

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

FIRST ADVISORY INCOME NOTES, LLC

\$2,000,000 Minimum Offering
\$20,000,000 Maximum Offering

6.0% Secured Senior Notes due 2006
7.75% Secured Senior Subordinated Notes due 2008
10.25% Secured Junior Notes due 2010

We are offering up to \$20 million aggregate principal amount of our 6.0% secured senior notes due 2006, (the "original senior notes"), 7.75% secured senior subordinated notes due 2008 (the "senior subordinated notes") and 10.25% secured junior notes due 2010 (the "junior notes") and together with the senior notes (as defined below) and the senior subordinated notes, 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 lesser of 6% or the then current Prime Rate, as set forth in the Wall Street Journal ("Prime Rate") +1%. Upon the maturity of the senior subordinated notes, the Company may issue additional two year notes with a maturity date of November 15, 2010, and an interest rate of the lesser of 7.75% or the then Prime Rate + 2%, 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 November 15, 2006 and any additional senior notes will mature on November 15, 2007, 2008, 2009 or 2010, respectively. The senior subordinated notes will mature on November 15, 2008. Any additional senior subordinated notes issued will have a two year maturity of November 15, 2010 and carry interest at the lesser of 7.75 % or the then Prime Rate + 2%. The junior notes will mature on November 15, 2010. We will pay interest on the notes quarterly on the 15th day of February, May, August, and November commencing on February 15, 2006. 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 (the "Securities Act"), as amended, 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 Advisory 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 \$2,000,000, 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 November 15, 2005, subject to the right to extend the offering as set forth herein. 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 October 1, 2005.

GOVERNMENT
EXHIBIT

GC4

MGS0014691

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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 Advisory 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 Advisory 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 ANY 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 HAVE NOT BEEN REGISTERED UNDER THE CONNECTICUT SECURITIES LAW. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND SALE.

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.

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 \$2,000,000, 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 period on December 31, 2005, provided however that the placement agent has agreed to extend the offering period for up to an additional twelve (12) months. 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 herein.

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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E-Mail: smithd@mcginnsmith.com

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 "FAIN", "we", "us" or "our" refer to First Advisory Income Notes, LLC.

FAIN

First Advisory Income Notes, LLC ("FAIN") is a newly formed, single purpose limited liability company. We were organized in New York in 2005.

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

FAIN 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 FAIN".

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 Advisory Income Notes, LLC
Amount of Offering	Up to \$20 million in three tranches: a minimum of \$500,000 and up to \$5 million to senior note holders; a minimum of \$500,000 and up to \$5 million to senior subordinated note holders; and a minimum of \$1 million and up to \$10 million to junior note holders
Placement Agent	McGinn, Smith & Co., Inc.
Trustee	McGinn, Smith Capital Holdings Corp.
Securities Offered	6.0% Secured Senior Notes due 2006 (the "original senior notes"), 7.75% Secured Senior Subordinated Notes due 2008 (the "senior subordinated

notes”) and 10.25% Secured Junior Notes due 2010 (the “junior notes”) and together with the senior notes (as defined below) and senior subordinated notes, 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 lesser of 6% or the then current Prime Rate +1% . Upon the maturity of the senior subordinated notes, the Company may issue additional senior subordinated notes with an two year maturity date and at an interest rate of the lesser of 7.75% or the then current Prime Rate + 2 % provided that the aggregate principal amount of the outstanding notes at any one time does not exceed \$20 million. The notes issued by the Company are secured promises to pay. 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 \$2 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	November 15, 2006 for the original senior notes and November 15, 2007, 2008, 2009 or 2010, respectively, for any additional senior notes. November 15, 2008 for each of the senior subordinated notes and November 15, 2010 for any additional senior subordinated notes. November 15, 2010 for the junior notes.
Interest Rate	The notes will accrue interest from the date of the first closing at the following rates per year: 6.0% for the original senior notes and the lesser of 6% or the then current Prime Rate + 1% for any additional senior notes; 7.75% for the original senior subordinated notes and the lesser of 7.75% or the then current Prime Rate + 2% for any additional senior subordinated notes; and 10.25% for the junior notes.
Interest Payment Dates.....	Quarterly on the 15 th day of February, May , August and November , commencing on February 15, 2006
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 FAIN”. 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 FAIN, 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 FAIN”.

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 \$19.6 million 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 on an annual basis equal to 2% of the purchase price of the notes. With respect to the minimum offering of \$2,000,000, 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) December 31, 2005, 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 twelve (12) 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 FAIN 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 FAIN. *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 its 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 FAIN."

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 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. In the event that you feel that you are not adequately represented by the trustee in an event of default, holders of 25% of the aggregate principal amount of all notes outstanding may vote to remove the trustee and elect a successor trustee.

The trustee under the indenture will represent all three tranches of notes. The note holders of a particular tranche of notes may feel that the trustee has 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 with respect to that tranche of notes and appoint a successor trustee to represent that tranche of notes.

Risk Factors Relating to FAIN

FAIN 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.*

FAIN was organized in New York in 2005. 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 expenses.

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 affect 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 \$19.6 million 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 FAIN".

CAPITALIZATION

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

BUSINESS

FAIN 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 notes and indenture, copies of which are available from FAIN upon request. See "Additional Information."

General. We will issue the notes under a indenture between First Advisory 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 at aggregate principal amount of our 6.0% secured senior notes due 2006 (the "original senior notes"), 7.75% secured senior subordinated notes due 2008 (the "the original senior subordinated notes") and 10.25% secured junior notes due 2010. 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 lesser of 6% or the then current Prime Rate +1% . Upon the maturity of the senior subordinated notes, we may continue to issue additional senior subordinated notes with a two year maturity period and with interest at the lesser of 7.75% or the then current Prime Rate + 2%, 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 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 November 15, 2006 and any additional senior notes will mature on November 15, 2007, 2008, 2009 or 2010, respectively. If not earlier redeemed, each of the senior subordinated notes will mature on November 15, 2008 and additional two year notes may be issued to mature on November 15, 2010 . The junior notes will mature on November 15, 2010. We will pay interest on the notes quarterly on the 15th day of February, May, August and November.

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 \$2 million aggregate principal amount of the notes is purchased.

Term. The original senior notes will mature on November 15, 2006 and any additional senior notes will mature on November 15, 2007, 2008, 2009 or 2010, respectively. The senior subordinated notes mature on November 15, 2008 and any additional senior subordinated notes mature on November 15, 2010. The junior notes will mature on November 15, 2010 respectively

Interest Rate. The original senior notes will accrue interest at an annual rate of 6% and any additional senior notes will accrue interest at an annual rate of the lesser of 6% or the then current Prime Rate + 1%. The senior subordinated notes will accrue interest at the annual rate of 7.75% and any additional senior subordinated notes will accrue interest at the lesser of 7.75% or the then current Prime Rate + 2%. 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 15th day of February, May, August and November commencing on February 15, 2006, to the person in whose name the note is registered at the close of business on the 15th 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. As a result, McGinn, Smith Capital Holdings Corp. may experience a conflict of interest between its role as our servicing agent and as the trustee for the note holders. 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 as Exhibit A and submit an executed subscription agreement in the form attached to this memorandum as

Exhibit B. 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 Advisory Income Notes, LLC", and upon receipt shall be deposited into an escrow account maintained by the placement agent at M & T Bank 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 FAIN. 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 Investments that may add value to our asset portfolio, 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.

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 earliest 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. 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 affiliation with our managing member and its role as our servicing agent, you may not feel that you are adequately represented by the trustee 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 replace it with a successor trustee.

As earlier stated, the trustee represents 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 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 with respect to that tranche and appoint a successor trustee with respect to that tranche pursuant to the procedures set forth in the indenture.

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 \$2,000,000, 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) December 31, 2005 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 twelve (12) 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 up to a maximum of	\$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 Advisory Income Notes, LLC, a New York limited liability company, was formed in 2005 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 FAIN

First Advisory 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 FAIN 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 FAIN. 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 organization provide that FAIN 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 FAIN 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 McGinn, Smith 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 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.

1 (WHEREUPON, the proceedings held on
2 January 17, 2013, were commenced at
3 9:30 a.m..)
4 (Whereupon, the proceedings were held in
5 open court in the presence of the Jury.)
6

7 THE COURT: Good morning, all. Good
8 morning, members of the jury.

9 Mr. Belliss, you may call your next witness.

10 MR. BELLISS: Thank you, Judge. The
11 government calls Tom Brown to the stand. Mr. Brown.

12
13 THOMAS BROWN, having been called as a Witness, being
14 first duly sworn, was examined and testified as follows
15 under oath:

16
17 DIRECT EXAMINATION BY MR. BELLISS:

18 Q. Good morning, Mr. Brown. Could you tell the
19 jury where you live?

20 A. I live in Albany, New York.

21 Q. Are you married, sir?

22 A. I am not.

23 Q. Are you currently working?

24 A. I am working.

25 Q. Where do you work?

THOMAS BROWN - Direct By Mr. Belliss

1 A. I work for the Department of Taxation and
2 Finance.

3 Q. You are an employee of the State of New York?

4 A. Yes.

5 Q. How long have you been doing that?

6 A. As an employee, I am approaching my five years.
7 I have consulted there for a number of years, but as an
8 employee, I am a five-year person.

9 Q. I would like to talk about your relationship
10 with McGinn and Smith. How did you first come to have a
11 relationship with anyone at McGinn, Smith?

12 A. When my son was playing youth hockey when he was
13 ten or eleven years old, one of the father's of one of the
14 other kids on his team was -- his name is Don Anthony. He
15 was working for McGinn, Smith at the time. We struck up a
16 conversation, and I was looking for an investment advisor.
17 At the time I wasn't happy with who I had, and I decided to
18 try and do business with him.

19 Q. About how long ago did that relationship first
20 develop, just a ballpark?

21 A. Let me see, my son is twenty-eight now, so about
22 probably fifteen years ago. Fifteen to twenty years.

23 Q. Over the years, did you have any conversations
24 with Don Anthony about your investment objectives?

25 A. Several times, yes.

THOMAS BROWN - Direct By Mr. Belliss

1 Q. What were your objectives?

2 A. I was really investing for retirement, strictly
3 for retirement.

4 Q. Would it be fair to say that you placed trust in
5 Mr. Anthony to make some investment recommendations that
6 would serve your objectives?

7 A. Yes, I did.

8 Q. Did Mr. Anthony present you with any
9 opportunities to invest in McGinn, Smith products?

10 A. Many, many products.

11 Q. How would he typically present an investment
12 opportunity to you?

13 A. Sometimes we did it over the phone. Sometimes
14 we did it -- when we started, we met face to face and had
15 long conversations, and he decided -- you know, he kind of
16 basically proposed investments that he thought would fit my
17 goals and balance risk versus growth at that point.

18 Q. From time to time, would he send you information
19 through the mail?

20 A. About investment opportunities?

21 Q. Yes.

22 A. I don't think normally I got those through the
23 mail, no.

24 Q. How about any of your quarterly or monthly
25 statements, did any of that type of information come

THOMAS BROWN - Direct By Mr. Belliss

1 through the mail?

2 A. Absolutely, yes.

3 Q. Did you, in fact, make some investments in
4 McGinn, Smith products?

5 A. I did.

6 Q. I would like to show you Exhibit GM-2.

7 Mr. Brown, the screen is going to come up right in front of
8 you. Would you take a look in that folder, please.

9 Mr. Brown, is this your ticket for a twenty-five
10 thousand dollar investment in Third Albany Income Notes?

11 A. Yes, it is.

12 Q. And the settlement date is on or about
13 November 24, 2004; is that right?

14 A. Correct.

15 Q. Did you invest in the note that paid a 10.25%
16 interest rate and had a maturity term of five years?

17 A. Yes, I did.

18 Q. I show you Exhibit GC-3. Do you recognize this
19 document, sir?

20 A. Yes, I do.

21 Q. What is it?

22 A. It is basically a description of the investment
23 opportunity and how the money is going to be used.

24 Q. And this was for Third Albany Income Notes. Was
25 it provided to you in connection with your twenty-five

THOMAS BROWN - Direct By Mr. Belliss

1 thousand dollar investment?

2 A. Yes, it was.

3 Q. If we look a little bit farther down in the
4 middle of the screen, it says: The junior notes will
5 mature on December 15, 2009. We will pay interest on the
6 notes quarterly on the 15th day of January, April, July,
7 and October commencing on January 15, 2005.

8 So did you expect to get quarterly interest
9 payments in connection with your investment?

10 A. I did.

11 Q. Is it fair to say that after that five-year
12 period of time you expected to get your principal back,
13 your twenty-five thousand dollars?

14 A. Yes, I did.

15 Q. As of today, have you received your principal
16 back?

17 A. No, none of it.

18 Q. Did your investment pay the quarterly interest
19 payments as promised for a period of time?

20 A. I believe they did for a very short period of
21 time, yes.

22 Q. Do you recall receiving any letters from McGinn,
23 Smith advising of a suspension of interest payments?

24 A. I can't honestly answer the question. I don't
25 know the answer to that.

THOMAS BROWN - Direct By Mr. Belliss

1 Q. To your knowledge, did your interest payments at
2 some point become suspended?

3 A. Yes, definitely.

4 Q. If we could look at page thirteen of the private
5 placement memorandum.

6 MR. BELLISS: Two more pages, please, at the
7 top.

8 BY MR. BELLISS, CONTINUED:

9 Q. Mr. Brown, do you see the section that's
10 highlighted under use of proceeds?

11 A. Yes.

12 Q. Does that section tell you how your investment
13 money is going to be used?

14 A. Yes, it does.

15 Q. At the time that you made your investment, did
16 you think your money would be used according to this use of
17 proceeds section?

18 A. Yes.

19 Q. Did you think your money would be used for
20 anything other than the investments that are described on
21 the screen?

22 A. No, I didn't expect that.

23 Q. Aside from the fees that were disclosed in the
24 private placement memorandum, if investor money was used to
25 make payroll for McGinn, Smith, is that an investment that

THOMAS BROWN - Direct By Mr. Belliss

1 you would have expected Third Albany Income Notes to make?

2 A. I would not have expected that.

3 Q. Is that information that would have been
4 significant to you in deciding whether you were going to
5 make that twenty-five thousand dollar investment that you
6 did make?

7 A. Honestly, it probably wouldn't have made a
8 difference. If they had disclosed it, I probably would
9 have glossed right over it.

10 Q. Nonetheless, did you place any trust in
11 Mr. Anthony in the recommendations that he made to you?

12 A. Yes, I did.

13 Q. Did you believe that any fees that were going to
14 be taken out of this investment would have been disclosed
15 in the private placement memorandum?

16 A. Yes.

17 Q. Any fees beyond what were disclosed, is that
18 something you would have wanted to have known?

19 A. Yes.

20 Q. Mr. Brown, did you make any investments in an
21 investment called Firstline Senior Trust 07 Series B?

22 A. I did.

23 Q. Did you have any discussions with Don Anthony
24 about that particular investment?

25 A. He brought me in, and we talked about it, and he

THOMAS BROWN - Direct By Mr. Belliss

1 did recommend that I purchase that or invest in that.

2 Q. I show you exhibit GA-9. Do you recognize this
3 document, Mr. Brown?

4 A. Yes, I have seen this document.

5 Q. What is it?

6 A. Again, it is a description of the Firstline
7 Senior Trust investment opportunity.

8 Q. What did Don Anthony tell you about this
9 particular investment, what was it investing in?

10 A. This was invested in -- I believe alarm
11 contracts was the principal investment.

12 Q. Did you end up making an investment in this
13 particular trust?

14 A. I did.

15 Q. Let me show you Exhibit GF-44. Is this your
16 ticket for a ten thousand dollar purchase for Firstline
17 Senior Trust 07 Series B made on or about November 2007?

18 A. Yes, it is.

19 Q. If we go back and look at the private placement
20 memorandum.

21 MR. BELLISS: The first page, please, Ron,
22 GA-9.

23 BY MR. BELLISS, CONTINUED:

24 Q. Mr. Brown, what was what your interest rate that
25 you were promised in connection with this investment?

THOMAS BROWN - Direct By Mr. Belliss

1 A. 9.5 percent.

2 Q. Was the maturity term forty-eight months?

3 A. I believe it was forty-eight months, yes.

4 Q. If we go down and look at the underwriting
5 discount at the bottom of page one, what is the percentage
6 that will be taken as the underwriting discount?

7 A. Four and a half percent.

8 Q. Let's take a look at the use of proceeds section
9 first at page five.

10 MR. BELLISS: Would you highlight that
11 paragraph in the center, please, Ron?

12 BY MR. BELLISS, CONTINUED:

13 Q. It should be coming up on the monitor as well,
14 Mr. Brown. Does it say: The net proceeds from the
15 offering of certificates will be used to purchase the
16 senior tranche of the financing provided to Firstline, as
17 more fully described in the Residential Monitoring
18 Receivable Financing Agreement dated October 9, 2007, and
19 attached hereto as Exhibit D.

20 Did I read that correctly?

21 A. Yes.

22 Q. If we look at page seven, there is a similar
23 section. Under the use of proceeds section, Mr. Brown,
24 that we are looking at here on page seven, does it describe
25 how investor money will be used after the underwriting

THOMAS BROWN - Direct By Mr. Belliss

1 discount is deducted?

2 A. Yes, it does.

3 Q. At the time that you made this investment, did
4 you think your investment money would be used or spent
5 according to the use of proceeds sections that we have just
6 been looking at?

7 A. Yes, I did.

8 Q. At the time you made your investment, Mr. Brown,
9 did Don Anthony or anyone from McGinn, Smith tell you that
10 Mr. McGinn or Mr. Smith were planning to use more than
11 three hundred thousand dollars of investor money raised by
12 the trust to pay themselves above and beyond what was
13 disclosed in the underwriting discount?

14 A. I had no awareness of that at all.

15 Q. Is that information that would have been
16 significant to you in deciding whether to invest?

17 A. Very possibly.

18 Q. Did Mr. Anthony or anyone from McGinn, Smith
19 tell you that Mr. Smith and Mr. McGinn were planning to use
20 more than three hundred thousand dollars of investor money
21 from the trust to pay themselves loans?

22 A. I did not know that.

23 Q. Is that something that would have been
24 significant to you in deciding whether you were going to
25 invest your ten thousand dollars?

THOMAS BROWN - Direct By Mr. Belliss

1 A. Very likely, yes.

2 Q. Did Mr. Anthony or anyone from McGinn, Smith
3 tell you that Mr. McGinn and Mr. Smith would end up taking
4 more than three hundred thousand dollars of investor money
5 raised by the trust to pay themselves above and beyond the
6 fees disclosed in the private placement memorandum?

7 A. No.

8 Q. Again, would that have been information
9 significant to you in deciding whether to invest?

10 A. In this case I believe the answer would be yes,
11 yes.

12 Q. Finally, if Mr. McGinn and Mr. Smith were going
13 to take more than three hundred thousand dollars beyond
14 what was disclosed as the underwriting fees to loan
15 themselves money, is that something that would have been
16 significant to you in deciding whether to invest?

17 A. Yes.

18 Q. At the time you made your investment, Mr. Brown,
19 where did you think investors were going to get their
20 interest and principal payments from, what was the source?

21 A. The source was investment into these alarm
22 contracts.

23 Q. Do you know where the alarm contracts were
24 located principally?

25 A. No, I do not.

THOMAS BROWN - Direct By Mr. Belliss

1 Q. Mr. Brown, if monthly interest payments were
2 going to be coming to you from a source unrelated to your
3 investment in Firstline, is that something you would have
4 wanted to have known prior to making your investment?

5 A. That would probably have not been a factor in my
6 decision.

7 Q. You would have been just okay as long the
8 monthly interest payments just kept coming?

9 A. Correct.

10 Q. Prior to making your investment in Firstline,
11 did Don Anthony or anybody from McGinn, Smith tell you
12 there was company called ADT that was threatening a
13 multi-million dollar lawsuit against Firstline Security,
14 Inc., the company borrowing investor money?

15 A. I did not know that. I was not aware of that.

16 Q. Is that information that would have been
17 significant to you in deciding whether to invest?

18 A. Absolutely.

19 Q. At any point in 2008, did anyone from McGinn,
20 Smith inform you that Firstline Security, Inc., that Utah
21 company that was borrowing investor money, had filed for
22 bankruptcy?

23 A. I honestly don't know the answer. I don't
24 believe so. I certainly don't remember it. It certainly
25 would have kind of raised an alarm.

THOMAS BROWN - Direct By Mr. Belliss

1 Q. Is that information that you would have wanted
2 to have known being an investor in Firstline?

3 A. Absolutely, yes.

4 Q. Mr. Brown, did you receive your monthly interest
5 payments for a period of time in connection with this
6 investment?

7 A. I believe so, yes.

8 Q. At some point in time, did the interest payments
9 stop altogether?

10 A. I will be honest, I know they stopped because
11 Don told me they stopped. My interest was always just
12 reinvested in my account, so...

13 Q. Let me show you Exhibit GF-60. It is a letter
14 from McGinn, Smith to you dated September 10, 2009; is that
15 right, Mr. Brown?

16 A. Correct.

17 Q. Do you have any recollection of ever receiving
18 this letter?

19 A. I am going to say I don't remember reading it in
20 depth. I am sure I received it, but I didn't pay a lot of
21 attention to it.

22 Q. How about if we look at the memorandum that is
23 attached on page two, do you have a similar recollection,
24 that is, you are uncertain of whether you received it or
25 read it?

THOMAS BROWN - Direct By Mr. Belliss

1 A. I am uncertain as to whether I read it, correct.

2 Q. Mr. Brown, as of today have you received your
3 principal back, your ten thousand dollar investment in
4 Firstline?

5 A. No.

6 Q. Thank you, Mr. Brown.

7 MR. BELLISS: No further questions, Judge.

8 THE COURT: Defense may cross-examine,
9 Ms. Owens.

10

11 CROSS-EXAMINATION BY MS. OWENS:

12 Q. Good morning, Mr. Brown. I just have a couple
13 of questions regarding your Third Albany, TAIN investment.
14 Mr. Belliss went over some of the fees that were disclosed
15 within the private placement memorandum?

16 A. Yes.

17 Q. Were you aware that there were advisory fees
18 that were listed as one of the fees?

19 A. I always expected there to be advisory fees,
20 yes.

21 Q. Okay, and what do you understand advisory fees
22 to be?

23 A. I have no idea.

24 Q. Did you understand they would be going towards
25 an entity that was advising the investments called McGinn,

MARY DALE - Cross by Ms. Owens

1 MR. JONES: Nothing, Your Honor.

2 MR. BELLISS: No, Your Honor.

3 THE COURT: Okay. Members of the jury we
4 will take our afternoon break now. Don't discuss the case
5 among yourselves or anyone else.

6 Mr. Minor.

7 COURT CLERK: Court stands for a brief
8 recess.

9 (Whereupon, a brief recess was taken.)

10 (Whereupon, the proceedings were held in
11 open court in the presence of the Jury.)

12 THE COURT: Next witness.

13 MR. BELLISS: Your Honor, the government
14 calls Mr. Avram Cahn to the stand.

15

16 AVRAM CAHN, having been called as a Witness, being
17 first duly sworn, was examined and testified as follows
18 under oath:

19

20 DIRECT EXAMINATION BY MR. BELLISS:

21 Q. Good afternoon, Mr. Cahn. How are you this
22 afternoon, sir?

23 A. So far so good.

24 Q. Could you tell the jury where you are from?

25 A. I am from New York.

AVRAM CAHN - Direct By Mr. Belliss

1 Q. New York City?

2 A. New York City, Manhattan.

3 Q. Are you married, sir?

4 A. Yes, I am.

5 Q. Are you currently working?

6 A. Yes, I am.

7 Q. What do you do for living?

8 A. I am an attorney.

9 Q. What kind of an attorney?

10 A. I do employee benefits and executive
11 compensation.

12 Q. How long have you been in that kind of business?

13 A. I have been in this business now for -- I
14 practiced for two years. I took off for about eight. And
15 I have been doing it now for almost fifteen.

16 Q. How did you first come to have a relationship
17 with anyone at McGinn, Smith?

18 A. I received a cold call from a broker connected
19 with McGinn, Smith named Colin McCarthy, and I don't
20 recall. He probably called me a couple of times and then
21 suggested some stock, which I, at some point, bought stock
22 and it was good stock. So over time I developed a
23 relationship, and I invested more money with them.

24 Q. About when did that relationship first form?

25 A. I don't recall. I guess maybe 2005, 2006, but I

AVRAM CAHN - Direct By Mr. Belliss

1 am not sure.

2 Q. Was Mr. McCarty your primary point of contact at
3 McGinn, Smith?

4 A. He was my only point of contact at McGinn,
5 Smith.

6 Q. Did you have discussions with Mr. McCarthy about
7 your investment objectives?

8 A. Somewhat.

9 Q. Sort of looking at 2007, 2008 timeframe, what
10 were your investment objectives?

11 A. Primarily capital appreciation, as well as
12 income.

13 Q. Did Mr. McCarthy ever present to you -- and I
14 think maybe you testified to this already, but with
15 investment opportunities of McGinn, Smith products?

16 A. Not initially, but at some point he did, yes.

17 Q. How would Mr. McCarthy present to you and
18 propose investment opportunities?

19 A. How? He would call me up and describe it. Then
20 send me documentation.

21 Q. Would he mail you things, would he e-mail you
22 things?

23 A. E-mail.

24 Q. Would he send you what is called a private
25 placement memorandum describing the investment?

AVRAM CAHN - Direct By Mr. Belliss

1 A. Yes.

2 Q. Did you, in fact, make any investments in any
3 McGinn, Smith private placements?

4 A. Yes, I did.

5 Q. Directing your attention to the fall of 2007,
6 did Mr. McCarthy present to you with an investment
7 opportunity called Firstline?

8 A. Yes.

9 Q. Did you ultimately make some investments in the
10 Firstline Trust?

11 A. Yes.

12 Q. I am going to show you three exhibits, GF-55,
13 GF-45, and GF-56. Mr. Cahn, if you could just flip through
14 those exhibits. I am going to put up the screen right in
15 front of you?

