges that he, she or it fully understands the Offering Materials, and the undersigned has had the opportunity to discuss any questions regarding any of the Offering Materials with his, her or its counsel or other advisor(s). Notwithstanding the foregoing, the only information upon which the undersigned has relied is that set forth in the Offering Materials and his, her or its own independent investigation. The undersigned acknowledges that the undersigned has received no representations or warranties from the Company, or its employees or agents in making this investment decision other than as set forth in the Offering Materials.

(c) The undersigned is aware that the purchase of Notes is a speculative investment involving a high degree of risk and that there is no guarantee that the undersigned will realize any gain from this investment, and that the undersigned could lose the total amount of the undersigned's investment.

(d) The undersigned understands that no federal or state agency has made any finding or determination regarding the fairness of this offering for investment, or any recommendation or endorsement of the Offering.

(e) The undersigned is acquiring the Notes for the undersigned's own account, with the intention of holding the Notes, with no present intention of dividing or allowing others to participate in this investment or of reselling or otherwise participating, directly or indirectly, in a distribution of the Notes, and shall not make any sale, transfer, or pledge thereof without registration under the Securities Act and any applicable securities laws of any state or unless an exemption from registration is available under those laws.

(f) The undersigned represents that the undersigned, if an individual, has adequate means of providing for his or her current needs and personal and family contingencies and has no need for liquidity in this investment in the Notes. The undersigned represents that the undersigned is an "Accredited Investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. The undersigned has no reason to anticipate any material change in his or her personal financial condition for the foreseeable future.

(g) The undersigned is financially able to bear the economic risk of this investment, including the ability to hold the Notes indefinitely or to afford a complete loss of his, her or its investment in the Notes.

(h) The undersigned represents that the undersigned's overall commitment to investments, which are not readily marketable, is not disproportionate to the undersigned's net worth, and the undersigned's investment in the Notes will not cause such overall commitment to become excessive. The undersigned realizes that in the view of the Commission, a purchase now with a present intent to resell by reason of a foreseeable specific contingency or any anticipated change in the market value, or in the condition of the Company, or that of the industry in which the business of the Company

is engaged or in connection with a contemplated liquidation, or settlement of any loan obtained by the undersigned for the acquisition of the Notes, and for which such Notes may be pledged as security or as donations to religious or charitable institutions for the purpose of securing a deduction on an income tax return, would, in fact, represent a purchase with an intent inconsistent with the undersigned's representations to the Company and the Commission would then regard such sale as a sale for which the exemption from registration is not available. The undersigned will not pledge, transfer or assign this Agreement.

(i) FOR PARTNERSHIPS, CORPORATIONS, TRUSTS, OR OTHER ENTITIES ONLY: If the undersigned is a partnership, corporation, trust or other entity, (i) the undersigned has enclosed with this Agreement appropriate evidence of the authority of the individual executing this Agreement to act on its behalf (e.g., if a trust, a certified copy of the trust agreement; if a corporation, a certified corporate resolution authorizing the signature and a certified copy of the articles of incorporation; or if a partnership, a certified copy of the partnership agreement), (ii) the undersigned represents and warrants that it was not organized or reorganized for the specific purpose of acquiring Notes, (iii) the undersigned has the full power and authority to execute this Agreement on behalf of such entity and to make the representations and warranties made herein on its behalf, and (iv) this investment in the Company has been affirmatively authorized, if required, by the governing board of such entity and is not prohibited by the governing documents of the entity.

(j) The undersigned has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Notes.

(k) The undersigned acknowledges that the certificates for the Notes ("Certificates") which the undersigned will receive will contain a legend substantially as follows:

THE SECURITIES WHICH ARE REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNTIL A REGISTRATION STATEMENT WITH RESPECT THERETO IS DECLARED EFFECTIVE UNDER SUCH ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE COMPANY THAT AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT IS AVAILABLE.

2. The undersigned expressly acknowledges and agrees that the Company is relying upon the undersigned's representations contained in the Offering Materials.