16 A. Okay.

17 Q. Look at GF-55 first, please?

18 A. Okay.

19 Q. Is this your ticket for a fifteen thousand
20 dollar investment?

21 A. One moment. Let me change glasses. Yes.

22 Q. All right. In Firstline Trust 07 Series B. And
23 you made the investment on or about November 5, 2007. Is
24 that what is showing on the computer screen?

25 A. Yes, it is.

AVRAM CAHN - Direct By Mr. Belliss

1 Q. If we look at GF-56, it is another investment
2 ticket; is that right, Mr. Cahn?

3 A. Yes, it is.

4 Q. In this case you bought twenty thousand dollars
5 of Firstline Senior Trust 07 Series B, and you made that
6 trade date on or about November 5, 2007; is that right?

7 A. Yes.

8 Q. And for Exhibit GF-45 you made a twenty-five
9 thousand dollar investment in Firstline Trust 07 Series B,
10 and you made that investment on or about April 25, 2008; is
11 that right?

12 A. Yes.

13 Q. And if we scroll down a couple of pages in this
14 exhibit, we should see a subscription agreement. Mr. Cahn,
15 do you see that page highlighted on the screen?

16 A. Yes, I do.

17 Q. And if we go to the next page, is that your
18 signature on the subscription agreement, Mr. Cahn?

19 A. Yes, it is.

20 Q. April 23, 2008?

21 A. Yes.

22 Q. If we go to the next page. Was your
23 subscription ultimately approved by Mr. Smith on or about
24 May 1, 2008?

25 A. Yes.

AVRAM CAHN - Direct By Mr. Belliss

1 Q. I show you Exhibit GA-8, and I will show you
2 GA-9 as well. Concerning GA-8, that is the Firstline
3 Trust 07 Series B. Did you receive a PPM for this
4 investment in connection with your investment in Firstline
5 Trust 07 Series B?

6 A. Yes.

7 Q. What was the interest rate that you were
8 expecting to be paid with this trust?

9 A. Eleven percent.

10 Q. What was the maturity term of the investment?

11 A. The maturity term, I don't recall offhand.

12 Q. Would it be the sixty months right there next to
13 the eleven percent?

14 A. Yes.

15 Q. If we go down to the bottom of that first page,
16 there was an underwriting discount of 6.0 percent; is that
17 right?

18 A. Yes, it is.

19 Q. Go to exhibit GA-9, first page. Mr. Cahn,
20 similarly is this a private placement memorandum for your
21 other investment, Firstline Senior Trust 07 Series B?

22 A. Yes, it is.

23 Q. Interest rate on this one was 9.5 percent, and
24 the maturity term was forty-eight months; is that right?

25 A. Yes.

AVRAM CAHN - Direct By Mr. Belliss

1 Q. The underwriting discount in this investment was
2 what?

3 A. 4.5 percent.

4 MR. BELLISS: If we go to page five. Let's
5 go one more page, please, Ron. One more.

6 BY MR. BELLISS, CONTINUED:

7 Q. The use of proceeds section. The highlighted
8 paragraph, does this describe how investor funds will be
9 used?

10 A. Yes, it does.

11 Q. If we look at page seven of the other private
12 placement memorandum, I think it is GA-8, page seven, do
13 you see a similar description for the use of proceeds?

14 MR. BELLISS: Keep going a couple more
15 pages, right there.

16 A. Yes.

17 BY MR. BELLISS, CONTINUED:

18 Q. Mr. Cahn, what was your understanding based upon
19 your review of the private placement memorandums of the
20 nature of your investment?

21 A. The investment was money that was owed to
22 Firstline Security, would be these alarm contracts, other
23 than the underwriting discount because all the other gross
24 proceeds was supposed to go back to investors. They were
25 supposed to be paying interest.

AVRAM CAHN - Direct By Mr. Belliss

1 Q. Have you come to learn that the company that was
2 borrowing investors' money was actually located out in
3 Utah?

4 A. Yes.

5 Q. Has a similar name, Firstline Security, Inc.,
6 did you know that?

7 A. Yes.

8 Q. At the time that you made your three investments
9 in the Firstline Trusts, did you think your investment
10 money would be used according to the use of proceeds
11 sections that we have been looking at in the two private
12 placement memorandums?

13 A. Yes, I did.

14 Q. Did Mr. McCarthy or anyone from McGinn, Smith
15 tell you that Mr. McGinn and Mr. Smith were planning to use
16 more than three hundred thousand dollars of investor money
17 raised by the two trusts to pay themselves above and beyond
18 what was disclosed in the underwriting fees?

19 A. No.

20 Q. Is that information that would have been of
21 concern to you in deciding whether to make those three
22 investments?

23 A. Yes.

24 Q. Did anyone tell you that Mr. McGinn and
25 Mr. Smith were planning to use more than three hundred

AVRAM CAHN - Direct By Mr. Belliss

1 thousand dollars of investment money raised by the trust to
2 make loans to themselves?

3 A. No.

4 Q. Is that information that would have been of
5 concern to you in deciding whether to make those three
6 investments?

7 A. Yes.

8 Q. Did anyone tell you that Mr. McGinn and
9 Mr. Smith used more than three hundred thousand dollars of
10 investor money raised by the two trusts to pay themselves
11 above and beyond what was disclosed in the private
12 placement memorandums?

13 A. No.

14 Q. Is that information that would have been of
15 concern to you in deciding whether to invest?

16 A. Yes.

17 Q. And finally, did anyone from McGinn, Smith tell
18 that you Mr. McGinn and Mr. Smith used more than three
19 hundred thousand dollars of investor money raised by the
20 two trusts to make loans to themselves?

21 A. I was not told that.

22 Q. Is that information that would have been of
23 concern to you in making your investment?

24 A. Yes.

25 Q. Prior to making your November 2007, the two

AVRAM CAHN - Direct By Mr. Belliss

1 investments in the Firstline Trust that you made, did
2 anyone from McGinn, Smith tell you that a company called
3 ADT was threatening a multi-million dollar lawsuit against
4 Firstline Security, Inc., the company that was borrowing
5 investor money?

6 A. No.

7 Q. Is that information that would have been of
8 concern to you in deciding whether to invest?

9 A. Yes.

10 Q. In connection with your April 2008 investment in
11 Firstline, did anyone from McGinn, Smith tell you that ADT
12 did actually file a multi-million dollar lawsuit against
13 Firstline Security, Inc., the company borrowing investor
14 money?

15 A. No.

16 Q. Is that information that would have been of
17 concern to you in deciding whether to make that April 2008
18 investment?

19 A. Yes.

20 Q. When you made your three investments, the
21 investments were supposed to pay monthly interest for a
22 period of years; is that right?

23 A. Yes.

24 Q. At the time that you made your three
25 investments, where did you think your monthly interest

AVRAM CAHN - Direct By Mr. Belliss

1 payments would come from?

2 A. From the loans.

3 Q. Did you think that your interest payments might
4 come from any McGinn, Smith investments that were unrelated
5 to the Firstline Trust?

6 A. No.

7 Q. Is that information that you would have wanted
8 to have known prior to making your investments in the
9 Firstline Trust?

10 A. Yes.

11 Q. Prior to making your April 2008 investment, did
12 anyone from McGinn, Smith tell you that Firstline Security,
13 Inc., the company that was borrowing investor money, had
14 filed for bankruptcy in January of 2008?

15 A. No.

16 Q. Is that information that would have been of
17 concern in deciding whether to invest?

18 A. Absolutely.

19 Q. Anyone from McGinn, Smith tell you that again
20 Firstline Security, Inc., the company that filed for
21 bankruptcy, stopped making payments on the loans, on the
22 monies it had borrowed from investors?

23 A. I was never told that.

24 Q. Is that something you would have wanted to have
25 known prior to making your April 2008 investment?

AVRAM CAHN - Direct By Mr. Belliss

1 A. Yes.

2 Q. Did you receive all of your interest payments as
3 promised in the private placement memorandums that we have
4 been looking at?

5 A. Initially.

6 Q. At some point in time, did the interest payments
7 stop?

8 A. Yes.

9 Q. I show you Exhibit GF-61.

10 MR. BELLISS: Could we zoom in on the body,
11 please, Ron?

12 BY MR. BELLISS, CONTINUED:

13 Q. Mr. Cahn, do you recognize this letter?

14 A. Yes, I do.

15 Q. Did you receive a copy of this letter on or
16 about September 10, 2009, in connection with your
17 investments in Firstline?

18 A. Yes.

19 Q. And if we go to page two, there is an attached
20 memorandum. Did you also receive a copy of that attached
21 memorandum from a Joseph B. Carr, general counsel?

22 A. Yes, I did.

23 Q. If we look at the bottom paragraph on that first
24 page of the memorandum, it says:

25 Funding was able to secure immediate financing

AVRAM CAHN - Direct By Mr. Belliss

1 secured by its Firstline receivables in order to have funds
2 available to make the monthly payments due to its lenders.
3 It is anticipated that this borrowing and the concomitant
4 payments to lenders would continue until the bankruptcy
5 proceeding was concluded and funding received the amounts
6 that Firstline owed to it.

7 At the onset it was anticipated that the
8 bankruptcy proceeding would be concluded in short order and
9 that there would be no disruption to the payments required
10 to be made by funding to its lenders. The lender has
11 become exhausted with time delays and is no longer willing
12 or capable of funding.

13 At the time that you received this letter from
14 McGinn, Smith, did anyone advise you who this lender was
15 that was making tpayments to Firstline investors such as
16 yourself?

17 A. No.

18 Q. If the lender was, in fact, a lender using
19 investor funds from other unrelated McGinn, Smith
20 investments, is that something you would have wanted to
21 have known?

22 A. Yes.

23 Q. As of today, have you received all of your
24 principal back from your three investments in Firstline
25 Trust?

AVRAM CAHN - Direct By Mr. Belliss

1 A. No.

2 Q. Thank you, Mr. Cahn.

3 MR. BELLISS: No further questions, Judge.

4 THE COURT: Cross exam, Ms. Owens.

5

6 CROSS-EXAMINATION BY MS. OWENS:

7 Q. Good afternoon, Mr. Cahn.

8 A. Good afternoon.

9 Q. I can't really see you. So you told Mr. Belliss
10 that you had three separate investments in the various
11 Firstline trusts; is that correct?

12 A. I believe so, yes.

13 Q. So you invested fifteen thousand dollars in the
14 junior trust and twenty thousand dollars in the senior
15 trust in November 2007?

16 A. Yes.

17 Q. And then you went back and purchased more in
18 April of 2008; is that correct?

19 A. That's correct.

20 Q. Was it because you were happy with the
21 performance of your November investments?

22 A. Yes.

23 Q. And you said that this investment was introduced
24 to you through your broker, Colin McCarthy?

25 A. Yes.

THOMAS BROWN - Cross by Ms. Owens

1 Q. And are you aware that the assets are currently
2 in the hands of a receiver appointed in the civil case?

3 A. I know the receiver is out there looking for
4 money. That's all I know.

5 Q. And have you received any payments on this
6 investment from the receiver yet?

7 A. No.

8 MS. OWENS: Thank you, Mr. Brown.

9 THE COURT: Mr. Jones, anything?

10 MR. JONES: No, Your Honor.

11 THE COURT: Anything further, Mr. Belliss?

12 MR. BELLISS: No, Judge.

13 THE COURT: Thank you, Mr. Brown. You may
14 step down.

15 (Whereupon, the Witness is excused.)

16 THE COURT: Mr. Belliss.

17 MR. BELLISS: The government calls
18 Doctor Henry Crist.

19

20 HENRY CRIST, having been called as a Witness, being
21 first duly sworn, was examined and testified as follows
22 under oath:

23

24 DIRECT EXAMINATION BY MR. BELLISS:

25 Q. Good morning, Doctor. How are you?

HENRY CRIST - Direct By Mr. Belliss

1 A. Fine.

2 Q. I am going to push that table in front of you a
3 little bit. Keep that mike as close to your mouth as
4 possible just so everyone can hear you. It is a big
5 courtroom. Doctor Crist, could you tell the jury where you
6 live?

7 A. I live in Hummelstown, Pennsylvania. It is
8 actually in Hershey, but Hummelstown is the mailing
9 address.

10 Q. Are you married, Doctor Crist?

11 A. I am divorced.

12 Q. Do you have any children?

13 A. Yes.

14 Q. How many?

15 A. Four.

16 Q. Are they adults themselves?

17 A. No, they aren't. They are around forty.

18 Q. Are you currently working, sir?

19 A. Yes, sir.

20 Q. Where do you work?

21 A. I work at Penn State College of Medicine Hershey
22 Medical Center.

23 Q. What do you did there, Doctor?

24 A. I am a pathologist and director of surgery and
25 pathology.

HENRY CRIST - Direct By Mr. Belliss

1 Q. How long have you been in that position?

2 A. I have been there since 2005.

3 Q. How long have you been practicing medicine?

4 A. I got my M.D. degree in 1966, so that would be
5 forty-nine years if I am doing the math right.

6 Q. A long time nonetheless?

7 A. Yes.

8 Q. How did you first come to have a relationship
9 with anyone at McGinn, Smith?

10 A. The only thing --

11 Q. Or anyone who was a broker working in connection
12 with McGinn, Smith?

13 A. It was in Carlisle Hospital where I was the
14 director of laboratories in probably the early to
15 mid-eighties when Mr. Smith, who was Bill Lex's associate,
16 were the financial advisors for the hospital. So I decided
17 to use them as my financial advisors, primarily Mr. Smith
18 who unfortunately died a few years later. And then I
19 started a relationship with Bill Lex.

20 Q. The Mr. Smith that you referenced, that's a not
21 a David Smith?

22 A. No.

23 Q. It is a totally different Mr. Smith?

24 A. Yes.

25 Q. Did Bill Lex end up becoming your primary point

HENRY CRIST - Direct By Mr. Belliss

1 of contact over the years in connection with McGinn, Smith
2 investments?

3 A. Yes.

4 Q. And over the last ten years, what would you say
5 your investment objectives were?

6 A. Primarily I was interested ten years ago in a
7 little bit of, you know, risk like in stock, but that
8 ended, you know, a couple of years later. That would have
9 been -- ten years would have been 2003. By about 2004 or
10 so I wanted to switch into perfectly secure because I was
11 sixty-four at the time.

12 Q. And your movement in more secure investments,
13 did at that continue up through 2005, 2006, 2007, and 2008?

14 A. Yes.

15 Q. During that time period, that 2005, 2006, 2007,
16 2008 period, did Mr. Lex provide you or present with you
17 any investment opportunities in McGinn, Smith products?

18 A. Yes.

19 Q. How would he typically present them to you?

20 A. He called me on the phone. We talked several
21 times a year whenever investments would be maturing or just
22 to review. Prior to that I had, I think, everything pretty
23 much in Lincoln National, which was a general, you know,
24 sort of a fund that had spread out over a number of things.
25 It was just sitting there doing a little bit. And Bill had

HENRY CRIST - Direct By Mr. Belliss

1 said that there was a really good opportunity in some
2 notes. So then I moved some money over into a note.

3 Q. Did you ultimately make some investments in
4 McGinn, Smith products?

5 A. Yes, I think that was the first one. And then
6 it had done so well, I moved everything over, pretty much
7 everything over into the notes as they came available.

8 Q. Moving forward to the fall of 2007, do you
9 recall any discussions with Bill Lex about an investment
10 called Firstline?

11 A. I don't -- didn't remember the names of these.

12 Q. Would you have asked to see a prospectus or a
13 private placement memorandum describing the investment
14 before you made any investments?

15 A. He provided me with a twenty, thirty page
16 document that went all through everything, but I basically
17 followed the recommendation and advice based on the fact
18 that was -- it seemed to be such a secure thing with the
19 ADT type security things around the country, and I don't
20 understand all those things.

21 Q. Let me show you Exhibit GA-8. Doctor Crist, a
22 screen is going to come up right in front of you. There
23 should be a computer screen up that has the first page of
24 the exhibit. And what is that document, Doctor Crist?

25 A. Firstline Trust 07 Series B placement

HENRY CRIST - Direct By Mr. Belliss

1 memorandum.

2 Q. Do you know what this document generally does
3 for a prospective investor?

4 A. No. I am afraid that these are complex to me,
5 and I spent a great deal of time in my own field, and I
6 rely on the people who are knowledgeable.

7 Q. Did you end up making an investment in Firstline
8 Trust 07 Series B?

9 A. Yes, I believe I did.

10 Q. I am going to show you exhibits -- I will start
11 with Exhibit GF-57. Doctor, we should have page one of the
12 exhibit up on screen. Is it fair to say that is the
13 investment ticket for your purchase of seventy-five
14 thousand dollars of Firstline Trust 07 Series B with a
15 settlement date of October 28, 2007; is that correct,
16 Doctor?

17 A. Yes.

18 Q. And you had invested in the junior contract
19 certificates at eleven percent due October 1, 2012; is that
20 right?

21 A. Yes.

22 Q. If we go back and look at the private placement
23 memorandum, that should come up on the screen. At the top
24 half there, Doctor, do you see again at the bottom of the
25 highlighted section, sixty-month maturity term and eleven

HENRY CRIST - Direct By Mr. Belliss

1 percent interest payable to you as the investor?

2 A. Yes.

3 Q. Going down to the bottom of page one, there is
4 an underwriting discount of six percent. Did you know what
5 that was, Doctor Crist, at the time you made your
6 investment?

7 A. Not really.

8 Q. Did you believe it was some type of fee in
9 connection with the investment?

10 A. Yes, usually that sort of underwriting fees or
11 something like that, but I don't know the details of what
12 underwriting discount means. Again, specific words have
13 various specific meanings that change in the context of
14 different uses. And it is a subtlety to understand them.

15 Q. Let me show you Exhibit GF-46. Doctor Crist,
16 did you end up making a second investment in one of the
17 trusts, this one for thirty thousand dollars in Firstline
18 Senior Trust 07 Series B?

19 A. Yes.

20 Q. If we could flip a couple of pages in there
21 should be what is called a subscription agreement. It
22 should be coming up on the screen, Doctor Crist.

23 A. Yes.

24 Q. If we go to next page of that document, at the
25 bottom, Doctor Crist, is that your signature and is it

HENRY CRIST - Direct By Mr. Belliss

1 dated January 28, 2008?

2 A. Yes, it is.

3 Q. If we go to the next page, was your investment
4 in Firstline Senior Trust 07 Series B approved by
5 Mr. McGinn on January 29, 2008?

6 A. That's a signature there of his name.

7 Q. Let me show you Exhibit GA-9. Is this document
8 a corresponding private placement memorandum for that
9 thirty thousand dollar investment that you made?

10 A. Yes, it appears to be.

11 Q. For this investment, Doctor Crist, could you
12 tell what maturity term and interest rate are?

13 A. Let's see --

14 Q. If we look at the very first page of the private
15 placement memorandum at the top?

16 A. Yes, 9.5 percent.

17 Q. With a forty-eight month maturity term; is that
18 right?

19 A. Yes.

20 Q. If we scroll down to the bottom of the first
21 page, there is again an underwriting discount. In this
22 case, it is 4.50 percent?

23 A. Yes.

24 Q. I just want to look at a couple of sections
25 inside of that private placement memorandum.

HENRY CRIST - Direct By Mr. Belliss

1 MR. BELLISS: Could we go to page five,
2 please, Ron.

3 BY MR. BELLISS, CONTINUED:

4 Q. And the highlighted section should come up on
5 the screen, Doctor, with the heading of use of proceeds?

6 A. Yes.

7 Q. Does that describe how investor funds are going
8 to be used?

9 A. Yes.

10 Q. If we could flip forward to page seven, there is
11 a similar section, Doctor, if you could just take a moment
12 and read it.

13 A. Okay.

14 Q. It says: The trust fund intends to use all of
15 the net proceeds of the offering to purchase the senior
16 tranche of the financing.

17 Was it your understanding that there were some
18 alarm contracts that were the focus of this investment?

19 A. Yes.

20 Q. At the time that you made your two investments,
21 that one back in October of 2007 and one in January of
22 2008, did you expect your investor funds to be used in
23 accordance with the use of proceeds section that we have
24 just been looking at?

25 A. Yes.

HENRY CRIST - Direct By Mr. Belliss

1 Q. At the time you made your investments,
2 Doctor Crist, did Mr. Lex or anyone from McGinn, Smith tell
3 you that Mr. McGinn and Mr. Smith were planning to use more
4 than three hundred thousand dollars of investor money to
5 pay themselves above and beyond the underwriting discount
6 that was disclosed in the private placement memorandum?

7 A. No, I was not told that.

8 Q. Was that something that would have been
9 significant to you in deciding whether to make those two
10 investments?

11 A. Yes.

12 Q. Anyone tell you that Mr. McGinn and Mr. Smith
13 were planning to use more three hundred thousand dollars of
14 investor money raised by the trust to make low interest
15 loans to themselves?

16 A. I didn't know that.

17 Q. Is that something that would have been
18 significant to you in deciding to make that investment?

19 A. Yes.

20 Q. Did anyone tell you that Mr. McGinn and
21 Mr. Smith in fact used more than three hundred thousand
22 dollars of investor money raised by the trust to pay
23 themselves above and beyond fees disclosed in the private
24 placement memorandum?

25 A. No.

HENRY CRIST - Direct By Mr. Belliss

1 Q. Would --

2 A. I found out much later that something was done
3 like that, but I didn't know anything at the time.

4 Q. Again, is that information that would have been
5 significant to you in deciding whether to invest?

6 A. Yes.

7 Q. And finally, if in fact Mr. McGinn and Mr. Smith
8 used over three hundred thousand dollars of investor money
9 to loan it to themselves, is that something that would have
10 been significant to you in deciding whether to invest?

11 A. Yes.

12 Q. Doctor, at the time you made your two
13 investments, where did you think the funds would come from
14 to pay you as an investor your monthly interest payments?

15 A. It was my understanding that the money was used
16 as loans to businesses throughout the country who were
17 purchasing various security alarm systems and that the
18 money was to put up front to small companies because that
19 was what they needed to put the systems in. And it was a
20 very secure investment because it was a constant flow of
21 cash back to the people, to the investors, you know, to the
22 businesses. And that flow of cash to them then would pay
23 the interest on a continual basis.

24 Q. At the time that you made your two investments,
25 did Mr. Lex or anyone from McGinn, Smith tell you that your

HENRY CRIST - Direct By Mr. Belliss

1 interest payments might come from some other source than
2 those alarm contracts that you were just describing?

3 A. No.

4 Q. Is that something that would have been
5 significant to you in deciding whether you were going to
6 make those investments?

7 A. Yes.

8 Q. Prior to making your January 2008 investment in
9 Firstline, did Mr. Lex or anyone tell you that an alarm
10 company called ADT had filed a multi-million dollar lawsuit
11 against a company called Firstline Security, Inc., one of
12 the companies that was borrowing investor money?

13 A. No.

14 Q. Is that something that would have been
15 significant to you in deciding whether to invest?

16 A. Yes.

17 Q. Doctor, at any point in 2008, did anyone from
18 McGinn, Smith inform you that Firstline Security, Inc.,
19 again, the company that was borrowing investor money, had
20 filed for bankruptcy?

21 A. No.

22 Q. Is that information that you -- would have been
23 significant to you in deciding whether to make that January
24 2008 investment?

25 A. Yes.

HENRY CRIST - Direct By Mr. Belliss

1 Q. Doctor Crist, for a period of time, did you
2 receive your monthly interest payments in connection with
3 your Firstline investments?

4 A. Yes.

5 Q. Have you received all of the interest payments
6 that you were entitled to?

7 A. There back at the very beginning they were
8 coming in, but then they seemed to stop.

9 Q. At some point in time after you made your two
10 investments, did you learn about the bankruptcy?

11 A. A long time later.

12 Q. Do you remember about when you first learned?

13 A. Two years ago. Let's see, it is the end of
14 2012. I don't know. A couple of years ago or so.

15 Q. After you learned about the bankruptcy, did you
16 ever have any individual communications with a gentleman
17 named Tim McGinn?

18 A. Yes, one.

19 Q. Could you describe what happened?

20 A. Bill Lex called me and said that the McGinn,
21 Smith & Company, Inc. needed to get a bailout so that they
22 could pay some money that they had to pay, which I was led
23 to believe would then enable them to proceed with the --
24 however it would work that we would get our money. And I
25 was asked to be -- to give them twenty-five thousand

HENRY CRIST - Direct By Mr. Belliss

1 dollars on a separate loan at a high interest rate, and I
2 was told that this -- I would be right at the top of
3 getting the money back, and it would be a guaranteed high
4 interest rate. I don't recall, above ten percent.

5 Q. Did you, in fact, speak to Mr. McGinn
6 one-on-one?

7 A. Yes. Bill Lex gave me his phone number and said
8 to call. I called to see what it was and how I should do
9 this and if I should do this.

10 Q. What did Mr. McGinn say?

11 A. I don't recall. It was a very abrupt, abrupt
12 and very brief conversation. He just said something about
13 that the money needed to be, you know, I needed to put the
14 money down, and that I would be on top of the list and high
15 interest rate and it needed to be done quickly.

16 Q. What did you end up doing?

17 A. I called Bill Lex back to ask him what, you
18 know, what this was, what was going on with this and ask
19 him advice on what I should do. And he really didn't give
20 an answer that I should do it. So I called the office
21 back, McGinn, Smith office back, and the phone never was
22 answered.

23 Q. Did you end up sending a twenty-five thousand
24 dollar additional investment in?

25 A. No.

HENRY CRIST - Direct By Mr. Belliss

1 Q. As of today, Doctor Crist, have you received all
2 of your principal back for your two investments in
3 Firstline?

4 A. No.

5 Q. Thank you, Doctor.

6 MR. BELLISS: No further questions, Judge.

7 THE COURT: Defense, cross.
8

9 CROSS-EXAMINATION BY MS. OWENS:

10 Q. Hi, Doctor Crist. I just have a couple of quick
11 questions for you. When you were learning about the
12 Firstline investments --

13 A. Wait until this -- my hearing isn't what it used
14 to be.

15 Q. When you were learning about Firstline
16 investments from your broker, Bill Lex, did he go over the
17 interest rates for the return with you?

18 A. Yes.

19 Q. And did he go over the risk involved?

20 A. My understanding is that these notes were about
21 as solid, you know, about as solid an investment you could
22 make because what he explained to me was that these were
23 companies that were spread all over the country. That they
24 were not subject to a geographic, a single geographic
25 economic downturn, and there were many businesses and many

ANDREW GUZZETTI - Recross by Mr. Jones

1 and there is a bankruptcy proceeding pending, correct?

2 A. No.

3 Q. You never heard anything at all within the
4 McGinn, Smith apparatus in connection with your
5 responsibilities as the person who reached out to all the
6 brokers on a daily basis about this bankruptcy?

7 A. About the bankruptcy, no, until September.

8 Q. Until September, yes.

9 MR. JONES: Thank you.

10 THE COURT: Okay. Thank you. You may step
11 down.

12 (Whereupon, the Witness is excused.)

13 THE COURT: Next witness for the government.

14 MR. BELLISS: Government calls Mary Dale to
15 the stand.

16

17 MARY DALE, having been called as a Witness, being
18 first duly sworn, was examined and testified as follows
19 under oath:

20

21 DIRECT EXAMINATION BY MR. BELLISS:

22 Q. Good afternoon, Ms. Dale. How are you?

23 A. Fine. Thank you.

24 Q. Could you tell the jury where you live?

25 A. I live in the Villages in Florida.

MARY DALE - Direct By Mr. Belliss

1 Q. Is the Villages a city or is that just the name
2 of a complex?

3 A. It is a city.

4 Q. Are you married?

5 A. Widowed.

6 Q. Are you currently working or are you retired?

7 A. I just retired.

8 Q. How long have you been retired?

9 A. Since May.

10 Q. May of this -- 2012?

11 A. Yes.

12 Q. What did you do before you retired?

13 A. I am a registered nurse.

14 Q. Where did you work?

15 A. Several places. Pennsylvania, Delaware, and
16 Orlando, Florida.

17 Q. How many years approximately?

18 A. Forty-eight.

19 Q. How did you first come to have a relationship
20 with anyone at McGinn, Smith?

21 A. With Mr. Bill Lex, my financial person.

22 Q. Was Mr. Lex one of the brokers for McGinn,
23 Smith?

24 A. Yes.

25 Q. About when did your relationship with Mr. Lex

MARY DALE - Direct By Mr. Belliss

1 first begin?

2 A. In 1982.

3 Q. Did you have any discussions over the years with
4 Mr. Lex about your investment objectives?

5 A. Yes.

6 Q. And how long did Mr. Lex work for you as an
7 investment advisor?

8 A. Thirty years.

9 Q. Did your investment objectives change over the
10 thirty some odd years that you worked with Mr. Lex?

11 A. I guess so. As I aged they got a little more
12 important.

13 Q. As you got closer to your retirement years, what
14 were your investment objectives?

15 A. To be able to retire and live in the manner in
16 which I had been accustomed.

17 Q. Is it fair to say that you placed trust in
18 Mr. Lex to help you meet your investment objectives?

19 A. Yes, sir.

20 Q. Did Mr. Lex ever present you with any
21 opportunities to invest in McGinn, Smith products?

22 A. Yes, sir.

23 Q. How would he typically bring an investment
24 opportunity to your attention?

25 A. Sometimes we would talk on the phone and

MARY DALE - Direct By Mr. Belliss

1 sometimes he would come -- I originally met him in the
2 hospital that I worked in at the time. And sometimes he
3 would come to the house.

4 Q. And when you are meeting either at the hospital
5 or at your house, did he have any materials that he would
6 show you?

7 A. Uh-huh.

8 THE COURT: Is that a yes?

9 A. Yes, sir.

10 BY MR. BELLISS, CONTINUED:

11 Q. What would he typically be showing you?

12 A. Gosh, just papers in regarding what we were
13 going to be investing in.

14 Q. Did you ultimately make some investments through
15 McGinn, Smith?

16 A. Yes, sir.

17 Q. I am going to direct your attention to the fall
18 of 2007, okay. And during that timeframe, did you have any
19 discussions with Mr. Lex about an investment opportunity
20 called Firstline Senior Trust 07 Series B?

21 A. Yes, sir.

22 Q. How would those discussions have come about with
23 Mr. Lex?

24 A. Since I lived in Florida then, they were mostly
25 done by phone.

MARY DALE - Direct By Mr. Belliss

1 Q. Do you remember anything that Mr. Lex said
2 generally about what this investment entailed and what it
3 was expecting to pay, those types of things?

4 A. I think the interest rate was proposed at 9.5
5 percent, and it had something to do with security systems.

6 Q. Security systems or alarm contracts; is that
7 right?

8 A. Yes.

9 Q. I am going to show you an exhibit, GA-9.
10 Ms. Dale, I am going to put up a computer screen right in
11 front of you, okay. Ms. Dale, what is this document that
12 is up on the screen?

13 A. Firstline Senior Trust 07 Series B it was.

14 Q. You call it the private placement memorandum; is
15 that right?

16 A. Yes, sir.

17 Q. As you indicated, the interest rate is in sort
18 of the lower part of the highlighted section for 9.50
19 percent, is that your understanding of the interest rate
20 that you would be paid?

21 A. Yes, sir.

22 Q. And the term of the investment would be
23 forty-eight months; isn't that right?

24 A. Yes, sir.

25 Q. If we go down to the bottom of the first page,

MARY DALE - Direct By Mr. Belliss

1 there was an underwriting fee or an underwriting discount
2 charge; is that correct? You have to say yes or no.

3 A. Yes.

4 Q. That was in this case 4.50 percent; is that
5 right?

6 A. Yes, sir.

7 Q. Did you end up making an investment in this
8 particular trust?

9 A. Yes, sir.

10 Q. I am going to show you Exhibit GF-47. Ms. Dale,
11 is it fair to describe this as your investment ticket or
12 your investment packet?

13 A. Yes, sir.

14 Q. If we look on the first page that's up on the
15 computer screen, is it indicating that you bought fifty
16 thousand dollars worth of Firstline Senior Trust 07
17 Series B and the interest rate is 9.50 percent and the
18 maturity date would be October 1, 2011; is that right?

19 A. Yes, sir.

20 Q. And to the far right there, there is highlighted
21 box, settled date, did you make your trade on or about
22 December 11, 2007?

23 A. Yes, sir.

24 MR. BELLISS: If we could go a couple of
25 pages down to the subscription agreement, please, Ron.

MARY DALE - Direct By Mr. Belliss

1 BY MR. BELLISS, CONTINUED:

2 Q. That is where I wanted to be. Ms. Dale, do you
3 see the subscription agreement that is up on the screen?

4 A. Yes, sir.

5 Q. And if we go to the second page of the
6 subscription agreement, did you, in fact, sign this
7 subscription agreement asking to invest in this particular
8 trust?

9 A. Yes, sir.

10 Q. And is that your signature dated December 13,
11 2007?

12 A. Yes, sir.

13 MR. BELLISS: If we go to the next page,
14 please.

15 BY MR. BELLISS, CONTINUED:

16 Q. The investment was ultimately approved by
17 Mr. Tim McGinn on December 18, 2007; is that right?

18 A. Yes, sir.

19 MR. BELLISS: I think, Ron, we saw in there
20 there was a photocopy of a check.

21 BY MR. BELLISS, CONTINUED:

22 Q. Ms. Dale, is that your check for fifty thousand
23 dollars to invest in the Firstline Trusts?

24 A. Yes, sir.

25 Q. How would that check have gotten from your

MARY DALE - Direct By Mr. Belliss

1 address down in Florida to Mr. Lex?

2 A. It was mailed.

3 Q. To your knowledge, was it then forwarded on to
4 McGinn, Smith for investment in a particular trust?

5 A. As far as I know, yes.

6 MR. BELLISS: Can we put back up GA-9, Ron,
7 on the screen? Can we go to page five on the private
8 placement memoranda? Go back one more. Nope. You had the
9 page.

10 BY MR. BELLISS, CONTINUED:

11 Q. And the second paragraph down the sole business
12 activity. It is kind of in the middle of the screen now.
13 It says:

14 The sole business activity of the trust fund
15 will be to acquire the senior tranche of a financing
16 secured by a portfolio of contracts.

17 Did you understand that to be alarm contracts,
18 Ms. Dale?

19 A. I am not sure. I don't -- it doesn't say that
20 there, but I know it had something to do with alarms.

21 Q. Okay, and if you keep reading, it says:
22 Consisting of payments rights in exchange for the provision
23 of electronic security monitoring services for security
24 alarm systems in residential homes.

25 Does that make a little more sense?

MARY DALE - Direct By Mr. Belliss

1 A. Yes.

2 MR. BELLISS: Scroll down a little more,
3 Ron, please.

4 BY MR. BELLISS, CONTINUED:

5 Q. It says: The trust fund intends to apply the
6 entire net proceeds of the offering to the purchase of the
7 senior tranche of the financing; is that right?

8 A. Yes, sir.

9 MR. BELLISS: If we could go two pages
10 forward please, Ron, to page seven.

11 BY MR. BELLISS, CONTINUED:

12 Q. Under the use of proceeds section at the top,
13 there is a similar description. This says: The net
14 proceeds to the trust fund from the sale of the
15 certificates offered hereby after deducting the
16 underwriting discount will be approximately 1.3 million and
17 change. If the maximum offering for the certificates is
18 achieved, the trust fund intends to use all of the net
19 proceeds of the offering to purchase the senior tranche of
20 the financing.

21 Does it say that, Ms. Dale?

22 A. Yes, sir.

23 Q. Based upon what we have seen, is it fair to say
24 that investor money would be loaned to a company that had a
25 pool of alarm contracts?

MARY DALE - Direct By Mr. Belliss

1 A. Yes, sir.

2 Q. Did you know that company was located out in
3 Utah?

4 A. Not at this time.

5 Q. At some point in time, did you learn it was out
6 in Utah?

7 A. Yes, sir.

8 Q. It also has the same name, Firstline Security
9 Inc., did you know that?

10 A. Yes, sir.

11 Q. You made an investment in December of 2007; is
12 that right, Ms. Dale?

13 A. Yes, sir.

14 Q. Did you think your investment money would be
15 used according to the use of proceeds section we have just
16 been looking at?

17 A. Yes, sir.

18 Q. And did either Mr. Lex or anyone with McGinn,
19 Smith tell you that Mr. McGinn and Mr. Smith were planning
20 to use more than three hundred thousand dollars of
21 investment money raised by the trust to pay themselves
22 above and beyond what was disclosed in the underwriting
23 fees?

24 A. No, sir.

25 Q. Is that information that would have been a

MARY DALE - Direct By Mr. Belliss

1 concern to you in deciding whether to invest?

2 A. Yes, sir.

3 Q. Did anyone tell that you Mr. McGinn and
4 Mr. Smith were planning to use more than three hundred
5 thousand dollars of investor money raised for the trust to
6 make loans to themselves?

7 A. No, sir.

8 Q. Is that information that would have been of
9 concern to you in deciding whether to invest?

10 A. Yes, sir.

11 Q. Anyone tell you that Mr. McGinn and Mr. Smith
12 actually used three hundred thousand dollars of investor
13 money to pay themselves above and beyond what was disclosed
14 in the underwriting fee?

15 A. No, sir.

16 Q. Again, is that information that would have been
17 of concern to you in deciding whether to invest?

18 A. Yes, sir.

19 Q. If Mr. McGinn and Mr. Smith were going to loan
20 themselves three hundred thousand dollars of investor funds
21 above and beyond what was disclosed in the private
22 placement memoranda for underwriting fees, is that
23 information that would have been of concern to you in
24 deciding whether to invest?

25 A. Yes, sir.

MARY DALE - Direct By Mr. Belliss

1 Q. Prior to making your investment, did Mr. Lex or
2 anyone with McGinn, Smith tell you that an alarm company
3 call ADT was threatening a multi-million dollar lawsuit
4 against Firstline Security, Inc., the company that was
5 borrowing investors' money?

6 A. No, sir.

7 Q. Is that information that would have been of
8 concern to you in deciding whether you were going to make
9 an investment or not?

10 A. Yes, sir.

11 Q. You made your investment in December of 2007 and
12 it was supposed to pay monthly interest for forty-eight
13 months; is that right?

14 A. Yes, sir.

15 Q. And at the time you made your investment, where
16 did you think the money was going to come to pay you those
17 monthly interest payments?

18 A. It was deposited in my bank account.

19 Q. Where would it come from ultimately though?

20 A. I assume it came from McGinn, Smith.

21 Q. From the investment; is that right?

22 A. Right.

23 Q. At the time that you made your investment in
24 this particular trust, did you think that your interest
25 payments would come from some other source unrelated to the

MARY DALE - Direct By Mr. Belliss

1 investment?

2 A. No, sir.

3 Q. Is that something that would have been of
4 concern to you in deciding whether you were going to make
5 that investment?

6 A. Yes, sir.

7 Q. At any point in 2008 did anyone from McGinn,
8 Smith inform that you Firstline Security, Inc., the company
9 that borrowed investor money located out in Utah, stopped
10 making repayments on the monies it had borrowed from
11 investors?

12 A. No.

13 Q. Is that something that you as an investor would
14 have wanted to have known prior to making an investment?

15 A. Yes, sir.

16 Q. At any point in 2008, did anyone from McGinn,
17 Smith, Mr. Lex or anyone else, inform you that Firstline
18 Security, Inc., had failed for bankruptcy on January 25,
19 2008?

20 A. No, sir.

21 Q. You were already invested in the trust at that
22 point; is that right?

23 A. Yes, sir.

24 Q. Nonetheless, is that something that would have
25 been of concern to you in deciding whether you would keep

MARY DALE - Direct By Mr. Belliss

1 that investment or invest more in this particular
2 investment?

3 A. Yes, sir.

4 Q. Did you receive all of your interest payments as
5 promised in the private placement memoranda?

6 A. No, sir.

7 Q. Did you receive some of them?

8 A. Yes, sir.

9 Q. Do you remember at about what point in time the
10 interest payments stopped?

11 A. I think it might have been December of 2008,
12 2007 or 2008.

13 Q. 2008, okay. Let me show you exhibit GF-62.

14 MR. BELLISS: And, Ron, could we zoom in on
15 the date in the body of the letter, please.

16 BY MR. BELLISS, CONTINUED:

17 Q. Ms. Dale, this is a letter addressed to you and
18 your now deceased husband dated September 10, 2009, and it
19 is concerning your fifty thousand dollar investment in
20 Firstline.

21 It says: I have attached a memorandum prepared
22 by our general counsel which provides a more definitive
23 review of the Firstline's situation and the anticipated
24 manner by which we hope to alleviate the current suspension
25 of payments, and it is signed by Mr. McGinn at the bottom.

MARY DALE - Direct By Mr. Belliss

1 Do you recall receiving this letter in or about
2 the fall of 2009, Ms. Dale?

3 A. I don't remember.

4 Q. Is it possible?

5 A. Yes, sir.

6 Q. If we look a page two of the exhibit, there is a
7 memorandum from a Joseph Carr, general counsel to all the
8 subscribers. It is dated September 10, 2009; is that
9 right?

10 A. Yes, sir.

11 Q. Do you recall in any way seeing this memorandum
12 before?

13 A. I don't remember seeing it, but I may have seen
14 it. I don't remember.

15 Q. All right.

16 MR. BELLISS: If we go to the bottom of this
17 page, please, Ron.

18 BY MR. BELLISS, CONTINUED:

19 Q. There is a paragraph that says: Funding was
20 able to secure immediate financing, secured by its
21 Firstline receivables, in order to have funds available to
22 make the monthly payments due to its lenders. It was
23 anticipated that this borrowing and concomitant payments to
24 lenders would continue until the bankruptcy proceeding was
25 concluded and Funding received the amounts that Firstline

MARY DALE - Direct By Mr. Belliss

1 owed to it.

2 At the onset it was anticipated that the
3 bankruptcy proceeding would be completed in short order and
4 that there would be no disruption in the payments required
5 to be made by Funding to its lenders. The lender has
6 become exhausted with the time delays and is no longer
7 willing or capable of funding. Therefore, monthly payments
8 are being suspended until transactions can be restructured.

9 Is this about the time you think when your
10 payments were suspended?

11 A. Yes, sir. And I do remember this now that I
12 have read more.

13 Q. It is coming back a little bit?

14 A. Yes.

15 Q. Did you have any discussions with Mr. Lex when
16 you no longer were receiving those interest payments to
17 your checking account?

18 A. Yes, sir.

19 Q. Did Mr. Lex have any explanation for you?

20 A. I think he was probably as confused as I was at
21 the time, but he...

22 Q. Did Mr. Lex or anyone from McGinn, Smith
23 identify to you who that lender was that had been
24 previously making interest payments to you?

25 A. Would you repeat that?

MARY DALE - Direct By Mr. Belliss

1 Q. Sure.

2 MR. BELLISS: If we look at the previous
3 paragraph, Ron, at the bottom of page one.

4 BY MR. BELLISS, CONTINUED:

5 Q. There is talk about a lender who had been making
6 interest payments to the Firstline investors. Anyone from
7 McGinn, Smith ever identify for you who that lender was?

8 A. Not to my knowledge.

9 Q. Would you have wanted to know who making those
10 interest payments?

11 A. Yes.

12 Q. Your initial investment was fifty thousand
13 dollars in Firstline; is that correct?

14 A. That's correct.

15 Q. And have you gotten any of that principal back
16 to date, any of your fifty thousand?

17 A. No, sir.

18 Q. Thank you, Ms. Dale.

19 MR. BELLISS: No further questions, Judge.

20 THE COURT: Defense may cross-examine.

21 Ms. Owens.

22

23 CROSS-EXAMINATION BY MS. OWENS:

24 Q. Good afternoon, Ms. Dale. I am just going to
25 put that down for you. There you go.

1

2 RONALD DELEONARDIS, having been called as a Witness,
3 being first duly sworn, was examined and testified as
4 follows under oath:

5

6 DIRECT EXAMINATION BY MR. BELLISS:

7 Q. Good afternoon, Mr. DeLeonardis. You can
8 actually pull that little table in front of you towards
9 you.

10 A. All right.

11 Q. How are you this afternoon?

12 A. Pretty good, thank you. Yourself?

13 Q. We now know your name. Could you tell the jury
14 where you live?

15 A. I live in Clifton Park, New York, REDACTED

16 REDACTED

17 Q. Are you married?

18 A. Yes, I am.

19 Q. Are you currently employed?

20 A. Yes, I am.

21 Q. Where do you work and what do you do?

22 A. I am the vice-president of Alec and Hope
23 Incorporated and doing business as the Grid Iron Cafe and
24 we operate the cafeteria in the National Grid building,
25 1125 Broadway in Albany, New York.

RONALD DELEONARDIS - Direct By Mr. Belliss

1 Q. How long have you been in that business?

2 A. Just over six years.

3 Q. Prior to that, were you employed?

4 A. Yes, I was.

5 Q. What did you do generally over the last fifteen,
6 twenty years?

7 A. Well, for thirty-four years I was the president
8 of Bob and Ron's Fish Fry, Incorporated, 1007 Central
9 Avenue in Albany, New York.

10 Q. I want to talk about your relationship with
11 McGinn, Smith?

12 A. Yes.

13 Q. How did you first come to have a relationship
14 with anyone at McGinn, Smith?

15 A. I was a transfer student in the Colonie Central
16 High School in class of 1966. Tim McGinn was also a member
17 of that class. We graduated together. I was a transfer
18 student. I didn't get to know too many people in school.
19 I am not sure whether or not I met him at that time. But
20 in the late sixties and early seventies, we were both
21 members of the 464 Engineer Army Reserves Center in
22 Schenectady, New York.

23 Q. Did your relationship progress with Mr. McGinn
24 over the years?

25 A. Yes, it did.

RONALD DELEONARDIS - Direct By Mr. Belliss

1 Q. How would you characterize it over the years?

2 A. We started an investing relationship in late
3 1981, and he became a customer of the Fish Fry prior to
4 that, and the relationship began with the investing. We
5 became social friends and very, very close friends.

6 Q. Do you see Mr. McGinn in the courtroom today?

7 A. Yes, I do.

8 Q. Where is he seated?

9 A. Seated right over there.

10 Q. Next to Mr. Jones?

11 MR. JONES: Stipulated.

12 THE COURT: So noted.

13 A. Yes.

14 BY MR. BELLISS, CONTINUED:

15 Q. Did you make any investments through McGinn,
16 Smith?

17 A. Yes, I started investing in 1981.

18 Q. Was Mr. McGinn your primary point of contact at
19 McGinn, Smith?

20 A. Yes, he was for a number of years, most of the
21 years.

22 Q. For any other years, was there someone else who
23 was your point of contact?

24 A. In the later years I had David Smith do some
25 investing for me.

RONALD DELEONARDIS - Direct By Mr. Belliss

1 Q. Do you see Mr. Smith in the courtroom?

2 MR. DREYER: Stipulated, Your Honor.

3 THE COURT: So noted.

4 BY MR. BELLISS, CONTINUED:

5 Q. Did you ever have any discussions with
6 Mr. McGinn about your investment objectives?

7 A. Yes.

8 Q. Over the last few years, what were your
9 investment objectives?

10 A. The last two years?

11 Q. Last five years.

12 A. Last five years.

13 Q. Five to ten years?

14 A. In 2002 I sold Bob and Ron Fish Fry and acquired
15 a large amount of money. And my intention was to invest
16 money so that I could retire and make a lot of money and
17 help my children out, as well as being able to enjoy
18 somewhat of the life that I felt I deserved because of all
19 the hard work and sacrifice I had put in.

20 Q. Did you convey these investment objectives to
21 Mr. McGinn?

22 A. Yes, I did.

23 Q. Is it fair to say you placed trust in Mr. McGinn
24 to help you meet your investment objectives?

25 A. Yes, I trusted Mr. McGinn.

RONALD DELEONARDIS - Direct By Mr. Belliss

1 Q. Over the last ten years, did Mr. McGinn present
2 you with any investment opportunities?

3 A. Yes, he has.

4 Q. How would he typically present them to you?

5 A. It would be over the telephone or we would meet
6 in person down at the office.

7 Q. Did he ever send you anything through the mail?

8 A. I believe so. I couldn't say definitely, but
9 probably, yes.

10 Q. Over the last ten, fifteen years, you, in fact,
11 actually made investments at McGinn, Smith; is that right?

12 A. Yes, I did, many times.

13 Q. I am going to hand you Exhibits GM-43 and GM-44.
14 If you could take a moment and just open those two folders,
15 GM-43 and GM-44. Do you recognize those two exhibits?

16 A. Yes, I do.

17 Q. Generally, what are they?

18 A. They are the transfer of money into an account
19 for the -- they are notes that they sold us.

20 Q. What was the name of the investment?

21 A. First Income Notes.

22 Q. First Independent Income Notes; is that right?

23 A. Correct, First Independent Income Notes.

24 MR. BELLISS: Ron, could we bring in 43.

25 BY MR. BELLISS, CONTINUED:

RONALD DELEONARDIS - Direct By Mr. Belliss

1 Q. Mr. DeLeonardis, can you see what is on the
2 computer screen in front of you?

3 A. Yes, I can.

4 Q. Is this your investment ticket or trade
5 confirmation of your purchase of a one hundred thousand
6 dollars investment in --

7 A. Yes.

8 Q. -- in First Independent Income Notes, LLC? What
9 is the interest rate that you are going to be promised
10 right below?

11 A. 10.25 percent.

12 Q. Secured junior notes due 2008 and the settle
13 date is October 9, 2003; is that correct?

14 A. Yes, it is.

15 MR. BELLISS: Could we flip to the next
16 page, please? Go one more.

17 BY MR. BELLISS, CONTINUED:

18 Q. Mr. DeLeonardis, does this document that's up on
19 the screen labeled note number fifty, First Independent
20 Income Notes Independent Income Notes, LLC, does this
21 document evidence your ownership interest for your one
22 hundred thousand dollar investment in First Independent
23 Income Notes?

24 A. Yes, it is.

25 Q. If we could scroll down to the highlighted

RONALD DELEONARDIS - Direct By Mr. Belliss

1 section, could you read what is highlighted on the screen,
2 please?

3 A. One hundred thousand dollars for value received,
4 First Independent Income Notes, LLC, a New York limited
5 liability company, the company, promises to pay to the
6 order of Ronald A. DeLeonardis and Kathryn A. DeLeonardis
7 JTEN, or registered assigns, upon the first to occur of
8 December 15, 2008, maturity date, or together with interest
9 on the unpaid balance amount outstanding at the rate of
10 10.25 percent annum without compounding payable on the
11 maturity date or redemption date.

12 Interest at the aforesaid rate of 10.25 percent
13 per annum will be paid in quarterly installments on the
14 15th day of January, April, July, and October, commencing
15 on January 15th, 2004.

16 Q. So your investment, this particular one, was
17 made in 2003 for one hundred thousand dollars; is that
18 right?

19 A. That's correct.

20 Q. What was the maturity date of that investment?

21 A. 2008.

22 Q. It was a five-year term; is that right?

23 A. Right.

24 Q. The interest rate you were to be paid per year?

25 A. 10.25 percent.

RONALD DELEONARDIS - Direct By Mr. Belliss

1 Q. And when were you supposed to get those interest
2 payments?

3 A. Quarterly.

4 Q. Let's take a look at GM-44, please. If we can
5 focus on that first page that's up on the computer screen.
6 How much was your second investment in FIIN for?

7 A. Seventy thousand dollars.

8 Q. And was it the same investment in First
9 Independent Income Notes, 10.25 percent, secured junior
10 notes due in 2008; is that right?

11 A. Yes.

12 Q. You also made the trade on or about October 9,
13 2003; is that correct?

14 A. Yes.

15 Q. Did you receive a similar certificate evidencing
16 your ownership interest for seventy thousand dollars --

17 A. Yes, I did.

18 Q. -- in this particular investment. Did you or
19 anyone else in your immediate family make any other
20 investments in FIIN, First Independent Income Notes?