3. The undersigned subscriber acknowledges that the undersigned understands the meaning and legal consequences of the representations and warranties which are contained herein and hereby agrees to indemnify, save and hold harmless the Company, and its officers, directors and counsel, from and against any and all claims or actions arising out of a breach of any representation, warranty or acknowledgment of the undersigned contained in any of the Offering Materials. Such indemnification shall be deemed to include not only the specific liabilities or obligations with respect to which such indemnity is provided, but also all reasonable costs, expenses, counsel fees and expenses of settlement relating thereto, whether or not any such liability or obligation shall have been reduced to judgment.

4. The undersigned acknowledges that MS will receive a commission equal to 2% of the principal amount of the Certificate being purchased for acting as a placement agent in the Offering.

5. The Company has been duly and validly organized and is validly existing and in good standing as a limited liability company under the laws of the State of New York. The Company has all requisite power and authority, and all necessary authorizations, approvals and orders required as of the

date hereof to conduct its business and to enter into this Subscription Agreement and the other Offering Materials and to be bound by the provisions and conditions hereof or therein.

6. Except as otherwise specifically provided for hereunder, no party shall be deemed to have waived any of his or her or its rights hereunder or under any other agreement, instrument or papers signed by any of them with respect to the subject matter hereof unless such waiver is in writing and signed by the party waiving said right. Except as otherwise specifically provided for hereunder, no delay or omission by any party in exercising any right with respect to the subject matter hereof shall operate as a waiver of such right or of any such other right. A waiver on any one occasion with respect to the subject matter hereof shall not be construed as a bar to, or waiver of, any right or remedy on any future occasion. All rights and remedies with respect to the subject matter hereof, whether evidenced hereby or by any other agreement, instrument, or paper, will be cumulative, and may be exercised separately or concurrently.

7. The parties have not made any representations or warranties with respect to the subject matter hereof not set forth herein, and this Agreement, together with any instruments executed simultaneously herewith, constitutes the entire agreement between them with respect to the subject matter hereof. All understandings and agreements heretofore had between the parties with respect to the subject matter hereof are merged in this Agreement, which alone fully and completely expresses their agreement.

8. This Agreement may not be changed, modified, extended, terminated or discharged orally, but only by an agreement in writing, which is signed by all of the parties to this Agreement.

9. The parties agree to execute any and all such other and further instruments and documents, and to take any and all such further actions reasonably required to effectuate this Agreement and the intent and purposes hereof.

10. If any provision or any portion of any provision of this Agreement or the application of any such provision or any portion thereof to any person or circumstance, shall be held invalid or unenforceable, the remaining portion of such provision and the remaining portion of such provision as is held invalid or unenforceable to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the undersigned hereby consents to the jurisdiction of the courts of the State of New York and/or the United States District Court for the Southern District of New York

ALL SUBSCRIBERS MUST COMPLETE THIS PAGE

Print Exact Name in Which Title is to be Held

IN WITNESS WHEREOF, the undersigned has executed this Subscription Agreement on
this ____ day of _____ 2004.

1. ☐ Individual
2. ☐ Joint Tenants with
Right of Survivorship
3. ☐ Community Property
4. ☐ Tenants in Common
5. ☐ Corporation/Partnership
6. ☐ IRA
of _____

7. ☐ Trust
Date Opened

8. ☐ As A Custodian
For

Under the Uniform
Gift to Minors Act of
the State of

EXECUTION BY SUBSCRIBER WHO IS A NATURAL PERSON

Exact Name in Which Title is to be Held

(Signature)

Name (Please Print)

Residence: Number and Street

City _____ State _____ Zip Code _____

Social Security Number

Accepted this _____ day of _____, 2004, on behalf of First Excelsior Income Notes LLC.

By: _____
David L. Smith

**EXECUTION BY SUBSCRIBER WHICH IS A CORPORATION,
PARTNERSHIP, TRUST, ETC.**

Exact Name in Which Title is to be Held

(Signature)

Name (Please Print)

Residence: Number and Street

City State Zip Code

Social Security Number or Tax ID Number

Accepted this _____ day of _____, 2004, on behalf of First Excelsior Income Notes LLC.

By: _____
David L. Smith