21 A. Yes, my wife did.

22 Q. I want to show you Exhibit GC-1. I am going to
23 bring up the cover page on the screen. First off, what is
24 that document that is in the folder there, GC-1 is the
25 exhibit number?

RONALD DELEONARDIS - Direct By Mr. Belliss

1 A. It is the placement document or prospectus.

2 Q. For First Independent Income Notes; is that
3 right?

4 A. Correct.

5 Q. Generally what does this document do for you as
6 a prospective investor?

7 A. It informs us the amount of money, the total of
8 the offering is, and the selection of the junior notes that
9 we expected to get or did buy, and the interest rate we
10 expected to receive and then when they are due, which was
11 2008.

12 Q. In this case you bought the 10.25 percent that
13 was due with a five-year maturity, 2008; is that right?

14 A. Correct.

15 MR. BELLISS: Scroll down a little bit,
16 please.

17 BY MR. BELLISS, CONTINUED:

18 Q. And the 10.25 percent that's highlighted, that
19 is your interest rate, and again, the second highlighted
20 section says we will pay interest on the notes quarterly on
21 the 15th day of January, April, July, and October
22 commencing on January 15, 2004; is that right?

23 A. Correct.

24 Q. If we go down a little bit farther, there is a
25 placement agent commission of two percent; is that right?

RONALD DELEONARDIS - Direct By Mr. Belliss

1 A. Yes, it is.

2 Q. Focusing on your two investments that you and
3 your wife had in First Independent Income Notes, is it fair
4 to say that after your five-year period of time you had
5 expected to get your principal back, your one hundred
6 thousand and your seventy thousand dollars?

7 A. Correct.

8 Q. As of today, have you received those principal
9 amounts back?

10 A. No, we have not.

11 Q. Is it all right if I call it FIIN for short?

12 A. That's easier.

13 Q. You know what I am talking about?

14 A. Yes.

15 Q. Did your investments in FIIN pay the quarterly
16 interest payments as promised in the private placement
17 memorandum?

18 A. They were fully paid through 2006 and 2007. And
19 then in 2008 we ran into problems.

20 Q. What happened in 2008?

21 A. We only received \$1,250.00 in 2008 and then the
22 payments stopped.

23 Q. Did you receive any correspondence from anyone
24 at McGinn, Smith advising that the payments were going to
25 stop?

RONALD DELEONARDIS - Direct By Mr. Belliss

1 A. Yes, we did, from David Smith.

2 Q. Since receiving that letter in 2008 advising
3 that your quarterly interest payments were going to stop,
4 have you received any interest payments on your two
5 investments?

6 A. No, we have not.

7 MR. BELLISS: I want to look at page nine of
8 the private placement memorandum, Ron, if we could bring
9 that up, please?

10 BY MR. BELLISS, CONTINUED:

11 Q. Can you see the section on the screen that says
12 use of proceeds?

13 A. Yes, I can.

14 Q. Does this section advise how investor money is
15 going to be used?

16 A. Yes.

17 Q. Could you go ahead and read that highlighted
18 paragraph to the jury?

19 A. We intend to use the net proceeds to acquire
20 various public and/or private investments, which may
21 include, without limitation, debt securities,
22 collateralized debt obligations, bonds, equity securities,
23 trust preferreds, collateralized stock, convertible stock,
24 bridge loans, leases, mortgages, equipment leases,
25 securitized cash flow instruments, and any other

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1 investments that may add value to our portfolio,
2 individually an investment, and collectively, the
3 investments.

4 Assuming we receive the maximum amount of the
5 offering, we will not invest more than twenty-five percent
6 of the proceeds of this offering in any single investment.
7 All subscription proceeds will be held in an escrow account
8 and no subscription agreement will be accepted until the
9 minimum proceeds requirement is met for the first closing.
10 Once we achieve the minimum amount required for the first
11 closing, we will begin to acquire investments.

12 Q. I want to narrow down one portion of the
13 sentence that says, and any other investment that may add
14 value to our portfolio, right in the center of the
15 highlighted portion. Do you see that language? Third
16 sentence down.

17 A. Yes.

18 Q. Based upon the information that you received in
19 connection with your investments, did you believe that an
20 investment would be made in McGinn, Smith payroll?

21 A. No, I did not.

22 Q. Did you believe that would add value to you as
23 an investor?

24 A. No, it would not.

25 Q. At the time that you made your two investments

RONALD DELEONARDIS - Direct By Mr. Belliss

1 in FIIN, did you think that your investment money would be
2 used according to this use of proceeds that you were
3 advised?

4 A. Yes, I believed it would be used as what is
5 stated on the form.

6 Q. Did you think your money would be used for
7 anything other than the investments described in the
8 private placement memorandum?

9 A. No.

10 Q. Aside from the fees disclosed in the private
11 placement memorandum, if investment money from FIIN was
12 used to make payroll in 2008, would that have surprised
13 you?

14 A. It would have shocked me.

15 Q. How about if the investor money from FIIN was
16 use to make McGinn, Smith payroll in 2009, would that have
17 surprised you?

18 A. Yes, it would have shocked me.

19 Q. If investor money from FINN was going to be used
20 to make payroll from McGinn, Smith, is that information you
21 would have wanted to have known prior to making your two
22 investments in FIIN?

23 A. Yes.

24 Q. If investor money from FIIN had been used to
25 make McGinn, Smith payroll, would that have affected your

RONALD DELEONARDIS - Direct By Mr. Belliss

1 decision to put your one hundred thousand and your seventy
2 thousand dollar investments in FIIN?

3 A. Yes.

4 Q. Would you have made those investments?

5 A. Probably not.

6 MR. BELLISS: Thank you.

7 THE COURT: Defense may cross-examine.

8 Ms. Owens.

9

10 CROSS-EXAMINATION BY MS. OWENS:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. My name is Lauren Owens. I am one of the
14 defense attorneys for Mr. Smith. I just want to get some
15 more information. You told Mr. Belliss that you --

16 THE COURT: Maybe you better go over and use
17 the mike so they can hear you.

18 BY MS. OWENS, CONTINUED:

19 Q. You told Mr. Belliss that you are the
20 vice-president of a company called Alec and Hope?

21 A. Alec and Hope, Incorporated.

22 Q. And you said that Alec and Hope does business as
23 The Iron Grid --

24 A. Grid Iron Cafe.

25 Q. Oh, the Grid Iron Cafe.

RONALD DELEONARDIS - Redirect by Mr. Belliss

1 THE COURT: Anything further, counselors?

2 MS. OWENS: Yes. Just something quick.

3

4 REDIRECT EXAMINATION BY MS. OWENS:

5 Q. Mr. DeLeonardis, the letter that Mr. Belliss
6 mentioned from Mr. Smith saying that they would be waiving
7 the fees, the letter was from 2008, did it say future
8 advisory fees?

9 A. I believe so. I would have to read it. I can't
10 recall right at this moment.

11 MS. OWENS: Thank you. Nothing further.

12 THE COURT: Thank you, sir. You may step
13 down.

14 (Whereupon, the Witness is excused.)

15 THE COURT: Next witness.

16 MR. BELLISS: The government calls
17 Mr. William Ferrero.

18

19 WILLIAM FERRERO, having been called as a Witness,
20 being first duly sworn, was examined and testified as
21 follows under oath:

22

23 DIRECT EXAMINATION BY MR. BELLISS:

24 Q. Mr. Ferrero, you can pull that screen right in
25 front of you because I am going to show you some documents

WILLIAM FERRERO - Direct By Mr. Belliss

1 later on.

2 A. Okay.

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Mr. Ferrero, we know your name. Could you tell
6 the jury where you live?

7 A. I live in Gansvoort, New York. It is just
8 outside of Schenectady.

9 Q. Are you married, sir?

10 A. Yes.

11 Q. Are you currently working or are you retired?

12 A. I am retired.

13 Q. What did you do before you retired?

14 A. I worked at Empire State College. I was the
15 vice-president of administration.

16 Q. How long did you do that for?

17 A. Thirty-four years.

18 Q. I want to talk about your relationship with
19 McGinn, Smith and its principals. Have you had a
20 relationship with McGinn, Smith over the years?

21 A. Yes.

22 Q. How did you first come to have a relationship
23 with McGinn, Smith?

24 A. Dave Smith was on our foundation board, the
25 foundation board of the college. I was also involved with

WILLIAM FERRERO - Direct By Mr. Belliss

1 the foundation. I got to know Dave through that
2 relationship.

3 Q. Do you see Mr. Smith in the courtroom today?

4 MR. DREYER: Stipulate, Your Honor.

5 THE COURT: So noted.

6 A. Yes.

7 BY MR. BELLISS, CONTINUED:

8 Q. About when did your relationship with Mr. Smith
9 begin, ballpark?

10 A. It had to be 2003 or 2004, something like that.

11 Q. In connection with your relationship dealing
12 with Empire College, did you and he work on financial
13 matters together?

14 A. Well, I was the treasurer of the foundation.
15 Dave was the -- originally was the finance committee chair,
16 and then Dave became the chairman of the foundation board.

17 Q. Based upon your experience working with
18 Mr. Smith on financial matters involving the college, do
19 you have an opinion as to financial acumen?

20 A. Can you say that again, please?

21 Q. Based upon your relationship with Mr. McGinn --

22 A. Smith.

23 Q. Mr. Smith, I am sorry. Mr. Smith, yes. Do you
24 have an opinion about Mr. Smith's financial acumen?

25 A. Yes, I thought he was brilliant. I really did.

WILLIAM FERRERO - Direct By Mr. Belliss

1 Q. What makes you say that?

2 A. Well. We did a lot of informal talking and
3 formally setting the agendas for the finance committee and
4 the general board of the foundation, and he had an awful
5 lot of knowledge through -- to help guide us in decisions
6 that we were making.

7 Q. Have you ever had any discussions with Mr. Smith
8 about your personal investment objectives?

9 A. Yes.

10 Q. About when did you have those discussions?

11 A. That probably was in, oh, 2005, 2006. Something
12 like that.

13 Q. What were your objectives at that time?

14 A. Well, I was trying to start planning for
15 retirement. I wanted to secure the funds I had set aside
16 for retirement and get some growth out of them as well.

17 Q. Did Mr. Smith provide you with any investment
18 advice?

19 A. Yes.

20 Q. Is it fair to say that you placed your trust in
21 Mr. Smith concerning helping you meet your investment
22 objectives?

23 A. Yes.

24 Q. Did Mr. Smith present you with any opportunities
25 to invest in McGinn, Smith products?

WILLIAM FERRERO - Direct By Mr. Belliss

1 A. Yes, he did.

2 Q. How would he present those opportunities to you?

3 A. Well, our -- my portfolio was, I guess, divided
4 among a few different managed funds, and they were stock
5 funds, equity kind of positions. They were all pretty much
6 doing about -- having about the same performance. And, you
7 know, I was looking to get a little bit more return on the
8 investment. And I talked to him about some of his private
9 placements.

10 Q. Did he send you any information about these
11 private placements through the mail?

12 A. Well, we talked about them and then, of course,
13 when I committed to make an investment in one or the other
14 private placements, I got documents to sign and send back,
15 yes.

16 Q. So you ultimately did make some investments with
17 McGinn, Smith; is that right?

18 A. Yes.

19 Q. I am going to show you Exhibit GM-10. Take a
20 look at that please, sir.

21 A. Yes.

22 Q. It should be up on the computer screen in front
23 you, the first page of that exhibit. Generally what is
24 that exhibit, what is in that folder?

25 A. What is in it?

WILLIAM FERRERO - Direct By Mr. Belliss

1 Q. Yes.

2 A. What is on the screen now is the summary of it,
3 and then there is a McGinn, Smith report and summary of the
4 investment.

5 Q. In fact, did you make a one hundred thousand
6 dollar investment in an investment called TDM Verifier
7 Trust 07R contract certificates, nine percent due
8 August 15, 2010?

9 A. Yes.

10 Q. Did you make that investment on or about April
11 13, 2009?

12 A. Yes.

13 Q. Flip to the next page. Mr. Ferrero, could you
14 look again on the computer monitor. Is there a
15 subscription agreement that's appearing before you?

16 A. Yes.

17 Q. And generally what was your understanding, how
18 does the subscription agreement work?

19 A. Well, I think it was -- it was describing what
20 the funds would be used for, what the investment was going
21 to be made in.

22 Q. Your way of signing up for the investment; is
23 that right?

24 A. Yes.

25 Q. And the first paragraph says: I hereby

WILLIAM FERRERO - Direct By Mr. Belliss

1 subscribe for and agree to purchase the dollar amount of
2 the Trust's certificates as is set forth opposite my name
3 acknowledging the minimum purchase to be ten thousand
4 dollars, and it goes on.

5 A. Yes.

6 Q. And if we could flip to the next page, towards
7 the bottom half of that page.

8 A. Yes.

9 Q. It says: In witness hereof. I have executed
10 this subscription agreement on this 10th day of April 2004.
11 And in fact, is that your signature?

12 A. 2008, I think it is. Is that a four?

13 Q. Let's go back to the -- well, I think it is
14 2009. I apologize. You are right. April 13, 2009, and
15 that's your signature there, sir; is that right?

16 A. Yes.

17 Q. And if we flip to the next page, did Mr. Smith
18 approve your investment or accept your investment?

19 A. Yes.

20 Q. On April 13, 2009?

21 A. Yes.

22 MR. BELLISS: If we go one more page down.

23 BY MR. BELLISS, CONTINUED:

24 Q. This contract certificate, is this the evidence
25 that you own this investment for one hundred thousand

WILLIAM FERRERO - Direct By Mr. Belliss

1 dollars in TDM Verifier Trust 07R?

2 A. Yes.

3 Q. Your interest rate was what?

4 A. Pardon me?

5 Q. What was your interest rate, sir?

6 A. What was the?

7 Q. Interest rate, was it nine percent?

8 A. It was supposed to be nine percent, yes.

9 Q. And when was it supposed to return your
10 principal, was that August 15, 2010?

11 A. I think that was the maturity date.

12 Q. Were interest payments due quarterly?

13 A. I believe they were.

14 Q. Let me show you GA-19. I will hand it to you.

15 Mr. Ferrero, what is that document?

16 A. Well, this is another private placement. It is
17 the TDM Verifier Trust 07R.

18 Q. This is the investment that you made for one
19 hundred thousand dollars; is that right?

20 A. Yes.

21 Q. Does this document generally describe what your
22 money is going to be used for?

23 A. Yes.

24 Q. What is up on the computer screen there in the
25 top half is again showing interest rate and when your

WILLIAM FERRERO - Direct By Mr. Belliss

1 principal was supposed to be returned, right, nine percent
2 due August 15, 2010; is that right?

3 A. Yes.

4 Q. This interest on the certificates is payable in
5 quarterly installments commencing May 15, 2009. And
6 towards the bottom of the page, what is underwriting
7 discount or underwriting fee to be paid in connection with
8 this investment?

9 A. Three and a half percent.

10 Q. Flip to page five of the memorandum and it
11 should come up on the screen. At the top there, there is
12 use of proceeds section. Could you read that for the jury?

13 A. The Trust will employ the gross proceeds of this
14 offering to retire certificates issued by TDM Verifier
15 Trust 07 in the amount of \$1,982,500.00, together with the
16 underwriting expenses of approximately seventy thousand and
17 legal and miscellaneous costs of approximately forty-four
18 thousand.

19 MR. BELLISS: If we could flip to the next
20 page, please, Ron, the highlighted area on page six of
21 private placement memorandum.

22 BY MR. BELLISS, CONTINUED:

23 Q. It says in the first paragraph: Net proceeds to
24 Trust from the sale of the certificates offered hereby,
25 after deducting the underwriting discount, will be

WILLIAM FERRERO - Direct By Mr. Belliss

1 approximately two million and change, which is 96.5 percent
2 of the gross proceeds, if the maximum offering for the
3 certificates is achieved.

4 And then it goes on to say: The Trust will
5 employ the gross proceeds of the offering to retire
6 certificates issued by TDM Verifier Trust in the amount of
7 1.9 million and change, together with underwriting expenses
8 of seventy thousand and legal and miscellaneous costs of
9 approximately forty-four thousand.

10 Generally what you did you think your investment
11 money was going to be used for in connection with this
12 investment?

13 A. Well, they were financing or purchasing security
14 contracts, home security systems contracts. And I am not
15 sure exactly if this is the one where they were using some
16 of the funds, were described as being used for capital
17 investments by some of the owners of these security
18 companies. And the proceeds of this investment were to buy
19 the -- basically to buy the contracts of the individual
20 users of the service.

21 Q. Based upon what we have looked at in the private
22 placement memorandum, did you think that your investment
23 money would be used according to these use of proceeds
24 sections?

25 A. Oh, sure, yes.

WILLIAM FERRERO - Direct By Mr. Belliss

1 Q. At the time that you made your investment, did
2 you think your money would be used for anything other than
3 the investment in TDM Verifier Trust 07R?

4 A. No.

5 Q. Between the time that you made your investment
6 in TDM Verifier Trust 07R in April of 2010, did Mr. Smith
7 or anyone else with McGinn, Smith ever inform you that
8 monies belonging to TDM Verifier Trust 07R might be used to
9 make interest and principal payments to investors in the
10 McGinn, Smith investment called Firstline?

11 A. No.

12 Q. If, in fact, that was the case and your
13 investment money was being used to pay interest and
14 principal payments to Firstline investors, would that have
15 been important to you in making your decision to invest in
16 TDM Verifier Trust 07R?

17 A. Well, sure, yes.

18 Q. If, in fact, that was the case, would you still
19 have invested the money that you did invest in TDM Verifier
20 Trust 07R?

21 A. Probably not.

22 Q. Have you received return of your principal for
23 your investment in TDM Verifier Trust 07R?

24 A. No, I have not.

25 Q. I show you Exhibit GM-9. I direct your

WILLIAM FERRERO - Direct By Mr. Belliss

1 attention to the September of 2008 timeframe. Did you have
2 any discussions with Mr. Smith about an investment called
3 Fortress Trust 08?

4 A. Yes.

5 Q. Do you remember anything that Mr. Smith told you
6 about this particular investment?

7 A. No, I think this was another one of those
8 security contracts, home security systems.

9 Q. Did Mr. Smith ever provide you with a private
10 placement memorandum describing the investment before you
11 made the investment?

12 A. Yes.

13 Q. And, in fact, if you look at the exhibit that's
14 up on the screen GM-9, page one, you made a two hundred
15 thousand dollar investment in Fortress Trust 08 with an
16 interest rate of thirteen percent, a return of principal
17 was due October 1, 2011; is that right?

18 A. Yes.

19 Q. You made that trade on or about September 25,
20 2008; is that correct?

21 A. Yes.

22 Q. I show you GA-13. What is GA-13, the exhibit?

23 A. What is it?

24 Q. Yes.

25 A. It is a Fortress Trust 08. Again, I think it is

WILLIAM FERRERO - Direct By Mr. Belliss

1 a securities investment.

2 Q. Private placement memorandum?

3 A. Yes, private placement.

4 Q. You would have received a copy of this before
5 making your investment?

6 A. Yes.

7 Q. We have already talked about the interest rate,
8 the maturity term, thirteen percent and thirty-six months;
9 is that right?

10 A. Yes.

11 Q. What is the underwriting discount or
12 underwriting fee to be taken in connection with this
13 investment?

14 A. This is six percent.

15 MR. BELLISS: If we could flip to page four,
16 Ron.

17 BY MR. BELLISS, CONTINUED:

18 Q. Can you see page four on the screen,
19 Mr. Ferrero?

20 A. Yes, I do.

21 Q. It talks about sole business of the trust will
22 be to lend two hundred and thirty-five thousand, minimum
23 offering, to 2.8 million and change, maximum offering to
24 NEI Capital, LLC, NEI. And it goes on to say what NEI will
25 acquire; is that correct?

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1 A. Yes.

2 Q. If you could look at page six, please?

3 A. Six?

4 Q. Yes. There is a similar section, use of
5 proceeds?

6 A. Yes. The net proceeds to the trust fund from
7 the sale of certificates will be approximately two million,
8 eight hundred and seventy-six thousand, four hundred
9 dollars of gross proceeds if the maximum offering for the
10 certificates is achieved. The trust fund intends to use
11 all of the net proceeds of the offering to purchase one
12 third of the financing and two-thirds of the equity in the
13 acquired portfolio contracts.

14 Q. Based upon your understanding of this language,
15 once that six percent is taken out, what happens to the
16 rest of the investor money, where does it go?

17 A. It goes to the use of the proceeds.

18 Q. At the time you made your two hundred thousand
19 dollar investment in Fortress Trust 08, did you think that
20 your investment money would be used or spent according to
21 the use of proceeds sections that we have just been looking
22 at?

23 A. Sure.

24 Q. Would it have surprised you if McGinn, Smith
25 would end up taking more in fees than the six percent

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1 underwriting discount that we have been talking about?

2 A. Yes, it would.

3 Q. If, in fact, McGinn, Smith was going to take
4 more than the 6.0 percent in fees that was disclosed in the
5 front of the PPM, would that have been information you
6 would have wanted to know prior to making your investment?

7 A. Yes.

8 Q. If, in fact, McGinn, Smith was going to take
9 more than six percent in fees, would you have still
10 invested the money that you did invest in Fortress
11 Trust 08?

12 A. Probably not.

13 Q. Have you received your principal back, your two
14 hundred thousand dollars for this investment?

15 A. No, I have not.

16 Q. Have you received all of your interest payments
17 as promised in the private placement memoranda?

18 A. No, I have not.

19 Q. Still focused on 2008, Mr. Ferrero. Did you
20 have any discussions with Mr. Smith about an investment
21 opportunity called McGinn, Smith Transaction Funding?

22 A. Yes.

23 Q. What, if anything, do you remember about those
24 discussions?

25 A. Well, it was another private placement with an

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1 attractive rate of return. And, you know, I have to say
2 probably naive, I put a lot of faith and trust in what
3 David was telling me about these things, and they sounded
4 good. And so I went along with the investment.

5 Q. I am going to show you Exhibit GM-36 and GM-35.
6 Look at 36 first, please.

7 A. Yes.

8 Q. This exhibit is documenting your investment for
9 one hundred thousand dollars in McGinn, Smith Transaction
10 Funding Corp., eight percent. Participating notes due
11 July 1st 2012; is that right?

12 A. Yes, sir.

13 Q. And you made your trade or your purchase on or
14 about September 1, 2008; is that correct?

15 A. Yes.

16 MR. BELLISS: If we could look at the first
17 page of GM-35 please, Ron. We can look at that as well.

18 BY MR. BELLISS, CONTINUED:

19 Q. The subscription agreement that is up here,
20 Mr. Ferrero, is that similar to other subscription
21 agreements that you filled out asking to invest in the
22 particular investments?

23 A. Yes.

24 MR. BELLISS: We can go to the next page,
25 Ron.

WILLIAM FERRERO - Direct By Mr. Belliss

1 BY MR. BELLISS, CONTINUED:

2 Q. Looking at the bottom, is that, in fact, your
3 signature made on September 3, 2008, for a one hundred
4 thousand dollar investment in McGinn, Smith Transaction
5 Funding Corp.?

6 A. Yes, it is.

7 Q. And then on the next page it was signed off on
8 by Mr. McGinn?

9 A. Yes.

10 MR. BELLISS: If we can bring up GM-35,
11 please, Ron?

12 BY MR. BELLISS, CONTINUED:

13 Q. Did you make a second investment in McGinn,
14 Smith Transaction Funding Corp. for seventy-five thousand
15 dollars according to this ticket?

16 A. Yes.

17 Q. Same investment, eight percent, maturity term
18 July 1, 2012, and you made your trade on or about
19 October 29, 2008; is that right?

20 A. Yes.

21 Q. Did you fill out a subscription agreement
22 similar to your first investment?

23 A. Yes.

24 Q. I am going to show you exhibit GB-2.

25 THE COURT: Mr. Belliss, how much more do we

WILLIAM FERRERO - Direct By Mr. Belliss

1 have for this witness?

2 MR. BELLISS: This is the last exhibit,

3 Judge. I have about five more minutes.

4 THE COURT: All right. Go ahead. We will

5 finish with this.

6 BY MR. BELLISS, CONTINUED:

7 Q. Mr. Ferrero, what is this exhibit? What is this
8 exhibit?

9 A. It is another private placement, and it is
10 McGinn, Smith Transaction Funding Corp. Again, it was my
11 understanding that this was related to the home security
12 systems and home security contracts.

13 Q. If we go down towards the bottom of page one,
14 what is the underwriting fee in connection with this
15 investment?

16 A. Two percent.

17 MR. BELLISS: Let's look at page six and
18 page ten. First page six, please, Ron.

19 BY MR. BELLISS, CONTINUED:

20 Q. Looking at the bottom, use of proceeds. Net
21 proceeds of this offering will be employed to purchase 1.5
22 million of McGinn, Smith cumulative preferred stock. And
23 two, to employ approximately 8.285 million for bridge
24 financing purposes.

25 Is that the use of proceeds description?

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1 A. Yes, that is it.

2 Q. And page ten. It talks again about if the
3 maximum amount is sold, the net proceeds from the sale of
4 the notes will be approximately 9.785 million after
5 deducting two hundred thousand for selling commissions and
6 fifteen thousand for legal, printing, filing and
7 miscellaneous expenses.

8 If we go down a little bit more. It again
9 states how much is going for the investment in McGinn,
10 Smith & Company and how much is available for bridge
11 financing; is that right?

12 A. Yes.

13 Q. At the time that you made your two investments
14 in McGinn, Smith Transaction Funding, did you think your
15 investment money would be used or spent according to the
16 use of proceeds sections that we have been looking at?

17 A. Yes, I did.

18 Q. Would is it have surprised you if at the end of
19 the day McGinn, Smith would end up taking more in fees than
20 the 2.0 percent underwriting fee that was disclosed and the
21 fifteen thousand dollars miscellaneous fee that was
22 disclosed?

23 A. Yes.

24 Q. If, in fact, McGinn, Smith was going to take
25 more than two percent and that fifteen thousand

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1 miscellaneous fee, might that have been information that
2 was important to you in making your investment?

3 A. Yes.

4 Q. Would that have affected your decision to, in
5 fact, invest?

6 A. It probably would have.

7 Q. Between the time that you made your two
8 investments in McGinn, Smith Transaction Funding in April
9 of 2010, did Mr. Smith or anyone with McGinn, Smith ever
10 inform you that monies belonging to the MSTF investment
11 might be used to make interest and principal payments to
12 investors in another investment called Firstline?

13 A. No, he did not.

14 Q. Would you have wanted to know such information?

15 A. Yes.

16 Q. If, in fact, MSTF investor money was being used
17 to make interest payments to Firstline investors, would you
18 have invested the money that you did?

19 A. Well, I don't know. I would have to know more
20 about what that was going to be. Dave was very good at
21 managing these things, and I would have to say that I would
22 have probably followed his advice.

23 Q. But you at least would have wanted to have known
24 up front?

25 A. Oh, yes, of course.

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1 Q. Between the time that you made your two
2 investments in McGinn, Smith Transaction Funding in April
3 of 2010, did Mr. Smith or anyone else with McGinn, Smith
4 inform you that investor money might be used to pay the
5 broker-dealer's preferred clients who were not MSTF
6 investors?

7 A. No.

8 Q. Is that something you would have wanted to have
9 known prior to making your investment?

10 A. Yes.

11 Q. If, in fact, MSTF investor money was being used
12 to pay investors who were not investors in MSTF, would you
13 have invested the money that you did?

14 A. Probably not.

15 Q. As of today, have you received your principal
16 back, your one hundred thousand dollar and seventy-five of
17 thousand dollar investments?

18 A. No, I have not.

19 MR. BELLISS: Thank you.

20 THE COURT: Is there cross exam?

21 MR. DREYER: Yes.

22 THE COURT: Okay. We will hold off on
23 taking a break then. Go ahead.

24

25 CROSS-EXAMINATION BY MS. OWENS:

1 follows under oath:

2

3 DIRECT EXAMINATION BY MR. BELLISS:

4 Q. Good afternoon, Mr. Greenberg. Could you tell
5 the jury where you live?

6 A. Manalapan, New Jersey.

7 Q. And, Mr. Greenberg, are you married?

8 A. Yes.

9 Q. Are you currently working?

10 A. Yes, I am.

11 Q. What do you do for a living?

12 A. I am a commodities trader.

13 Q. How long have you been a commodities trader?

14 A. Seventeen years.

15 Q. What types of commodities are you currently
16 trading?

17 A. I mainly trade coffee, coffee futures and
18 options.

19 Q. How did you first come to have a relationship
20 with anyone at McGinn, Smith?

21 A. Jeff Smith, David Smith's son worked for me for
22 about five years. He was an assistant for three years, and
23 then he was a trader with our group for another two years
24 before leaving to go back and work with his father's
25 company.

ANDREW GREENBERG - Direct By Mr. Belliss

1 Q. Have you ever met Jeff Smith's father,
2 David Smith?

3 A. Not in the flesh, no.

4 Q. Did you ever have any discussions with
5 Jeff Smith about investment options?

6 A. Yes.

7 Q. What were your investment objectives during
8 those discussions?

9 A. To get a better return, income, income oriented
10 return on my investments.

11 Q. How would Jeff Smith typically present
12 investment opportunities to you?

13 A. Well, because he worked on the floor of the
14 Exchange, he would come back down to the Exchange and meet
15 with me, as well as a number of other people that he had
16 met during his time there, and he would say, hey, I have
17 this deal. It is an alarm contract deal or a cable deal.
18 And he would give us some details and then we would either
19 invest or not invest.

20 Q. Did you, in fact, make some investments through
21 Jeff Smith of McGinn, Smith products?

22 A. Yes, I think I did six or seven times.

23 Q. I want to focus your attention first on an
24 investment called TDM Verifier Trust 08. Do you recall
25 that investment?

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1 A. Yes.

2 Q. Do you remember any particular discussions with
3 Jeff Smith about the nature of that investment?

4 A. Yes, I think that was an alarm contract deal.
5 My understanding was that they would buy the alarm
6 contracts for a number of residences and the proceeds would
7 be split between the investors and the servicing company,
8 that is like the company actually servicing the alarm
9 contracts, and we would therefore get a decent return on
10 our money.

11 Q. Let me show you Exhibit GM37, and the screen is
12 going to pop up right in front of you there. And what is
13 the exhibit in that folder, Mr. Greenberg?

14 A. This is the order ticket for my investment in
15 the Verifier trust.

16 Q. Twenty thousand dollars traded on or about
17 December 27, 2007; is that right?

18 A. Yes, sir.

19 Q. I am going to show you GA10. What is that
20 exhibit?

21 A. The private placement memorandum for the
22 Verifier trust.

23 Q. How would you have received this private
24 placement memorandum?

25 A. Jeff probably handed it to me, but I may have

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1 received it in the mail, but he probably handed it to me.

2 Q. Looking at page one, what were the two interest
3 rates to be paid?

4 A. Eight and a half or ten.

5 Q. And the two maturity terms were what?

6 A. Eighteen months or thirty-six months.

7 Q. If we go back and look at GM37, your ticket, you
8 elected to go with the ten percent option; is that right?

9 A. Yes, it is.

10 MR. BELLISS: Going back to GA10, please,
11 Ron, bottom of page one.

12 BY MR. BELLISS, CONTINUED:

13 Q. Mr. Greenberg, what was the underwriting
14 discount to be taken here?

15 A. Nine and a half percent.

16 Q. It we could look at page four, please, the
17 paragraph right above the heading investment starting with
18 the company?

19 A. Yes.

20 Q. Do you see: The company intends to use the net
21 proceeds of the transaction contemplated hereby, together
22 with the sale of two and a half million to four million
23 dollars of equity to purchase approximately one hundred and
24 thirty-three thousand of RMR in England and one hundred
25 thousand dollars of RMR in Hawaii.

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1 If we go to page five, under use of proceeds
2 heading, does it say: The net proceeds from the offering
3 will be lent by the trust fund to McGinn, Smith Funding,
4 LLC for the purpose of purchasing three million dollars
5 face value of guaranteed payment units issued by the
6 company.

7 Finally, page six, the bottom half, does this
8 section similarly describe how investor proceeds are going
9 to be used, Mr. Greenberg?

10 A. Yes.

11 Q. If we look at the bottom half, there is an
12 itemization of fees and expenses. Do you see that section?

13 A. Yes.

14 Q. Mr. Greenberg, once any underwriting fee had
15 been taken, any brokerage fee had been taken, any
16 miscellaneous legal fee, expense had been taken, if
17 Mr. McGinn and Mr. Smith were going to personally take
18 monies beyond what was disclosed in the private placement
19 memorandum, would you have wanted to know about that
20 information?

21 A. Yes.

22 Q. As of today, have you received your principal
23 back for your twenty thousand dollar investment in TDM
24 Verifier Trust 08?

25 A. No, I haven't.

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1 Q. Have you received all the interest payments that
2 you were promised?

3 A. No, not all.

4 Q. I want to move forward to September of 2008.
5 Did you have any discussions with Jeff Smith about Fortress
6 Trust 08?

7 A. Yes, that was another trust in which I invested.

8 Q. I want to show you Exhibit GM11 and
9 Exhibit GA13. First, GM11, is that your ticket for a
10 twenty thousand dollar purchase of Fortress Trust 08,
11 thirteen percent interest, due October 1, 2011, with a
12 settlement date of September 25, 2008?

13 A. Yes, it is.

14 Q. What is Exhibit GA13, is that the private
15 placement memorandum for Fortress Trust 08?

16 A. Yes, it is.

17 Q. Would you have received this private placement
18 memorandum in the same fashion that you described the first
19 one, either through Mr. Smith personally or possibly
20 through the mail?

21 A. Yes, I would have.

22 Q. What was the maturity term of this investment?

23 A. Thirty-six months.

24 Q. Going down to the bottom of page one, what is
25 the underwriting discount?

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1 A. Six percent.

2 MR. BELLISS: If we could look at page six,
3 there it is.

4 BY MR. BELLISS, CONTINUED:

5 Q. Use of proceeds. If you could take a moment and
6 read the highlighted section to yourself, Mr. Greenberg.

7 A. Okay.

8 Q. And then page seven, please, under the heading
9 Business of the Trust Fund, towards the top, if you can
10 read that section to yourself as well, Mr. Greenberg.

11 A. Okay.

12 Q. Based upon the sections that we have been
13 looking at, is it fair to say that this was another
14 investment in alarm contracts?

15 A. Yes.

16 Q. Is it fair to say that once any underwriting fee
17 or brokerage fee was taken out, that based upon the
18 language in the private placement memorandum investor money
19 would be used to invest in these assets?

20 A. Yes.

21 Q. At the time you made your investment, did you
22 think your money would be used or spent according to the
23 use of proceeds section?

24 A. Yes, I did.

25 Q. Did anyone tell you that Mr. McGinn and

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1 Mr. Smith were planning to use more than eight hundred
2 thousand dollars raised by the trust to pay themselves and
3 another person above and beyond the fees disclosed?

4 A. No.

5 Q. Is that information that would have been
6 significant to you in making your decision?

7 A. Yes.

8 Q. Did anyone tell you that Mr. Smith and
9 Mr. McGinn were planning to use more than eight hundred
10 thousand dollars of investment money to make low interest
11 loans to themselves?

12 A. No, I wasn't told.

13 Q. Is that information that would have been
14 significant to you in deciding whether to invest?

15 A. Yes, it would.

16 Q. Anyone tell you that Mr. McGinn and Mr. Smith
17 actually did use more than eight hundred thousand dollars
18 of investor money to pay themselves and another man above
19 and beyond the fees disclosed in the private placement
20 memorandum, anyone tell you that?

21 A. No.

22 Q. Is that information that would have been
23 significant to you?

24 A. Yes, sir.

25 Q. Did anyone tell you that Mr. McGinn and

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1 Mr. Smith used more than eight hundred thousand dollars of
2 investor money raised by the trust to make low interest
3 loans to themselves?

4 A. No, I wasn't told.

5 Q. Is that information that would have been
6 significant to you?

7 A. Yes.

8 Q. Did Jeff Smith mention that Mr. McGinn and
9 Mr. Smith were planning to use forty thousand dollars of
10 the investor money to pay for a golf membership at a golf
11 course in Ireland?

12 A. No, never mentioned that.

13 Q. Is that information that would have been
14 significant to you in making your investment decision?

15 A. Yes.

16 Q. With respect to this investment, have you
17 received all of your principal back for your twenty
18 thousand dollar investment?

19 A. No.

20 Q. Have you received all of your interest payments
21 as promised?

22 A. No, not at all.

23 Q. I will move on to TDM Cable Trust 06. And let
24 me show you Exhibit GM38 and Exhibit GA3. Looking first at
25 GM38, which is up on the screen, page one, does this show

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1 that you bought twenty thousand dollars of TDM Cable
2 Trust 06, ten percent contract certificates due
3 November 15, 2010, and a settlement date of on or about
4 November 20, 2008?

5 A. Yes.

6 Q. Exhibit GA3, is that the private placement
7 memorandum for TDM Cable Trust 06?

8 A. Yes, it is.

9 Q. Looking at the bottom of page one, underwriting
10 discount is what?

11 A. Two percent.

12 MR. BELLISS: Going to page five, please.
13 Towards the top there, Ron, heading use of proceeds.

14 BY MR. BELLISS, CONTINUED:

15 Q. Do you see the section where it says: The net
16 proceeds from the offering will used to redeem 1.345
17 million of TDM Cable Trust 06 notes which mature on
18 November 15, 2008. Do you see that section?

19 A. Yes, I do.

20 MR. BELLISS: Page six, please, Ron.

21 BY MR. BELLISS, CONTINUED:

22 Q. Business of the trust fund towards the bottom.
23 It says: The trust fund has been formed solely for the
24 acquisition of the disclosed assets. Subsequent to the
25 closing date, the trust fund will utilize the net proceeds

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1 from the offering to redeem 1.345 million of two year
2 notes, which mature on November 15, 2008.

3 At the time you made your investment in this
4 particular trust, Mr. Greenberg, did you think your
5 investment money would be used for anything other than the
6 sections we have just been looking at?

7 A. No.

8 Q. Were these investments in what are called triple
9 play contracts?

10 A. I believe so.

11 Q. What's a triple play contract?

12 A. Well, I think it is distinct from the alarm
13 contracts here. My impression was that the cash flow
14 stream we were counting on was from cable contracts as part
15 of a triple play deal that was offered by the cable
16 companies.

17 Q. At the time you made your investment, did
18 Jeff Smith or anyone from McGinn, Smith tell you that
19 investor money from TDM Cable Trust 06 was used to make
20 interest payments to investors in an investment called
21 Firstline?

22 A. No.

23 Q. Have you ever heard of the Firstline investment?

24 A. Yes.

25 Q. How so?

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1 A. It is another one that I invested in. It is
2 another trust that I invested in with McGinn, Smith.

3 Q. If, in fact, investor money from TDM Cable
4 Trust 06 was going to be used to make monthly interest
5 payments to Firstline investors such as yourself, is that
6 information that you would have wanted to have known prior
7 to making your decision to invest?

8 A. Sure.

9 Q. Did you receive all of your interest payments as
10 promised for this investment?

11 A. No.

12 Q. Have you received all of your principal back?

13 A. No.

14 Q. Let me show you Exhibits GF49 and GA8.
15 Mr. Greenberg, did you make a twenty thousand dollar
16 purchase of Firstline Trust 07 Series B on or about
17 5/18/2008?

18 A. Yes, I did.

19 Q. If we could turn to the private placement
20 memorandum, GA8. Is this the private placement memorandum
21 for the trust?

22 A. Yes.

23 Q. And Jeff Smith had provided to you this PPM to
24 you in the same fashion that you described for the other
25 investments?

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1 A. Yes, this one was probably handed to me because
2 this one was I believe the first one that I did. So we
3 talked it over before then.

4 Q. What was the interest rate promised to investors
5 for this trust?

6 A. Eleven percent.

7 Q. Maturity date of sixty months, is that right?

8 A. Yes.

9 Q. Going down to the bottom of page one, what was
10 the underwriting discount?

11 A. Six percent.

12 Q. Looking at page five, please. Please take a
13 moment and read the use of proceeds section to yourself.

14 MR. BELLISS: And page seven, please, Ron.
15 And the highlighted paragraph under the use of proceeds
16 section.

17 BY MR. BELLISS, CONTINUED:

18 Q. Mr. Greenberg, based upon what we have been
19 looking at it, is it fair to say that investor money would
20 be loaned to a Utah company also called Firstline?

21 A. Yes.

22 Q. And that Utah company had a basket of alarm
23 contracts so to speak?

24 A. Yes.

25 Q. At the time you made your Firstline investment,

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1 did you expect your investment money to be used in
2 accordance with the use of proceeds sections that we have
3 just been looking at?

4 A. Yes, I did.

5 Q. Did Jeff Smith tell you that Mr. McGinn and
6 Mr. Smith were planning to use more than three hundred
7 thousand dollars of investor money raised by the trust to
8 pay themselves above and beyond the fees disclosed in the
9 private placement memorandum?

10 A. No.

11 Q. Is that information that would have been
12 significant to you in deciding whether to invest?

13 A. Yes.

14 Q. Did Jeff Smith or anyone from McGinn, Smith tell
15 you that Mr. McGinn and Mr. Smith were planning to use more
16 than three hundred thousand dollars of investor money to
17 make low interest loans to themselves?

18 A. No, nobody told me to that.

19 Q. Is that information that would have been
20 significant to you in deciding whether to invest?

21 A. Yes.

22 Q. Did Jeff Smith tell you that Mr. McGinn and
23 Mr. Smith used more three hundred thousand dollars of
24 investor money raised by the trust to pay themselves above
25 and beyond the fees disclosed in the private placement

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1 memorandum?

2 A. No.

3 Q. Is that information that would have been
4 significant to you in deciding whether to invest?

5 A. Yes.

6 Q. Did Jeff Smith tell that you Mr. McGinn and
7 Mr. Smith used more than three hundred thousand dollars of
8 investor money to make low interest loans to themselves?

9 A. No.

10 Q. In that information that, again, would have been
11 significant to you?

12 A. Yes.

13 Q. At the time you made your investment, where did
14 you think the money used to pay you and the other investors
15 would come from?

16 A. From the activities of the trust, the cash flows
17 coming from those alarm contracts.

18 Q. At the time that you made your investment in
19 Firstline, did you think that your monthly interest
20 payments could come from McGinn, Smith investments
21 unrelated to Firstline?

22 A. No.

23 Q. If interest payments were in fact coming from
24 unrelated McGinn, Smith investments, is that something you
25 would have wanted to have known prior to investing?

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1 A. Yes.

2 Q. Prior to making your investment in Firstline,
3 did Jeff Smith or anyone with McGinn, Smith tell you that
4 an alarm company called ADT had filed a multi-million
5 dollar lawsuit against Firstline, the company that was
6 borrowing investor money?

7 A. No.

8 Q. Is that information that would have been
9 significant to you in deciding whether to invest?

10 A. Yes.

11 Q. Prior to making your investment, did Jeff Smith
12 or anyone at McGinn, Smith tell you that Firstline, the
13 company that was borrowing investor money, had filed for
14 bankruptcy in January of 2008?

15 A. No.

16 Q. Is that information that would be significant to
17 you?

18 A. Yes.

19 Q. Did Jeff Smith tell you that monthly interest
20 payments to investors were going to be coming from sources
21 other than the Firstline investment?

22 A. No.

23 Q. Is that information that would have been
24 significant to you?

25 A. Yes.

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1 Q. Did you receive all of your interest payments as
2 promised in the private placement memoranda?

3 A. No, not all.

4 Q. Did you at least for a period of time receive
5 some?

6 A. I did.

7 Q. At some point in time, did your payments stop
8 altogether?

9 A. Yes, at some point.

10 Q. I show you Exhibit GF41. Is this a letter to
11 you from McGinn, Smith Capital Holdings Corps?

12 A. Yes.

13 Q. Did you receive this letter on or about
14 September 10, 2009?

15 A. I did, yes.

16 Q. If we could go to page two. You will see a
17 memorandum from a Joseph B. Carr, Esquire, general counsel
18 to all subscribers involved with Firstline Security, Inc.
19 Do you see the heading?

20 A. Yes, I do.

21 Q. If you could take a moment to read the first
22 paragraph to yourself silently?

23 A. Okay.

24 Q. Does that first paragraph generally reflect your
25 understanding of how investor funds were used, that is,

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1 loaned to a company in Utah called Firstline?

2 A. Yes.

3 Q. If we could go down to the second paragraph.

4 Take a moment and read it to yourself, please. Do you see
5 the last sentence of that paragraph, it begins: Firstline
6 concealed from funding that it was embroiled in a massive
7 disagreement with ADT and, in fact, breached various
8 representations and warranties in the loan documents at the
9 time that Funding made the two loans to Firstline.

10 Did Jeff Smith tell you how exactly Firstline
11 had concealed the problems with ADT?

12 A. No, he didn't, not to my recollection at least.

13 Q. If we could look at the bottom of paragraph
14 three, and take a moment and again read it to yourself. Do
15 you see the section that talks about a lender who has been
16 making interest payments to investors while Firstline has
17 been in bankruptcy?

18 A. Yes.

19 Q. Did Jeff Smith or anyone from McGinn, Smith give
20 you more information about the source of those payments or
21 the identity of this lender?

22 A. No.

23 Q. As of today, have you received your principal
24 back for your twenty thousand dollar investment?

25 A. No.

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1 Q. I want to focus on any discussions you might
2 have had with Jeff Smith about an investment called McGinn,
3 Smith Transaction Funding Corp. Have you heard of that
4 investment?

5 A. Yes.

6 Q. Had Mr. Smith ever presented to you with
7 information in a similar fashion as he did with your other
8 investments?

9 A. Yes.

10 Q. Did you, in fact, make an investment or
11 investments in McGinn, Smith Transaction Funding Corp?

12 A. Yes, on two separate occasions.

13 Q. Let me show you Exhibits GM12 and GM13. What is
14 the first page of Exhibit GM12?

15 A. My order ticket showing that I had made a
16 twenty-five thousand dollar investment in McGinn, Smith
17 Transaction Funding.

18 Q. On or about May 11, 2008; is that correct?

19 A. Yes.

20 Q. And the second ticket, GM13, did you purchase
21 another twenty-five thousand dollars on or about
22 November 5, 2008?

23 A. Yes.

24 Q. Let me show you Exhibit GB2. What is that
25 document?

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1 A. This is a private placement memorandum for
2 McGinn, Smith Transaction Funding.

3 Q. If we could look at page six, please, towards
4 the top. What were the maturity and interest rate of this
5 particular investment?

6 A. It was eight percent with an additional
7 contingent percentage depending on performance, and the
8 maturity date was July 1, 2012.

9 Q. If we go back and look at page one, please, at
10 the bottom. The underwriting discount for this investment
11 was two percent; is that right?

12 A. Yes, it is.

13 MR. BELLISS: Go back to page six, please,
14 Ron, at the bottom.

15 BY MR. BELLISS, CONTINUED:

16 Q. If you could take a look at the use of proceeds
17 section. We will also look at page ten, please.
18 Mr. Greenberg, what was your understanding of what investor
19 money was going to be used for in this investment?

20 A. Predominantly for bridge financing so that
21 McGinn, Smith could do more deals. Basically I remember
22 thinking, well, I am already doing the deals that they are
23 selling, so I might as well take the opportunity to
24 participate in paying myself back since they are
25 essentially giving us some contingency, contingent benefit

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1 resulting from their performance. So since I was on the
2 other end buying the deals, I thought it would make sense
3 to do this. And my understanding was that the money would
4 be used to provide bridge financing so that they could do
5 more deals and just grow their business, and I could be a
6 partner in that.

7 Q. At the time you made your two investments,
8 Mr. Greenberg, did you think that your money would be used
9 in accordance with the use of proceeds sections that we
10 have just been looking at?

11 A. Yes, I did.

12 Q. I show you Exhibit GB1A. Mr. Greenberg, if
13 could you set aside for the moment the red arrow just
14 tracing the flow with the black arrows, does this diagram
15 accurately reflect your understanding of what McGinn, Smith
16 Transaction Funding would use its investor money on?

17 A. Yes.

18 Q. Did anyone tell you that Mr. McGinn was planning
19 to take two hundred and thirty thousand dollars from
20 McGinn, Smith Transaction Funding above and beyond the fees
21 disclosed in the private placement memorandum?

22 A. No.

23 Q. Is that information that would have been
24 significant to you in making your investment decision?

25 A. Yes.

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1 Q. Did anyone tell you that Mr. McGinn and Smith
2 were planning to use nearly five hundred thousand dollars
3 of investor money raised by McGinn, Smith Transaction
4 Funding to pay some of the firm's preferred investors in
5 other unrelated McGinn, Smith investments such as SAI or
6 Third Albany Income Notes?

7 A. No.

8 Q. Is that information that would have been
9 significant to you in deciding whether to invest?

10 A. Yes.

11 Q. Let me show you Exhibit GB52. We will start at
12 the top on the screen, Mr. Greenberg. Do you see the
13 section that talks about agreement being made this 15th day
14 of May 2008, by and among McGinn, Smith Transaction Funding
15 Corp and the four Firstline Trusts?

16 A. I do.

17 Q. If we go down to the next highlighted section,
18 it says: Whereas, Firstline has defaulted with respect to
19 its obligations to pay principal and interest to trust
20 number one, trust number two, trust number three, and trust
21 number four, collectively the Trusts. As required pursuant
22 to the terms of the confidential private placement
23 memoranda dated May 19, 2007, and October 19, 2007,
24 collectively the PPMS. Do you see that section?

25 A. I do.

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1 Q. Go down a little bit farther, paragraph one:
2 Effective June 2, 2008, MSTF will assume all obligations of
3 Firstline arising under the PPMs to pay to the trusts all
4 principal and interest due and to become due to the trust
5 thereunder up to the maximum amount of three million
6 dollars in aggregate.

7 If we turn to the last page, would you tell us
8 who the document is signed by?

9 A. Timothy McGinn and David Smith.

10 Q. Go back to page one. Mr. Greenberg, when was
11 the first time you saw this agreement?

12 A. A few hours ago when you showed it to me.

13 Q. Was this agreement referenced anywhere in the
14 private placement memorandum for McGinn, Smith Transaction
15 Funding Corp?

16 A. No.

17 Q. What, again, was your understanding of what
18 McGinn, Smith Transaction Funding Corp. was investing in?

19 A. I thought they were investing in the same kind
20 of deals, alarm deals and cable deals, that had been sold
21 to me and were relatively safe. And my understanding of
22 the risk was that if they could not sell one of the deals,
23 it would just sit there. And then if that deal went bad
24 because people couldn't pay their alarm or cable contracts,
25 then that deal would go bad, and I would bear the risk of

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1 that. But I thought that that was the only thing they were
2 putting in. That is why it is called bridge financing
3 because they were supposed to hold onto it while they try
4 to sell it off to investors.

5 Q. Was paying interest payments to other investors
6 and other unrelated investments something you expected your
7 McGinn, Smith Transaction Funding investor money to be used
8 for?

9 A. No.

10 Q. Even though this agreement wasn't referenced in
11 the private placement memorandum, did Jeff Smith or anyone
12 with McGinn, Smith tell you that, in fact, McGinn, Smith
13 Transaction Funding was going to be paying up to three
14 million dollars worth of Firstline interest payments?

15 A. No.

16 Q. Were you also an investor in one of the
17 Firstline Trusts?

18 A. Yes, I was. In fact, you can look at the
19 ticket, but I think I was within a week of this agreement
20 date.

21 Q. What then is the effect of this agreement on
22 your situation?

23 A. I was buying into a defunct trust and paying
24 myself with the second trust that I invested.

25 Q. Is this information that would have been

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1 significant to you in deciding whether to invest?

2 A. Yes, it would have.

3 Q. As of today have you received your principal
4 back for your two twenty-five thousand dollar investments?

5 A. No.

6 Q. Other than Jeff Smith, did you ever have any
7 conversations with either David Smith or Timothy McGinn
8 about your investments?

9 A. Yes. One -- when these -- there was some small
10 problems with a couple of the deals that you referenced at
11 the beginning, the Verifier, but they were small like
12 payments that were in arrears slightly.

13 But then the Firstline thing happened where it
14 became public that Firstline had been in bankruptcy, and at
15 that point, I just wanted to get out. So I realized that
16 these were small private placement deals and that there was
17 no market for them, that I just couldn't call up a
18 stockbroker and say sell, get whatever you can.

19 So I asked Jeff to set up a call with his father
20 and with Timothy McGinn with respect to the McGinn, Smith
21 Transaction Funding because my understanding, again, of the
22 deal was that the money was just going to sit there unless
23 they are actively trying to buy a deal and set it off.

24 But because they were kind of locked up because
25 the Firstline deal had made it impossible for them to

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1 continue in business the way they had been, I thought,
2 well, the money is just sitting there. I approached Jeff
3 with that theory. The money is just sitting there unlike
4 these other ones, Verifier or the cable one where these are
5 separate entities. McGinn, Smith Transaction Funding is
6 under direct control of you guys. You should be able to
7 just return my money. It should just be sitting there.

8 He told me that they had one deal to his
9 knowledge on the books that they hadn't sold, and it was
10 like a million dollars. But that their entire pool for
11 McGinn, Smith Transaction Funding had been six million
12 dollars. So again, I was thinking okay. A million is
13 locked up out of six million. That still leaves eighty
14 something cents on the dollar that I could get out now. It
15 was my biggest holding. And I would have taken that eighty
16 something cents on the dollar at the time.

17 Q. Did you, in fact, have a conversation with
18 Mr. McGinn and Mr. Smith about this very topic?

19 A. Yes. He set up the call. I spoke to the two of
20 them, and said I would like to get my money out based on
21 that. And they told me that Jeff Smith had been in error,
22 that there -- the money wasn't just sitting there doing the
23 sort of bridge financing that I had thought it would be.
24 It was instead invested in a number of things.

25 One of the ones that I remember was that it was

ANDREW GREENBERG - Direct By Mr. Belliss

1 invested in like a -- shares in like a cruise line or
2 something like that, like space on a cruise ship. And they
3 lost a million and a half dollars. There was a security
4 company in New York that they made an equity investment in,
5 I believe, which, again, I wasn't under the impression that
6 the McGinn, Smith Transaction Funding was supposed to be
7 like their little hedge fund.

8 So I was disappointed in that outcome. It was
9 pretty clear halfway through the conversation that I wasn't
10 going to get any money back, that it was tied up in things
11 I had no desire to ever be invested in. So we ended the
12 call.

13 Q. When was the timeframe of this phonecall?

14 A. It was after the -- that letter that was in
15 September of 2009.

16 Q. Announcing the Firstline bankruptcy?

17 A. Announcing the Firstline bankruptcy. It was
18 definitely after that, and it was before McGinn, Smith's
19 assets got frozen sometime in 2010. So I would say late
20 2009, early 2010 at some point. I can't be more specific
21 than that.

22 Q. During the conversation in which Mr. McGinn or
23 Mr. Smith told you you were not going to be able to get
24 your money back, did they ever mention this agreement that
25 is up on the screen, Exhibit GB52, that MSTF was paying up

ANDREW GREENBERG - Direct By Mr. Belliss

1 to three million dollars of interest payments to Firstline?

2 A. Not to my recollection.

3 Q. After you concluded that conversation, did you
4 have any further communications with either David Smith or
5 Timothy McGinn about your investments?

6 A. No, that was the only time.

7 Q. Have you gotten back your two twenty-five
8 thousand dollar investments from McGinn, Smith Transaction
9 Funding Corp.?

10 A. No.

11 MR. BELLISS: Thank you, Judge. No further
12 questions.

13 THE COURT: Defense cross exam. Ms. Owens.

14

15 CROSS-EXAMINATION BY MS. OWENS:

16 Q. Good afternoon, Mr. Greenberg.

17 A. Hello.

18 Q. For these various private placements that you
19 invested in, you mentioned that one of the reasons why you
20 wanted to invest in them was because you wanted a better
21 income, you wanted the return on your investment; is that
22 correct?

23 A. Yes, it is.

24 Q. Some of the interest rates were eleven percent
25 or somewhere in that area; is that correct?

AVRAM CAHN - Cross by Ms. Owens

1 find a solution to the fact that an entity that McGinn,
2 Smith Funding invested in went bankrupt?

3 A. That's what they said they were doing, yes.

4 MS. OWENS: No further questions. Thank
5 you.

6 THE COURT: Thank you.

7 THE COURT: Mr. Jones.

8 MR. JONES: Nothing, Your Honor.

9 THE COURT: Mr. Belliss, anything further?

10 MR. BELLISS: No, Judge.

11 THE COURT: Okay. You may step down.

12 (Whereupon, the Witness is excused.)

13 THE COURT: Next.

14 MR. BELLISS: The government calls
15 Berta Kogan.

16
17 BERTA KOGAN, having been called as a Witness, being
18 first duly sworn, was examined and testified as follows
19 under oath:

20
21 DIRECT EXAMINATION BY MR. BELLISS:

22 Q. Good afternoon, Mrs. Kogan. How are you?

23 A. I am fine. Thank you.

24 Q. I am going to push that desk right in front of
25 you just a little bit, okay.

BERTA KOGAN - Direct By Mr. Belliss

1 A. Okay.

2 Q. Mrs. Kogan, could you tell the jury where you
3 live?

4 A. I live in New Jersey. I live in New Jersey in
5 Paramus.

6 Q. Mrs. Kogan, are you married?

7 A. Yes, I am.

8 Q. And are you currently working or are you
9 retired?

10 A. I am retired.

11 Q. What are you retired from?

12 A. New York City Police Department.

13 Q. Forensic lab?

14 A. Yes.

15 Q. What did you do at the forensic lab?

16 A. I was a chemist and I was analyzing narcotics.

17 Q. Are you of Russian descent, Mrs. Kogan?

18 A. Yes, I am.

19 Q. Mrs. Kogan, how did you first come to have a
20 relationship with McGinn, Smith?

21 A. Friend of a friend contacted me and told me that
22 she knows one of the brokers in this company. His name was
23 Philip Rabinovich, and he recommended him to me.

24 Q. Did Mr. Rabinovich ultimately become your broker
25 for McGinn, Smith?

BERTA KOGAN - Direct By Mr. Belliss

1 A. Yes.

2 Q. Did you ever have any discussions with
3 Mr. Rabinovich about your investment objectives?

4 A. Yes.

5 Q. Generally what were your objectives over the
6 last few years?

7 A. Our objectives we were to have -- to invest our
8 retirement money and receive profit.

9 Q. Did Mr. Rabinovich ultimately present you with
10 some investment opportunities?

11 A. Correct.

12 Q. And when Mr. Rabinovich had an investment
13 opportunity for you, how did he present it to you, would it
14 come through the mail, would you discuss it over the phone?

15 A. No. He came to visit us. He was in our house.
16 We discussed our situation, and we asked him to give us
17 recommendations. And we saw him a few times before he made
18 this recommendation, and we accepted his recommendation.
19 And that's the way we contacted him.

20 Q. So you did, in fact, make some investments in
21 McGinn, Smith products; is that right?

22 A. Correct.

23 Q. I am going to show you Exhibit GM-14.
24 Mrs. Kogan, I am going to put up a screen right in front of
25 you, okay. I am going to bring up on the screen a copy of

BERTA KOGAN - Direct By Mr. Belliss

1 what you have in the folder there, all right. And up on
2 the screen is Exhibit GM-14?

3 A. Yes.

4 Q. And Mrs. Kogan, does this show that you bought
5 three hundred thousand dollars of TDM Luxury Cruise
6 Trust 07, and that you bought it on or about July 31st
7 2007; is that right?

8 A. Yes, it is.

9 Q. I am going to show you Exhibit GA-7.

10 A. Yes.

11 Q. And, Mrs. Kogan, what is the document that I
12 just handed to you, do you know what it is called?

13 A. It is called a confidential private placement
14 memorandum.

15 Q. Mrs. Kogan, what was the interest rate in this
16 investment that was promised to investors, was it ten
17 percent highlighted near the top on page one?

18 A. Yes.

19 Q. Was the maturity date of your investment
20 September 1, 2011?

21 A. Yes.

22 Q. Is it fair to say that after the maturity term
23 had expired you expected to get your three hundred thousand
24 dollars back; is that right?

25 A. Yes, it is.

BERTA KOGAN - Direct By Mr. Belliss

1 Q. As of today, have you received your three
2 hundred thousand dollar principal back?

3 A. No.

4 Q. Could we look at page six of the private
5 placement memorandum?

6 A. Yes.

7 Q. I am going to bring up a highlighted area on the
8 screen.

9 A. Yes.

10 Q. The first paragraph says: The net proceeds to
11 the trust fund from the sale of certificates offered
12 hereby, after deducting the underwriting discount, would be
13 approximately 3.4 million and change, ninety-four percent
14 of the gross proceeds if the maximum offering for the
15 certificates is achieved.

16 Going a couple of paragraphs down: The net
17 proceeds from the offering will be lent by the trust to TDM
18 for the purpose of contributing 1.45 million of capital to
19 Luxury Cruises and funding the remaining 1.55 million
20 commitment to make additional capital contributions
21 thereto.

22 Additionally, certain fees and expenses will be
23 paid as more fully described below. And then there are a
24 listing of various fees; is that right?

25 A. Yes.

BERTA KOGAN - Direct By Mr. Belliss

1 Q. If we go to page seven, next page I believe.

2 A. Yes.

3 Q. In the middle there is a section business of the
4 trust fund.

5 A. Right.

6 Q. It says: The trust fund has been formed solely
7 for the purpose of lending the net proceeds to TDM. That
8 TDM will in turn contribute up to three million dollars to
9 Luxury receivables.

10 And was it your understanding that this
11 investment had something to do with luxury cruises or
12 travel agencies?

13 A. Correct.

14 Q. At the time you made your investment in this
15 particular trust, did you think your money would be used
16 according to the use of proceeds section that we were just
17 looking at?

18 A. Yes.

19 Q. Did you think your investment money would be
20 used for anything other than what was described in the
21 private placement memorandum?

22 A. No.

23 Q. If, in fact, investor money from this trust was
24 used to pay investors in other unrelated McGinn, Smith
25 investments, is that information that would have been

BERTA KOGAN - Direct By Mr. Belliss

1 significant to you in deciding whether to invest?

2 A. It would be very significant.

3 Q. Between the time that you made your investment
4 in TDM Luxury Cruise Trust 07 and April of 2010, did
5 Mr. Rabinovich or anyone at McGinn, Smith ever inform you
6 that monies belonging to TDM Luxury Cruise Trust 07
7 investment would be used to make investor payments to
8 investors in an investment called Firstline?

9 A. No.

10 Q. Is that information that would have been
11 significant to you in deciding whether to invest in TDM
12 Luxury Cruise Trust 07?

13 A. Of course.

14 Q. At some point in the spring of 2008, did you
15 have discussions with Mr. Rabinovich about an investment
16 called Firstline?

17 A. Yes.

18 Q. And do you know how those discussions came about
19 or was it just he presented you with a new investment
20 opportunity?

21 A. The market was doing very poorly, and we
22 discussed how we can -- what can be done, and during the
23 discussion this was offered to us.

24 Q. And, in fact, did you make an investment in one
25 of the Firstline Trusts?

BERTA KOGAN - Direct By Mr. Belliss

1 A. Yes.

2 Q. I want to show you Exhibit GF-50. Mrs. Kogan,
3 is this your investment ticket showing that you purchased
4 one hundred and fifty thousand dollars of Firstline
5 Trust 07 Series B on or about April 24, 2008?

6 A. Correct.

7 MR. BELLISS: If we go a couple of pages
8 down to the subscription agreement, please, Ron.

9 BY MR. BELLISS, CONTINUED:

10 Q. Is that the first page of the subscription
11 agreement?

12 A. Yes.

13 Q. We will go to next page, the signature block.
14 Mrs. Kogan, is that you and your husband's signature on
15 April 17, 2008?

16 A. Yes.

17 MR. BELLISS: The next page, please.

18 BY MR. BELLISS, CONTINUED:

19 Q. Did Mr. Smith approve your investment on or
20 about April 23, 2008?

21 A. Yes.

22 Q. Mrs. Kogan, I am going show you Exhibit GA-8.
23 Mrs. Kogan, in connection with your investment in
24 Firstline, did you receive a private placement that looks
25 like this entitled Firstline Trusts 07 Series B?

BERTA KOGAN - Direct By Mr. Belliss

1 A. Yes.

2 Q. And did it describe that the investment would
3 pay an interest rate of eleven percent and that the term of
4 the investment would be sixty months?

5 A. Correct.

6 Q. If we go down a little bit farther on page one,
7 there was an underwriting fee of six percent; is that
8 right?

9 A. Correct.

10 Q. If we look at page seven of the private
11 placement memorandum, and it should come up on the screen,
12 there is a use of proceeds section. It talks about how the
13 trust fund intends to use all of the net proceeds of the
14 offering to purchase the junior tranche of the financing.

15 Were you aware that this investment involved
16 some alarm contracts?

17 A. Yes.

18 Q. Were you aware that it involved a company that
19 was located in Utah called Firstline Security,
20 Incorporated, have you come to know that?

21 A. I don't remember.

22 Q. At the time you made your investment in
23 Firstline in April of 2008, did you think your investor
24 money would be used according to the use of proceeds
25 section that we are looking at here on the screen?

BERTA KOGAN - Direct By Mr. Belliss

1 A. Yes.

2 Q. Did anyone tell you that Mr. McGinn or Mr. Smith
3 were planning to use more than three hundred thousand
4 dollars of investor money raised by the trust to pay
5 themselves above and beyond the underwriting fee that was
6 disclosed in the private placement memorandum?

7 A. No.

8 Q. Is that information that would have been
9 significant to you in deciding whether to invest?

10 A. Definitely.

11 Q. Did anyone tell you that Mr. McGinn and
12 Mr. Smith were planning to use more than three hundred
13 thousand dollars of investor money raised by the trust to
14 loan themselves that money, is that information that would
15 have been significant to you?

16 A. Very significant.

17 Q. Did anyone tell you that Mr. McGinn and
18 Mr. Smith used more than three hundred thousand dollars of
19 investor money raised by the trust to pay themselves above
20 and beyond the fees disclosed in the PPM?

21 A. No.

22 Q. Is that information that would have been
23 significant to you in deciding whether to invest?

24 A. Yes.

25 Q. And finally, did anyone tell that you Mr. McGinn

BERTA KOGAN - Direct By Mr. Belliss

1 and Mr. Smith was going to take more than three hundred
2 thousand dollars of investor money and loan it to
3 themselves?

4 A. It would have been very significant.

5 Q. They didn't tell you that, and it would have
6 been significant to you?

7 A. Yes.

8 Q. Prior to making your April investment in
9 Firstline, did Mr. Rabinovich or anyone from McGinn, Smith
10 tell you that there was company called ADT that had filed a
11 multi-million dollar lawsuit against Firstline Security
12 Incorporated, the company that was borrowing investor
13 funds?

14 A. I was completely unaware of it.

15 Q. Is that something that would have been
16 significant to you in deciding whether you and your husband
17 wanted to invest?

18 A. We would have never invested.

19 Q. At the time you made your investment in
20 Firstline, where did you think your interest payments were
21 going to come from?

22 A. It will come from the -- this company we
23 invested in.

24 Q. From the company that you invested in; is that
25 right?

BERTA KOGAN - Direct By Mr. Belliss

1 A. Correct.

2 Q. If your interest payments were coming from an
3 unrelated McGinn, Smith entity, is that something you would
4 have wanted to have known?

5 A. Definitely.

6 Q. Would that have been significant to you in
7 deciding whether to invest?

8 A. Yes.

9 Q. Prior to making your investment, did
10 Mr. Rabinovich or anyone from McGinn, Smith tell you that
11 in January of 2008 Firstline Security, Incorporated, the
12 company that was borrowing investor money, filed for
13 bankruptcy?

14 A. No.

15 Q. Is that something that would have been
16 significant to you in deciding whether to invest?

17 A. Yes.

18 Q. Did you receive all of your interest payments as
19 promised in the private placement memorandum for Firstline?

20 A. No.

21 Q. Did you at least for a period of time receive
22 some of those interest payments?

23 A. Certain amount of money we did receive, but it
24 was far from what we expected.

25 Q. At some point in time, did the interest payments

BERTA KOGAN - Direct By Mr. Belliss

1 stop altogether?

2 A. Yes.

3 Q. Did there come a point in time where you found
4 out that Firstline Security, Inc., was in bankruptcy?

5 A. No, I never knew about that.

6 Q. As of today, have you received your one hundred
7 and fifty thousand dollar principal back?

8 A. No.

9 Q. Thank you, Mrs. Kogan.

10 MR. BELLISS: No further questions, Your
11 Honor.

12 THE COURT: Cross exam, if any, Mr. Jones.

13 MR. JONES: Thank you, Judge.

14

15 CROSS-EXAMINATION BY MR. JONES:

16 Q. Good afternoon, Mrs. Kogan. I will be very
17 brief with you. Mr. Rabinovich was your financial advisor?

18 A. Correct.

19 Q. And each of the two investments that were just
20 discussed with you, those investments were discussed with
21 Mr. Rabinovich before you agreed to make the investments?

22 A. You have to ask Mr. Rabinovich. I don't
23 understand the question. Did he discuss this placement
24 with me?

25 Q. Yes.

PHILIP RABINOVICH - Recross by Mr. Jones

1 Q. And MS Funding was a McGinn, Smith entity,
2 correct?

3 A. Correct.

4 Q. Owned by?

5 A. Mr. McGinn and Mr. Smith.

6 Q. The payments that were made to the Firstline
7 investors by MS Funding extended over a period of twenty
8 months, correct?

9 A. Correct.

10 MR. JONES: Thank you.

11 THE COURT: Okay. Now we can take a break,
12 members of the jury. And don't discuss the case among
13 yourselves or anyone else, and we will see you back here in
14 fifteen minutes.

15 Mr. Minor.

16 COURT CLERK: Court stands for the morning
17 recess.

18 (Whereupon, a brief recess was taken.)

19 THE COURT: Next witness.

20 MR. BELLIS: Your Honor, the government
21 calls Mr. Steve Novack to the stand.

22

23 STEPHEN NOVACK, having been called as a Witness,
24 being first duly sworn, was examined and testified as
25 follows under oath:

PHILIP RABINOVICH - Recross by Mr. Jones

1

2 DIRECT EXAMINATION BY MR. BELLISS:.

3 Q. Good morning, Mr. Novack. I am just going to
4 slide that to you a little closer. Mr. Novack, would you
5 tell the jury where you live?

6 A. I live in Manalapan, New Jersey.

7 Q. Are you married, sir?

8 A. Yes.

9 Q. Are you currently employed?

10 A. Yes.

11 Q. What do you do for a living?

12 A. I am a commodities trader. We trade for oil.

13 Q. How long have you been doing that for?

14 A. Well, different products since 1997.

15 Q. Talk about any relationship that you had with
16 McGinn, Smith. Did you come to have a relationship with
17 anyone at McGinn, Smith?

18 A. Yes, I knew Geoff Smith.

19 Q. Do you know Geoff Smith's connection to McGinn,
20 Smith?

21 A. Yes.

22 Q. What is the connection?

23 A. His father is -- he is Mr. Smith's son.

24 Q. Did you ever have a chance to meet with
25 Mr. McGinn and Mr. Smith of McGinn, Smith?

STEPHEN NOVACK - Direct By Mr. Belliss

1 A. No.

2 Q. Was Geoff Smith your primary point of contact at
3 McGinn, Smith?

4 A. Yes.

5 Q. Did he ever present you with opportunities to
6 invest in McGinn, Smith products?

7 A. Yes.

8 Q. How would he present the opportunities to you?

9 A. In person.

10 Q. What types of documents or spreadsheets or
11 charts would he show you in connection with a possible
12 investment?

13 A. Regular prospectus.

14 Q. Sometimes called a private placement memorandum?

15 A. Yes.

16 Q. Did you in fact makes some investments in
17 McGinn, Smith products?

18 A. Yes.

19 Q. I want to show you Exhibit GM-45. If you could
20 open that folder, Mr. Novack, and then an electronic copy
21 should come up on the screen in front of you.

22 A. Okay.

23 Q. If we look at the top half of the first page, it
24 is talking about your investment ticket, is that right,
25 dated August 5, 2008, that's your name Stephen

STEPHEN NOVACK - Direct By Mr. Belliss

1 Edward Novack; is that correct?

2 A. Yes.

3 Q. And you purchased twenty-five thousand dollars
4 of Integrated Excellence, ten percent; is that right?

5 A. Correct.

6 Q. If we go to the next page, we see a subscription
7 agreement for Integrated Excellence Jr. Trust 08. If we go
8 to next page of that, is that your signature, sir, at the
9 bottom of the page?

10 A. Yes, sir.

11 Q. You signed it on or about August 5, 2008?

12 A. Yes.

13 Q. Flip to the next page. Was your investment
14 approved by McGinn, Smith?

15 A. Yes.

16 Q. On August 6, 2008, signed by Mr. McGinn; is that
17 right?

18 A. Yes.

19 Q. In connection with this investment, did you also
20 receive a private placement memorandum for Integrated
21 Excellence Jr. Trust 08?

22 A. Yes.

23 Q. I am handing you Exhibit GA-11. Do you
24 recognize that document, Mr. Novack?

25 A. Yes.

STEPHEN NOVACK - Direct By Mr. Belliss

1 Q. What is it?

2 A. It is the placement memorandum.

3 Q. In looking at page one, we have the top half of
4 the page up on the screen. What again was the interest
5 rate promised to you as an investor?

6 A. Ten percent.

7 Q. What was the maturity term of your employment?

8 A. Sixty-six months.

9 Q. Is it fair to say that after that sixty-six
10 month term, you would expect to get your principal back,
11 your twenty five thousand; is that right?

12 A. Yes.

13 Q. As of today, have you received any of your
14 principal back?

15 A. No.

16 Q. If we go down and look at page four of the
17 private placement memorandum. Now, you see those
18 highlighted sections. The first talks about the sole
19 business activity of the trust fund will be to acquire the
20 junior tranche of the financing secured by a portfolio of
21 contracts, so on and so forth?

22 A. Yes.

23 Q. Let's go to page seven, it is the use of the
24 proceeds section; is that right?

25 A. Yes.

STEPHEN NOVACK - Direct By Mr. Belliss

1 Q. Is says that the trust fund intends to use all
2 of the net proceeds of the offering to purchase the junior
3 tranche of the financing. What was your understanding of
4 what this investment involved?

5 A. That it was an alarm deal and they were using
6 this to finance an alarm company and receive payments basis
7 and revenue stream.

8 Q. At the time you made your investment, did you
9 think your money would be used according to this use of
10 proceeds section?

11 A. Yes, of course.

12 Q. At the time you made your investment, did you
13 think that your money might be used for something other
14 than your investment in Integrated Excellence?

15 A. No.

16 Q. I show you Exhibit GA-1D. Have you ever seen
17 this diagram before, Mr. Novack?

18 A. No.

19 Q. Let's talk briefly about a couple of the icons.
20 Do you see the icon that is represented by broker-dealer?

21 A. Yes.

22 Q. Private placement memorandum, and then an
23 investors icon?

24 A. Yes.

25 Q. Investors placed money into the trust?

STEPHEN NOVACK - Direct By Mr. Belliss

1 A. Right.

2 Q. Do you see some red arrows at the bottom of the
3 diagram?

4 A. Yes.

5 Q. At the time you were about to make your
6 investment, did anyone tell you that Mr. McGinn and
7 Mr. Smith were planning to use investor money raised by the
8 trust to pay investors in other trusts?

9 A. No.

10 Q. Is that information that would have been
11 significant to you in making your investment decision?

12 A. Yes.

13 Q. Did anyone tell you that on August 29, 2008,
14 Mr. McGinn and Mr. Smith used ninety-seven thousand dollars
15 of investor money to pay investors in the Firstline Senior
16 Trust 07, did anyone tell you that?

17 A. No.

18 Q. Is that information that would have been
19 significant to you in making your investment decision?

20 A. Yes.

21 Q. Finally, did anyone tell you that on August 29,
22 2008, Mr. McGinn and Mr. Smith used forty-five thousand
23 dollars of investor money to pay investors in TDM Luxury
24 Cruise Trust 07, did anyone tell you that?

25 A. No.

STEPHEN NOVACK - Direct By Mr. Belliss

1 Q. Is that information that would have been
2 significant to you in making your investment decision?

3 A. Yes.

4 Q. Thank you, Mr. Novack.

5 MR. BELLISS: No further questions, Judge.

6 THE COURT: Defense may cross-examine.
7 Ms. Owens.

8

9 CROSS-EXAMINATION BY MS. OWENS:

10 Q. Good morning, Mr. Novack.

11 A. Good morning.

12 Q. You referenced that your connection with McGinn,
13 Smith investments was through Geoffrey Smith?

14 A. That's correct.

15 Q. And you met him on the commodities floor?

16 A. Yes.

17 Q. And you are also a commodities trader?

18 A. That's correct.

19 Q. And during the time period when you met
20 Geoffrey Smith, was he also working for McGinn, Smith &
21 Company at the same time?

22 A. Yes. I am not sure of the exact timeframe when
23 he began working with his father, but, yes.

24 Q. It seems like there was some overlap?

25 A. That's correct.

STEPHEN NOVACK - Recross by Mr. Jones

1 A. I cannot tell you truthfully exactly what is in
2 there or not.

3 Q. You can't tell me whether it is money or not?

4 A. It is not a check, sir.

5 MR. BELLISS: Objection.

6 THE COURT: You may step down. Thank you.

7 (Whereupon, the Witness is excused.)

8 THE COURT: Next witness.

9 MR. BELLISS: The government calls
10 Robert Pugliese, Judge.

11

12 ROBERT PUGLIESE, having been called as a Witness,
13 being first duly sworn, was examined and testified as
14 follows under oath:

15

16 DIRECT EXAMINATION BY MR. BELLISS:

17 Q. Good morning, Mr. Pugliese. How are you today,
18 sir?

19 A. Fine. Thank you.

20 Q. I understand you are also a retired Command
21 Sergeant Major; is that right?

22 A. That's correct.

23 Q. Do you prefer if I call you Mr. Pugliese or
24 Sergeant Major?

25 A. Sergeant Major was so long ago. Mr. Pugliese is

ROBERT PUGLIESE - Direct By Mr. Belliss

1 fine.

2 Q. All right. Mr. Pugliese, where do you currently
3 live?

4 A. I live at 110 Lake Drive in Rotterdam, New York.

5 Q. Are you married, sir?

6 A. Yes, sir, fifty-three years.

7 Q. Congratulations. You are, in fact, retired at
8 this point?

9 A. Yes, I am.

10 Q. Let me talk about your relationship with McGinn,
11 Smith. About when did you first come to have a
12 relationship with McGinn, Smith?

13 A. I received a call from a Mr. Feldman, and we
14 talked on the phone, and he had some investment offers and
15 we got along very well, and I says, well, I think we will
16 take a chance.

17 THE COURT: Move the mike a little closer.

18 BY MR. BELLISS, CONTINUED:

19 Q. Mr. Feldman; is that right?

20 A. That's correct.

21 Q. Was he a broker for McGinn, Smith?

22 A. Yes, sir.

23 Q. Did he become your primary point of contact at
24 McGinn, Smith?

25 A. Yes, sir, he was.

ROBERT PUGLIESE - Direct By Mr. Belliss

1 Q. Did you ever have any discussions with him over
2 the years about your investment objectives?

3 A. Yes.

4 Q. What were your objectives over the last, let's
5 say, ten years?

6 A. Short term. At my age I didn't want anything
7 that was long term, and I wanted to make some money for --
8 so I could leave my three sons.

9 Q. Is it fair to say that you placed some trust in
10 Mr. Feldman to present you with some opportunities that
11 would meet those objectives?

12 A. That is absolutely correct.

13 Q. How would Mr. Feldman present you with
14 opportunities to invest, would he send you things through
15 the mail, did you have face-to-face meetings?

16 A. No, he would call me on the telephone.

17 Q. And if he described an investment that you might
18 be interested in, would he follow up with something through
19 the mail to have you read something?

20 A. Yes, sir. My wife and I would discuss it and
21 read whatever he sent and then we would make a decision.

22 Q. I am going to show you an exhibit, GE-13. You
23 can open that folder, sir. Mr. Pugliese, is that a McGinn,
24 Smith firm brokerage pamphlet that you received over the
25 years?

ROBERT PUGLIESE - Direct By Mr. Belliss

1 A. Yes.

2 Q. If we look at the top of the first half of the
3 page, do you know if that's McGinn, Smith's offices or does
4 that happen to be Wall Street, if you know?

5 A. I don't know. I am going to get my eyeglasses.

6 Q. I am looking at page one, the cover page,
7 Mr. Pugliese.

8 A. No, that looks like Wall Street to me.

9 Q. If we go to the bottom of the first page, it
10 says at McGinn, Smith, it is all about trust; is that
11 right?

12 A. That's correct.

13 Q. And the various pages describe some of the
14 products that they are involved in, is that a fair
15 statement?

16 A. That is extremely fair.

17 Q. Did you ultimately make some investments through
18 Mr. Feldman?

19 A. Yes, I did.

20 Q. I want to show you two exhibits, GM-21 and
21 GM-41. And I am going to put those same exhibits up on
22 screen, Mr. Pugliese, if that's easier. You tell me, okay?

23 A. Okay.

24 Q. And the first one is an investment ticket; is
25 that right?

ROBERT PUGLIESE - Direct By Mr. Belliss

1 A. That's correct.

2 Q. It says you bought ten thousand dollars worth of
3 TDM Luxury Cruise Trust 07 and you bought it around
4 July 19, 2007; is that right?

5 A. That's correct.

6 Q. And then the second exhibit, GM-41, it should
7 come up on the screen, you bought a second investment in
8 the same TDM Luxury Cruise?

9 A. Yes, sir.

10 Q. For fifteen thousand dollars; is that right?

11 A. That's correct, sir.

12 Q. If we look right in the center of that page, it
13 talks about contract certificates at ten percent. Was that
14 the interest rate you were being promised?

15 A. Yes, sir.

16 Q. And then to the right of that ten percent, it
17 says, due 9/1/11, so September 1, 2011. Is that the
18 maturity date of the investment?

19 A. Yes, sir.

20 Q. So at the -- once you hit those maturity dates
21 in 2011, did you expect to receive a return of your
22 principal?

23 A. Yes, sir, I did.

24 Q. To date have you received a return of your
25 principal?

ROBERT PUGLIESE - Direct By Mr. Belliss

1 A. No, sir, I have not.

2 Q. If we go and look at Exhibit GA-7.

3 Mr. Pugliese, do you know what that document is?

4 A. Not really.

5 Q. Does it describe the investment?

6 A. Yes.

7 Q. Would you have been provided with a copy of this
8 at the time you decided you were going to invest?

9 A. Yes, sir.

10 Q. And if we go down and look at page six. Again,
11 it will come up on the screen for you. In the middle there
12 is a paragraph that says:

13 The net proceeds from the offering will be lent
14 by the trust to TDM for the purpose of contributing 1.45
15 million of capital to Luxury Cruises and funding the
16 remaining 1.55 million commitment to make additional
17 capital contributions thereto.

18 Generally did you understand this investment to
19 be involved in luxury cruises and travel?

20 A. I did understand the cruise portion, yes.

21 Q. Mr. Pugliese, at the time that you made your two
22 investments in TDM Luxury Cruise Trust 07, did you expect
23 your money to be used in accordance with what we have just
24 been looking at?

25 A. Yes, sir.

ROBERT PUGLIESE - Direct By Mr. Belliss

1 Q. If your money was used for some other purpose,
2 would you have wanted to have known that prior to making
3 your investment?

4 A. Absolutely.

5 Q. At the time you made your investment, did you
6 ever think that investor funds would be used to make
7 interest payments to investors in a company called
8 Firstline?

9 A. No, sir.

10 Q. Is that information you would have wanted to
11 have known?

12 A. Yes, sir.

13 Q. Let me show you Exhibit GM-42.

14 MR. BELLISS: If we can go to the very top,
15 Ron, just so we can see the letterhead.

16 BY MR. BELLISS, CONTINUED:

17 Q. Mr. Pugliese, was this a letter sent to you on
18 January 14, 2009, from McGinn, Smith?

19 A. I tell you it is addressed to me, and I would
20 have to assume it came, but I really don't remember.

21 Q. Okay, and the highlighted section says the
22 following will describe the position of TDM Luxury Cruise,
23 and its borrower, Luxury Cruise Division/White Glove
24 Travel. Do you see that highlighted section?

25 A. Yes, I do.

ROBERT PUGLIESE - Direct By Mr. Belliss

1 Q. If we go to page two and read it briefly, it
2 says: From March 2009 through October 2009 net revenues,
3 accrual, averaged one hundred and thirty thousand per
4 month, and it goes on to talk about some additional
5 numbers.

6 Then it says, as a result of the booking to
7 collection lag and the resulting deficits accumulated
8 through February 2009, we anticipate not being able to meet
9 interest payments until June 2010, by which time interest
10 payments will resume.

11 Do you recall about this time your interest
12 payments on TDM Luxury Cruise Trust stopping, if you
13 recall, sir?

14 A. I don't recall.

15 Q. I would like to talk about some investments you
16 made in an investment called Firstline. Does that sound at
17 all familiar, sir?

18 A. Yes, sir.

19 Q. I am going to show you GF-58 and GF-51. There
20 should be two investment tickets that will come up on the
21 screen. And the first one, GF-58, is for twenty-five
22 thousand dollars, Firstline Trust 07 Series B, and you
23 bought it on or about November 5, 2007; is that right?

24 A. That's correct, sir.

25 Q. And the second one, which is GF-51, says you put

ROBERT PUGLIESE - Direct By Mr. Belliss

1 an additional fifty-five thousand towards Firstline
2 Trust 07 Series B. And the trade date or the settlement
3 date was on or about June 9, 2008; is that right?

4 A. Yes, sir.

5 Q. And if we go a couple pages in, we might see
6 what is called a subscription agreement, Mr. Pugliese?

7 A. Yes, sir.

8 Q. And if we go to the next page, if we look down
9 at the bottom, is that in fact your and your wife's
10 signature for the subscription agreement?

11 A. Yes, sir, it is.

12 Q. Look at the next page, your subscription
13 agreement was ultimately approved by Mr. Smith on June 10,
14 2008; is that right?

15 A. Yes, sir. I really don't know. I really don't
16 remember this.

17 Q. Okay. In any of these documents that we have
18 been looking at that you would have had to fill something
19 out and sign your name, how would they get back to McGinn,
20 Smith?

21 A. I would mail them in an envelope.

22 Q. I am going to take a look at Exhibit GA-8.
23 Mr. Pugliese, do you recognize this as a private placement
24 memorandum for your Firstline investments?

25 A. Yes, sir.

ROBERT PUGLIESE - Direct By Mr. Belliss

1 Q. If you look at the highlighted section on the
2 computer screen, do you recall the interest rate that you
3 were promised to be about -- to be eleven percent?

4 A. Yes, sir, that is correct.

5 Q. With a maturity term of sixty months or five
6 years, does that sound about right?

7 A. That sounds right, sir.

8 Q. If we go down to the bottom of the first page,
9 there is talk about an underwriting discount of six
10 percent. Do you see that, Mr. Pugliese?

11 A. Yes, sir, I do.

12 Q. What did you understand that to be?

13 A. I didn't understand it.

14 Q. If we go to page five.

15 MR. BELLISS: Right in the center, Ron, the
16 use of proceeds, if you could highlight that for us,
17 please.

18 BY MR. BELLISS, CONTINUED:

19 Q. And I will give you a moment to read that,
20 Mr. Pugliese, if you could.

21 A. Okay.

22 Q. Do you have any recollection of this investment
23 involving some type of alarm contracts, Mr. Pugliese?

24 A. No, sir, I don't.

25 Q. At least based upon what we are looking at here

ROBERT PUGLIESE - Direct By Mr. Belliss

1 on the highlighted section, would you expect your investor
2 money to be used in accordance with this description?

3 A. No, sir, I don't remember that at all.

4 Q. You don't remember this section?

5 A. No, I don't.

6 Q. Generally speaking, would you hope that your
7 investor money was going to be used in accordance with the
8 investment as described to you?

9 A. Absolutely, yes.

10 Q. Mr. Pugliese, at the time that you were making
11 your two investments, if you recall, you had one in 2007
12 one and in 2008, did Mr. Feldman or anyone from McGinn,
13 Smith tell you that Mr. McGinn and Mr. Smith were going to
14 take three hundred thousand dollars in fees beyond what was
15 disclosed in the private placement memorandum?

16 A. No, sir.

17 Q. Is that something you would have wanted to have
18 known?

19 A. Yes, sir.

20 Q. Prior to investing?

21 A. Yes, sir.

22 Q. If Mr. McGinn or Mr. Smith was going to take
23 three hundred thousand dollars of investor money as loans
24 to themselves, is that something that you would have wanted
25 to have known?

ROBERT PUGLIESE - Direct By Mr. Belliss

1 A. Absolutely.

2 Q. Let's focus on your 2008 investment in
3 Firstline, the one that you made in June of 2008?

4 A. Okay.

5 Q. Did Mr. Feldman or anyone from McGinn, Smith
6 tell you that a company called ADT was threatening a
7 massive lawsuit against Firstline?

8 A. No, sir. That's news to me.

9 Q. Is that something that you might have wanted to
10 have known before you invested your money?

11 A. Yes, sir, absolutely.

12 Q. Mr. Pugliese, when you invested in 2008, did
13 anyone from McGinn, Smith tell you that the company called
14 Firstline Security, Inc. had filed for bankruptcy in
15 January of 2008?

16 A. No, sir.

17 Q. Is that information that would have been
18 significant to you in deciding whether to invest?

19 A. Absolutely.

20 Q. Over a period of time, Mr. Pugliese, did you
21 receive your interest payments on the Firstline investment?

22 A. I can vaguely recall maybe a three hundred
23 dollar check, in that area, but that was it.

24 Q. At some point did the interest payments then
25 stop?

ROBERT PUGLIESE - Direct By Mr. Belliss

1 A. Yes, sir.

2 Q. I am going to show you one more exhibit, GF-66.
3 Mr. Pugliese, this is a letter dated September 10, 2009, to
4 you and your wife in connection with your Firstline
5 investment. Do you remember receiving this letter?

6 A. No, sir, I do not.

7 Q. During 2008 or 2009, did anyone from McGinn,
8 Smith ever tell you what the source of any interest
9 payments that you were receiving was?

10 A. No, sir.

11 Q. You had an investment in TDM Luxury Cruise,
12 didn't you, as well? We looked at that previously.

13 A. Yes, sir.

14 Q. And if investor money from TDM Luxury Cruise was
15 being used to pay interest payments to Firstline investors,
16 is that something you would have wanted to have known?

17 A. Yes, sir, I certainly would.

18 Q. Were you an investor in both of those trusts,
19 TDM Luxury Cruise and Firstline?

20 A. I honestly can't remember.

21 Q. As for the Firstline investment, Mr. Pugliese,
22 have you gotten any of your principal back yet?

23 A. No, sir.

24 Q. Thank you, Mr. Pugliese. Ms. Owens and
25 Mr. Jones may have some questions for you.

ROBERT PUGLIESE - Direct By Mr. Belliss

1 MR. BELLISS: Thank you, Judge.

2 THE COURT: Does the defendants have any
3 cross exam?

4 MR. DREYER: I just have a few questions,
5 Your Honor.

6 THE COURT: Proceed, Mr. Dreyer.

7

8 CROSS-EXAMINATION BY MR. DREYER:

9 Q. Good morning, Mr. Pugliese.

10 A. Good morning.

11 Q. Mr. Pugliese, I am going to ask you some very
12 general questions, okay. I know that you have said, am I
13 correct, that you can't remember a lot of the details, and
14 I understand that.

15 A. Yes, sir, I wish I could be of more help, but I
16 just don't remember.

17 Q. All right. One of the questions I want to ask
18 you to explain to the jury is your relationship with
19 Mr. Feldman. So if would you start there and tell us what
20 the relationship is that you had with Mr. Feldman, when it
21 first started? In other words, did you go to his office in
22 Clifton Park, did he meet you anywhere, did you have dinner
23 together, that kind of thing?

24 A. No, the only thing we -- he called me on the
25 telephone, explained who he was, and we struck up a nice

ROBERT PUGLIESE - Cross by Mr. Jones

1 THE COURT: Mr. Belliss, you may call your
2 next witness.

3 MR. BELLISS: Thank you, Your Honor. The
4 government calls Paul Sokol to the stand.

5

6 PAUL SOKOL, having been called as a Witness, being
7 first duly sworn, was examined and testified as follows
8 under oath:

9

10 DIRECT EXAMINATION BY MR. BELLISS:

11 Q. Good afternoon, Mr. Sokol. Could you tell the
12 jury where you live?

13 A. I live in Hebron, New York, which is on the
14 Vermont border.

15 Q. How long have you lived there, sir?

16 A. I have been there four years.

17 Q. Are you married?

18 A. I am.

19 Q. Do you have any kids?

20 A. I do.

21 Q. How many?

22 A. I have a son who is twenty and a daughter who is
23 thirty-four, and my oldest boy is deceased.

24 Q. Mr. Sokol, are you presently employed?

25 A. I am self-employed.

PAUL SOKOL - Direct By Mr. Belliss

1 Q. What do you do for a living?

2 A. I am a home builder.

3 Q. Have you ever had any relationship with anyone
4 at McGinn, Smith or anybody who worked for McGinn, Smith?

5 A. I have.

6 Q. And could you explain how that relationship
7 developed?

8 A. On a recommendation from a friend I met,
9 Carl Kipper (phonetically), who was a representative of
10 McGinn, Smith. I invested with him through Merrill Lynch,
11 and then when he moved to McGinn, Smith, I moved with him.

12 Q. When Mr. Kipper was employed through McGinn,
13 Smith, was he your primary point of contact at McGinn,
14 Smith?

15 A. He was my only point.

16 Q. Did he ever present you with any opportunities
17 to invest in McGinn, Smith products?

18 A. Yes.

19 Q. How would he present those opportunities to you,
20 in person, over the telephone, through e-mail?

21 A. Always in person.

22 Q. Did you ultimately make any investments in any
23 McGinn, Smith products?

24 A. I did.

25 Q. I want to talk about TDMM Cable Junior Trust 09,

PAUL SOKOL - Direct By Mr. Belliss

1 is that an investment that you made?

2 A. Yes.

3 Q. I am going to show you Exhibit GA-16. Did
4 Mr. Kipper give you a copy of a private placement
5 memorandum describing the investment, TDMM Cable Junior
6 Trust 09?

7 A. He did.

8 Q. Does that look like a copy that you would have
9 received?

10 A. It does.

11 Q. I am showing you Exhibits GM-39 and GM-40, if
12 you could look at those two, please. Mr. Sokol, GM-39
13 should come up on the computer screen in front of you. Do
14 you see it, sir?

15 A. I do.

16 Q. Is that your investment ticket for your purchase
17 of TDMM Cable Junior Trust 09?

18 A. It is.

19 Q. In the amount of fifty thousand dollars on April
20 20, 2009; is that right, sir?

21 A. As far as I recall, yes.

22 Q. And if we look at GM-40.

23 MR. BELLISS: If we bring up the first page
24 please, Ron.

25 BY MR. BELLISS, CONTINUED:

PAUL SOKOL - Direct By Mr. Belliss

1 Q. Did you also make a twenty-five thousand dollar
2 investment in TDMM Cable Junior Trust 09 on or about
3 April 20th 2009?

4 A. I did on behalf of my son, yes.

5 Q. What were the purposes for these two particular
6 investments?

7 A. Well, the origin of the twenty-five I think is
8 important because my oldest son was killed in a car
9 accident, and he left me in trust of a twenty-five thousand
10 dollars insurance policy for my youngest son. So that was
11 for his college fund. And the fifty thousand dollars, my
12 wife and I had saved quite a few years for his college
13 fund. So all seventy-five was to put him through college.

14 MR. BELLISS: Going back to Government's
15 Exhibit GA-16, the private placement memorandum, Ron,
16 please.

17 BY MR. BELLISS, CONTINUED:

18 Q. Mr. Sokol, looking at the first page and the top
19 half. It should come up on the computer screen, it is your
20 recollection that the interest rate on this investment to
21 be paid to investors was eleven percent?

22 A. Yes.

23 Q. The maturity term was August 1st 2014; is that
24 right?

25 A. Correct. It was a five-year note.

PAUL SOKOL - Direct By Mr. Belliss

1 Q. Were you expecting to be paid monthly interest
2 payments, monthly or quarterly at least?

3 A. Yes.

4 Q. Have you received any of those monthly or
5 quarterly interest payments?

6 A. No.

7 Q. If we could go to page seven (sic) of the
8 private placement memorandum. If we can, the use of
9 proceeds section is highlighted. Does it read: The net
10 proceeds from the offering will be loaned to TDM Cable
11 Funding, LLC. TDM Cable Funding, LLC will acquire the
12 operating assets and customer contracts of broadband and
13 HipNET LLC.

14 Did I read that correctly, Mr. Sokol?

15 A. You did.

16 Q. Flip to page seven. Reading again the
17 highlighted section, the net proceeds to the trust from the
18 sale of the certificates offered hereby, after deducting
19 the underwriting discount, will be approximately 1.219
20 million, ninety-two percent of gross proceeds, if the
21 maximum offering for the certificates is achieved.

22 Did I read that correctly?

23 A. You did.

24 MR. BELLISS: If we could go forward one
25 more page, please, Ron.

PAUL SOKOL - Direct By Mr. Belliss

1 BY MR. BELLISS, CONTINUED:

2 Q. Looking at business of the trust section. It
3 says: The trust has been formed solely for the purpose of
4 funding a loan to TDM Cable Funding, LLC. Subsequent to
5 the closing date, the trust will utilize the net proceeds
6 from the offering to provide a loan to TDM Cable Funding,
7 LLC for the purpose of acquiring operating assets and
8 customer contracts of Broadband Solutions, LLC and HipNET,
9 LLC.

10 Mr. Sokol, is that what it says?

11 A. It does.

12 Q. Is it fair to say that this investment involved
13 what are called triple play contracts, cable, Internet, and
14 phone, was that your understanding?

15 A. Yes.

16 Q. If you could look at page one of the private
17 placement memorandum, on the bottom half of the page where
18 it says underwriting discount. Do you see that eight
19 percent figure?

20 A. I do.

21 Q. What did you understand that to be?

22 A. That would be their cut out of my initial
23 investment.

24 Q. Once that eight percent was taken out, did you
25 expect that your investor money would be used to according

PAUL SOKOL - Direct By Mr. Belliss

1 to the use of proceeds section that we have just been
2 looking at?

3 A. Correct.

4 Q. I am going to show you Exhibit GA-1E. Do you
5 see the diagram up on the screen Mr. Sokol?

6 A. I do look.

7 Q. And looking at the far left there is an icon
8 that represents the broker-dealer, that being McGinn,
9 Smith. Do you understand that?

10 A. Yes.

11 Q. PPM is short for private placement memorandum.
12 It shows it being sent to investors who are in TDMM Cable
13 Junior Trust 09. That was what you invested in; is that
14 right?

15 A. Yes.

16 Q. And that money was then sent to the trust. Is
17 that accurately depicted on this diagram?

18 A. Yes.

19 Q. Do you see the red arrow that is going downward
20 and a figure of thirty thousand dollars to a
21 Timothy M. McGinn. Do you see that?

22 A. I do.

23 Q. Now, prior to making the two investments that
24 you did make, did anyone tell you that Mr. McGinn was
25 planning to pay himself thirty thousand dollars from that

PAUL SOKOL - Direct By Mr. Belliss

1 trust above and beyond what was disclosed in the private
2 placement memorandum?

3 A. No.

4 Q. Is that information that would have been
5 significant to you in deciding whether you were going to
6 make your two investments?

7 A. Well, sure.

8 Q. Prior to making your two investments, did anyone
9 tell you that on April 30th of 2009, Mr. McGinn directly --
10 he took thirty thousand dollars directly from the TDMM
11 Cable Junior Trust 09 Mercantile account holding investor
12 funds. Did anyone tell you that?

13 A. No.

14 Q. Was that information that would have been
15 significant to you in deciding whether to invest?

16 A. Absolutely.

17 MR. BELLISS: Thank you, Mr. Sokol. No
18 further questions, Judge.

19 THE COURT: Defense cross.

20 MS. OWENS: I just have a few quick
21 questions.

22 THE COURT: Ms. Owens.

23

24 CROSS-EXAMINATION BY MS. OWENS:

25 Q. Good afternoon, Mr. Sokol.

Motion

1 defendants as a result of their alleged failure to declare
2 income on their tax returns. And the defense, of course,
3 has an exception to that ruling.

4 Anything further, counselors, before we
5 break?

6 If not, Mr. Minor.

7 COURT CLERK: Court stands in recess until
8 two o'clock.

9 (Whereupon, the luncheon recess was taken.)

10 (Whereupon, the proceedings were held in
11 open court in the presence of the Jury.)

12 THE COURT: The government may call its next
13 witness.

14 MR. BELLISS: Thank you, Your Honor. The
15 government calls Monsignor Robert Wargo to the stand.

16
17 ROBERT JAMES WARGO, having been called as a Witness,
18 being first duly sworn, was examined and testified as
19 follows under oath:

20
21 DIRECT EXAMINATION BY MR. BELLISS:

22 Q. Good afternoon, Monsignor. Could you tell the
23 jury where you live?

24 A. I am the pastor of Saint Joseph's Church in
25 Orefield, Pennsylvania right outside of Allentown.

ROBERT JAMES WARGO - Direct By Mr. Belliss

1 Q. How long have you been the pastor of that
2 church?

3 A. Three years.

4 Q. In addition to performing your fatherly duties,
5 do you have any other responsibilities associated with the
6 church?

7 A. I am also in charge of the school. We have the
8 grade school, grades K through eight. Four hundred
9 students in a pre-school also.

10 Q. Do you have to any involvement in the church's
11 finances?

12 A. I am in charge of the finance committee. I
13 oversee all of the financial collections and paying the
14 bills.

15 Q. I would like to talk about the church's
16 relationship with McGinn, Smith. How did the church first
17 come to have a relationship with anyone at McGinn, Smith?

18 A. One of members of our finance committee had come
19 to us and talked about investments. We had started a fund
20 for our school called the Angel Fund. It was started at
21 the bequest to raise scholarship money for needy students.
22 And we started this fund, and we were trying to get a
23 better return, better interest rate.

24 And when this member had stepped down, I had
25 gone to talk to him about some investments, and he told me

ROBERT JAMES WARGO - Direct By Mr. Belliss

1 about the TDM Verifier and the other funds. He said there
2 is a fund that will pay a good return, nine percent. And
3 we talked about it and decided that we would like to take a
4 chance with it. It seemed very good after listening to
5 him.

6 Q. Was George Lex your primary point of contact?

7 A. George Lex was the main, yes.

8 Q. Did the church, in fact, make some investments
9 in McGinn, Smith products?

10 A. We did, yes. We made three investments with
11 them.

12 Q. I would like to first talk about your
13 investment, Integrated Excellence Senior Trust 08. I am
14 going to show you, Monsignor, Exhibit GG-33.

15 Monsignor, the screen is going to pop up right
16 in front of you.

17 Monsignor, if we go to page two of the exhibit,
18 it should be on the screen.

19 A. Yes.

20 Q. Does this show that the church purchased forty
21 thousand dollars of Integrated Excellence Senior Trust 08
22 on or about July 10, 2008?

23 A. That's correct.

24 Q. Let me also show you Exhibit GA12. Is this the
25 private placement memorandum for Integrated Excellence

ROBERT JAMES WARGO - Direct By Mr. Belliss

1 Senior Trust 08?

2 A. That's correct.

3 Q. If we look at page one that's up on the screen,
4 is the interest rate that the church was expecting to
5 receive nine percent?

6 A. That's correct.

7 Q. And the maturity term on the investment is sixty
8 months; is that right?

9 A. That's correct.

10 MR. BELLISS: Go ahead and look at page
11 four, please. Ron.

12 BY MR. BELLISS, CONTINUED:

13 Q. Looking at the highlighted sections, Monsignor,
14 does it say: The sole business activity of the trust fund
15 will be to acquire the senior tranche of a financing
16 secured by a portfolio of contracts, the contracts.
17 Further down: The trust fund intends to apply the entire
18 net proceeds of the offering to the purchase of the senior
19 tranche of the financing.

20 Did I read that correctly?

21 A. Correct.

22 MR. BELLISS: Page seven, please, Ron.

23 BY MR. BELLISS, CONTINUED:

24 Q. Reading from the highlighted paragraph under use
25 of proceeds: The net proceeds to the trust fund from the

ROBERT JAMES WARGO - Direct By Mr. Belliss

1 sale of the certificates offered hereby, after deducting
2 the underwriting discount, will be approximately eight
3 hundred fifty-nine thousand, five hundred dollars, 95.5
4 percent of gross proceeds, if the maximum offering for the
5 certificates is achieved. The trust fund intends to use
6 all of the net proceeds of the offering to purchase the
7 senior tranche of the financing.

8 Did I read that correctly?

9 A. That's correct.

10 Q. Go back to page one, please, at the bottom. Is
11 the underwriting discount in connection with this
12 investment 4.5 percent?

13 A. That's correct.

14 Q. Monsignor, once the underwriting fee of four and
15 a half percent was taken out, did you expect that investor
16 funds would be used in accordance with the sections that we
17 have just looked at?

18 A. No, we thought that was the only fee that would
19 be charged for us.

20 Q. Would you have expected your investor funds then
21 to be used for those alarm contracts?

22 A. Correct.

23 Q. Let me show you Exhibit GA1C. Monsignor, I am
24 focused on the left side of the diagram. Do you see the
25 icon that says broker-dealer?

ROBERT JAMES WARGO - Direct By Mr. Belliss

1 A. Yes.

2 Q. That's McGinn, Smith. PPM stands for private
3 placement memorandum, and that goes to investors. In fact,
4 you did receive a private placement memorandum for
5 Integrated Excellence; is that correct?

6 A. Correct.

7 Q. And the church did make its investment into the
8 trust; is that right?

9 A. That's correct.

10 Q. At the time that the church made its investment
11 in the trust, did anyone tell that you Mr. McGinn and
12 Mr. Smith were planning to cumulatively take eighty-five
13 thousand dollars in fees beyond what was disclosed in the
14 private placement memorandum?

15 A. No, we were not aware of that.

16 Q. Is that something that would have been
17 significant to the church in deciding whether to invest?

18 A. It would have been something for discussion with
19 the finance committee.

20 Q. At the time the church made its investment in
21 the Integrated Excellence investment, where did you think
22 the money used to make interest payments would come from?

23 A. From the investment in the cable company, as
24 well as the other investment, the trust fund.

25 Q. Did you think that the church's interest

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1 payments might come from McGinn, Smith investments
2 unrelated to this trust?

3 A. No. In fact, we had asked Mr. Lex about that,
4 how could they give that type of interest? And he said it
5 was from the purchase of the cable to be supplied to
6 developers and the return money that they would then be
7 paid by the people who purchased the cable.

8 Q. And in connection with your other investment,
9 was that TDMM Cable trust?

10 A. That's correct.

11 Q. Was that one involving cable contracts?

12 A. That's correct.

13 Q. And the Integrated Excellence one, did it
14 involve alarm contracts?

15 A. Alarm contracts.

16 Q. If, in fact, interest payments from the
17 Integrated Excellence investment were coming from other
18 sources unrelated to your investment, is that something
19 that would have been significant to the church in deciding
20 whether to invest?

21 A. It would have been, yes.

22 Q. Has the church received all of its interest
23 payments as promised for this trust?

24 A. No, no.

25 Q. I want to move on to the church's second

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1 investment, and that was in TDMM Cable Senior Trust 09?

2 A. Correct.

3 Q. How did the church learn about this potential
4 investment?

5 A. The same way, through Mr. Lex.

6 Q. Would he have provided with you a private
7 placement memorandum describing the investment?

8 A. It was a prospectus, yes.

9 Q. Did the church ultimately make an investment in
10 that trust?

11 A. We did, yes.

12 Q. Let me show you two exhibits, GM24 and GA18.

13 MR. BELLISS: Can we do the other exhibit,
14 please, GM24, Ron? Or GA18, I am sorry. No, no, you are
15 right.

16 BY MR. BELLISS, CONTINUED:

17 Q. GM24, Monsignor, is this the document that
18 evidences the church's interest in TDMM Cable Senior
19 Trust 09 contract certificate, nine percent, due
20 February 1, 2012?

21 A. That's correct.

22 Q. Saint Joseph the Worker Church is your church;
23 is that right?

24 A. Correct.

25 Q. The amount that the church invested in this

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1 trust, was it one hundred thousand dollars?

2 A. That's correct.

3 Q. If we could look at Exhibit GA18, is this in
4 fact the private placement memorandum describing this
5 investment?

6 A. Yes, it is.

7 Q. Was the interest rate for this one also nine
8 percent?

9 A. Nine percent.

10 Q. With a maturity date of February 1st, 2012?

11 A. That's correct.

12 MR. BELLISS: If we could go to page six,
13 please, Ron.

14 BY MR. BELLISS, CONTINUED:

15 Q. Under the use of proceeds, I will go ahead and
16 read it. Does it say: The net proceeds from the offering
17 will be loaned to TDM Cable Funding, LLC. TDM Cable
18 Funding, LLC will acquire the operating assets and customer
19 contracts of Broadband and HIPNet, LLC.

20 Based upon your understanding, Monsignor,
21 was the investment related to some cable contracts?

22 A. That's correct.

23 Q. At the time the church made its investment in
24 this one, TDMM Cable Senior Trust 09, did you think the
25 church's investment money would be used according to the

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1 use of proceeds section?

2 A. That's correct.

3 Q. At the time the church made its investment in
4 this trust, did you think that the church's money would be
5 used for anything other than the investment in the cable
6 contracts?

7 A. We were not aware of that.

8 Q. Between the time that the church made its
9 investment in TDMM Cable Senior Trust 09 in April of 2010,
10 did George Lex or anyone from McGinn, Smith inform you that
11 monies belonging to TDMM Cable Senior Trust 09 would be
12 used to make investor payments to investors in the
13 Integrated Excellence Trust?

14 A. No, he did not.

15 Q. Is that information that would have been
16 significant to the church?

17 A. It would have been, yes.

18 Q. Did the church receive all of its interest
19 payments as promised in the private placement memorandum
20 for TDMM Cable?

21 A. No. In the beginning we did receive checks of
22 the interest, but then they stopped.

23 Q. As of today, has the church received all of its
24 principal back for its investment?

25 A. No.

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1 Q. Thank you, Monsignor.

2 MR. BELLISS: No further questions, Judge.

3 THE COURT: Defense may cross-examine.

4 Ms. Owens.

5

6 CROSS-EXAMINATION BY MS. OWENS:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. You said your broker was George Lex, is that
10 correct?

11 A. That's correct.

12 Q. And you invested in Integrated Excellence Senior
13 Trust and TDMM Cable Trust 09?

14 A. That's correct.

15 Q. Have you invested in -- I am sorry. On behalf
16 of the church, had you invested in any of these private
17 placements prior to these two trusts?

18 A. None of these, no.

19 Q. Did you understand that these private placements
20 weren't available on the public market?

21 A. We were notified that they were not FDIC
22 insured, but we were also told by Mr. Lex that they had
23 always paid their interest on time and had never failed.

24 Q. And to that extent, did you still understand hat
25 there was a degree of risk involved in these types of

1 MS. COOMBE: The government calls
2 Brian Cooper.

3

4 BRIAN J. COOPER, having been called as a Witness,
5 being first duly sworn, was examined and testified as
6 follows under oath:

7

8 DIRECT EXAMINATION BY MS. COOMBE:

9 Q. Good morning.

10 A. Good morning.

11 Q. Have you entered into a proffer agreement with
12 the United States?

13 A. Yes, I did.

14 Q. What is your understanding of that agreement?

15 A. As long as I tell the truth here today, anything
16 I say will not be held against me.

17 Q. Did you do anything to prepare for your
18 testimony here today?

19 A. Yes, I did.

20 Q. What did you do?

21 A. I went over documents and records that I
22 prepared while working at McGinn, Smith and presented
23 information to a Grand Jury.

24 Q. Did you review any other materials in
25 preparation for your testimony here today?

BRIAN J. COOPER - Direct By Ms. Coombe

1 A. I reviewed my Grand Jury testimony.

2 Q. Did you review any other documents?

3 A. Not that I am aware of.

4 Q. Did you review any summaries of meetings
5 prepared by federal agents?

6 A. Yes.

7 Q. Did you meet with anyone to prepare for your
8 testimony today?

9 A. Yes, I did.

10 Q. Who did you meet with?

11 A. I met with you.

12 Q. Was anyone else there?

13 A. Yes.

14 Q. Who?

15 A. Alyssa and a few other people. I don't remember
16 names, but, yes, there was other people.

17 Q. Why did you do this to prepare for your
18 testimony today?

19 A. To provide information for the case that is
20 presented here.

21 Q. Was there any other reason why you reviewed
22 those documents?

23 A. To be sure what I was saying was truthful and
24 knew what I was telling.

25 Q. Mr. Cooper, I forgot to tell you, you can swing

BRIAN J. COOPER - Direct By Ms. Coombe

1 that door closed right in front of you. Yes, Mr. Cooper.

2 You might want to move the microphone closer to your mouth.

3 Can you tell us about your education, please?

4 A. Yes, I attended Siena College, graduated from
5 Siena College.

6 Q. What was your degree in?

7 A. Accounting.

8 Q. Are you a certified public accountant?

9 A. No, I am not.

10 Q. Where do you work now?

11 A. I work for Pitney Bowes.

12 Q. What do you do there?

13 A. I am a senior accountant in the Account
14 Reconciliation Department.

15 Q. Did you ever work for McGinn, Smith and Company,
16 Incorporated?

17 A. Yes, I did.

18 Q. When did you begin working there?

19 A. April of 2007.

20 Q. When did you leave?

21 A. July of 2010.

22 Q. What was your title when you began working at
23 McGinn, Smith and Company, Incorporated?

24 A. Senior accountant.

25 Q. Could we call them the broker-dealer this

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1 morning?

2 A. Sure.

3 Q. Did your title ever change?

4 A. No.

5 Q. Who else was on the accounting staff at the time
6 that you worked for the broker-dealer?

7 A. Tricia Trombley and Dave Rees.

8 Q. What was Mr. Rees' job?

9 A. He was the comptroller, CFO.

10 Q. What was Ms. Trombley's job?

11 A. She handled accounts payable and payables for
12 McGinn, Smith and Company.

13 Q. Who did you report to?

14 A. Dave Rees.

15 Q. Could you tell us what your duties and
16 responsibilities were as a senior accountant at the
17 broker-dealer?

18 A. Yes. My main duties and responsibilities were
19 to reconcile the bank statements, track the funds in and
20 out of the accounts, and make scheduled payments to the
21 investors.

22 Q. What kinds of books and records did you
23 maintain?

24 A. I maintained Quicken files, which were the
25 electronic copies of the accounting records, and also I

BRIAN J. COOPER - Direct By Ms. Coombe

1 kept binders of my schedules and different reports to back
2 up the transactions.

3 Q. Could you explain please what type of
4 information you kept in the binders?

5 A. I kept the schedules of the interest payments to
6 investors and any wire transfer documentation or fund
7 transfer documentation.

8 Q. Did you keep anything else in the binders?

9 A. Sometimes there was Quicken reports that were
10 printed and put in the binders.

11 Q. Could you explain to us what Quicken is, please?

12 A. Quicken is an accounting software to record
13 accounting transactions. It maintains balance sheets and
14 spreadsheets.

15 Q. Did you and Mr. Rees divide up the entities at
16 all for who kept the books for which entity?

17 A. Yes, we did.

18 Q. How did you do that?

19 A. When I first started, Dave Rees had instructed
20 me to work on some of the smaller layer funds, which was
21 RTC, JDC, SAI, while he was still handling all of the other
22 funds and books.

23 Q. When you first arrived, did you notice anything
24 about the RTC books, whether there was sufficient money to
25 pay investors?

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1 A. I did notice that one of the funds other than
2 RTC was providing cashflow to make interest payments for
3 RTC investors.

4 Q. Was the RTC investment generating enough money
5 to pay RTC investors?

6 A. No.

7 Q. Where was the money coming from to pay RTC
8 investors?

9 MR. DREYER: Objection, Your Honor. No
10 foundation for this testimony.

11 THE COURT: Sustained. Lay some foundation.
12 BY MS. COOMBE, CONTINUED:

13 Q. Mr. Cooper, did you keep the books and records
14 for RTC trusts?

15 A. Yes, I did.

16 Q. Did that involve looking at the bank accounts
17 and what money was moving where?

18 A. Yes, it did.

19 Q. Based on your experience in keeping the books
20 and records for RTC Trust, did you observe whether there
21 was sufficient money to pay investors being generated from
22 the RTC investment?

23 A. There was not sufficient money being generated
24 to pay the RTC investors. Money was coming from other
25 sources to pay the investors.

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1 Q. As the person who kept the books and records for
2 RTC Trust, do you know where money came from to pay those
3 investors?

4 A. Yes, I do.

5 Q. Could you please tell us?

6 A. The money came from one of the Four Funds.

7 Q. Could you explain to us what the Four Funds are,
8 please?

9 A. The Four Funds were the largest funds that were
10 held by McGinn, Smith. They were called First Advisory
11 Income Notes, First Independent Income Notes, Third Albany
12 Income Notes, and First Excelsior Income Notes. FEIN is
13 the fourth one.

14 Q. Did your responsibilities for which books and
15 records you kept change over time?

16 A. Yes, it did.

17 Q. How did it change?

18 A. After three or four months, I was instructed to
19 start taking over the four major funds and to track the
20 bank reconciliations to the cashflows, and paying
21 investors.

22 Q. Were there additional entities or other trusts
23 formed while you worked at the broker-dealer?

24 A. Yes.

25 Q. Were you responsible for keeping the books and

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1 records for any of those entities?

2 A. Yes, I was.

3 Q. Can you tell us any of the ones that you kept
4 the books and records for?

5 A. There was a large number of trusts created after
6 I started working there that I was responsible to keep the
7 book and records for, TDM Verified Trust, Integrated
8 Excellence, Firstline Trusts, many more.

9 Q. Did each of those trusts have more than one bank
10 account normally?

11 A. Yes, they did.

12 Q. Now, as the number of entities grew and the
13 number of bank accounts grew, did the accounting staff at
14 the broker-dealer increase to deal with the added workload?

15 A. No.

16 Q. Did Mr. McGinn and Mr. Smith ever keep their own
17 books and records?

18 A. Yes.

19 Q. Who did that?

20 A. Tim McGinn had a set of books.

21 Q. Could you describe those for us, please?

22 A. Yes. It was a ledger book, one of the old style
23 accounting books with columns. You keep track of each
24 transaction and fund transfers.

25 Q. What happened to those books?

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1 A. I don't know.

2 Q. Did you ever provide any information about how
3 much money was available in bank accounts to Mr. McGinn and
4 Mr. Smith?

5 A. Yes.

6 Q. How often did you provide that kind of
7 information?

8 A. Daily.

9 Q. How did you provide that information?

10 A. At first it was printouts of spreadsheets, and
11 eventually I made them electronic and sent e-mails.

12 Q. Mr. Cooper, I am handing you previously admitted
13 exhibits GB10 and GB15, and I am going to have the screen
14 come up in front of you. Could you tell us what these are,
15 Mr. Cooper?

16 A. These are e-mails outlining the daily bank
17 balances and the sources and uses of funds that went
18 through the bank for that day.

19 Q. Did you prepare these based on the bank
20 information that you had at the time?

21 A. Yes, I did.

22 Q. Did you make these records as part of your
23 regular job responsibilities at the broker-dealer?

24 A. Yes, I did.

25 Q. Okay. Let's look at GB10 first, please.

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1 A. Okay.

2 Q. This is an electronic message from yourself to
3 Brian Shea and Mr. Smith. The subject is account balance,
4 and there is an attachment listed, daily bank balance
5 distribution copy?

6 A. Yes.

7 Q. .XLS. And you wrote: Here are the account
8 balances as of 4/10/09. Dave, the book balance for TAIN
9 and FIIN is after the quarterly interest payment payable
10 4/15.

11 Mr. Cooper, is this an example of the kind of
12 e-mail that you would send with the bank balance
13 information?

14 A. Yes.

15 MS. COOMBE: Could we look at the next page,
16 please.

17 BY MS. COOMBE, CONTINUED:

18 Q. Could you tell us what this is, please?

19 A. This is the list of all the operating accounts
20 at M&T bank, and it shows their bank balance, funds used,
21 and funds received.

22 Q. Okay. You mentioned operating accounts, what is
23 an operating account?

24 A. An operating account is the account where the
25 interest payments would go out to make payments to

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1 investors. And money would come into the accounts in order
2 to make those payments.

3 Q. And the first column there, what does that stand
4 for?

5 A. The first what? Excuse me.

6 Q. The first column?

7 A. That is the trust name or the fund name.

8 Q. And then there is an account number?

9 A. The bank's account number.

10 Q. GL/book balance, what does that refer to?

11 A. That refers to the balance in Quicken Books.

12 Q. There is closing ledger before sweep and closing
13 ledger before sweep, two different dates. What does that
14 refer to?

15 A. That refers to the balance that is on 4/8, and
16 also the balance on 4/10 and the change between those two
17 balances.

18 Q. And the change is reflected in the next column,
19 change from prior day?

20 A. Correct.

21 Q. And then there is some notes, what do those
22 notes refer to?

23 A. That is a description of the source and the uses
24 of the funds that either came -- had come into the account
25 or gone out of the account.

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1 Q. Was it your practice to provide that information
2 about any money that had been transferred on this daily
3 bank balance update?

4 A. Yes.

5 Q. Did you ever decide on your own to transfer
6 money in other accounts?

7 A. No, I did not.

8 Q. Who made those decisions?

9 A. Either Dave Rees, Tim McGinn or Dave Smith.

10 Q. What is your understanding about whether
11 Mr. Rees had the authority to transfer funds without
12 approval from Mr. McGinn and Mr. Smith?

13 MR. DREYER: Objection. Without a
14 foundation.

15 THE COURT: Overruled.

16 A. I do not believe he had the authority to make
17 those transfer decisions without Dave or Tim's knowledge.

18 BY MS. COOMBE, CONTINUED:

19 Q. Now, these are all for operating accounts as you
20 mentioned. If we look at GB15, is this another example of
21 a daily update?

22 A. Yes.

23 Q. Okay, and this goes from you to Mr. Shea and
24 Mr. Smith?

25 A. Yes.

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1 Q. You state: Good morning. Here are the balances
2 for April 20th and activity from 4/13 to 4/20.

3 Could we look at the next page, please?

4 A. Yes.

5 Q. Could you tell us what this is?

6 A. It is the same as we saw previously. And here
7 it shows the balances on 4/10 versus 4/17 and the change in
8 those balances and what the funds and uses -- sources and
9 uses of those funds were for.

10 Q. Did you prepare regular summaries of any other
11 types of accounts other than the operating accounts?

12 A. Yes.

13 Q. Just before we move on to those, both of these
14 e-mails were to Mr. Shea and Mr. Smith. Did you provide
15 this kind of information to Mr. McGinn?

16 A. I believe I did.

17 Q. How did he receive it?

18 A. Either via fax or a copy on his desk.

19 Q. What other summaries did you prepare of what
20 other types of accounts?

21 A. I prepared the accounts for the escrow accounts.

22 Q. What is an escrow account?

23 A. An escrow account is an account established to
24 receive investor funds before they can be withdrawn to make
25 investments.

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1 Q. I am handing you previously admitted
2 Exhibit GE19. Could you tell us what that is, please?

3 A. This is an e-mail to David Smith, Brian Shea,
4 and Tim McGinn showing the balances at Mercantile Bank,
5 which is the bank that held our escrow accounts.

6 Q. And if we look at the first page, the e-mail is
7 from yourself to Mr. Shea, Mr. Smith, and Mr. McGinn. It
8 is regarding -- it was dated September 17th of 2009. It
9 says 9/16 bank activity?

10 A. Correct.

11 Q. Is this an example of the daily information you
12 provided to Mr. McGinn, Mr. Smith, and Mr. Shea about
13 activity in escrow accounts?

14 A. Yes.

15 MS. COOMBE: Could we look at the next page,
16 please.

17 BY MS. COOMBE, CONTINUED:

18 Q. What is this, Mr. Cooper?

19 A. This is a list of the bank accounts at
20 Mercantile Bank. It is a list of their names, the account
21 number, the balance on 9/16/2009. I want to point out
22 there is a formula error on this spreadsheet. It says
23 updated at 1/3/2013. It probably should have said
24 9/17/2009. And those were the balances probably on
25 9/17/2009.

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1 Q. So you think the date is just the date that this
2 document was printed out?

3 A. Yes, because it reflects the date and time on
4 top.

5 Q. Mr. Cooper, how often was money transferred
6 among various bank accounts?

7 A. It seems like it was daily.

8 Q. Were any of those transfers made to pay
9 investors?

10 A. Yes.

11 Q. Were there ever transfers made from one fund or
12 trust to another fund or trust to pay investors?

13 A. Yes.

14 Q. What is your understanding -- and was that
15 because the fund or trust did not have sufficient income to
16 pay --

17 MR. JONES: Objection. Leading.

18 MR. DREYER: Objection.

19 THE COURT: Sustained.

20 BY MS. COOMBE, CONTINUED:

21 Q. Mr. Cooper, what is your understanding about why
22 money was transferred from one trust or fund to another
23 trust or fund to pay investors?

24 A. Because the funds were not there to cover the
25 interest payments. So funds would have to be moved in

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1 order to make those interest payments to investors.

2 Q. When you say the funds were not there to cover
3 the interest payments, what do you mean by that?

4 A. The investments were not generating enough
5 income to make the payments to investors.

6 Q. Did the pace of these transfers increase over
7 time?

8 A. Yes.

9 Q. And did you ever observe that anyone felt any
10 kind of pressure for these transfers to occur?

11 A. Yes.

12 Q. What did you observe?

13 A. I observed what felt like it was stressful that
14 the funds weren't there to cover these interest payments
15 and having to relay this information to Tim McGinn, it
16 seemed like there was a lot of pressure on him to come up
17 with the funds to make these payments.

18 Q. How did Mr. McGinn learn that there was not
19 enough money to pay investors in a particular investment?

20 A. I would tell him.

21 Q. I am handing you previously admitted
22 Exhibits GG20, GG21, and GG22. Could you please take a
23 look at those and tell us what those are generally?

24 A. This is an e-mail from me to Tim McGinn
25 outlining the February 1st interest payments showing the

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1 interest that's due and the funds available and the funding
2 that is needed to cover those interest payments.

3 Q. Could we please look at GG22? I am sorry.
4 Could we look at GG20 first? Is that the electronic mail
5 message you were just describing, Mr. Cooper?

6 A. That's correct.

7 Q. And this is a message that you sent to
8 Mr. McGinn?

9 A. Yes.

10 Q. With a copy to Mr. Rees. The subject is
11 February 1st interest payments. What does that refer to?

12 A. That refers to the interest payments that were
13 due to investors on February 1st.

14 Q. You wrote: Tim, here is a breakdown of what is
15 due and what we have available at M&T and Mercantile.

16 And then there is a list for the trust,
17 interest, funds available, and funding needed.

18 What does funding needed refer to?

19 A. That was our shortfall, where we needed to raise
20 additional funds in order to make those interest payments.

21 Q. What is your understanding of why there was not
22 enough money available to pay the investors listed here
23 without getting money from some other source?

24 A. My understanding is the investments made were
25 not generating enough income to make those investor

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1 interest payments.

2 Q. Could we look a GG21, please? This is an
3 electronic mail message dated June 2, 2009, from you to
4 Mr. McGinn and Mr. Shea with the Mercantile account
5 balances attached. And you wrote: Tim, here is the
6 funding needed, Integrated Excellence 5K.

7 What does K refer to, Mr. Cooper?

8 A. Thousand.

9 Q. Fortress Trust, 5K; Firstline, 108K; TDMM Cable
10 Junior/Senior, 65K; TDM Luxury Cruise, 91K, for a total of
11 275K or two hundred and seventy-five thousand dollars.

12 Is this another example of what we have been
13 talking about?

14 A. Yes, it is.

15 Q. And could you explain to us what you are asking
16 for here?

17 A. Additional funding in order to cover the
18 interest payments due to investors.

19 Q. Could we look now please at GG22? This is an
20 electronic mail message dated June 29, 2009, from yourself
21 to Mr. McGinn. The subject is 7/1 funding.

22 Tim, here are the funding needs for 7/1.
23 Firstline, one hundred and eight thousand dollars.
24 Integrated Excellence, five thousand dollars. Fortress,
25 fifty-seven thousand dollars less what Brian Shea will get

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1 from Full Circle Partners. TDM Cable, seventeen thousand
2 five hundred dollars. TDMM Cable, sixty-five thousand
3 dollars. TDM Verifier 08, ninety thousand dollars. TDM
4 Verifier 09, thirty-two thousand five hundred dollars, for
5 a grand total of total funding three hundred and
6 seventy-five thousand dollars.

7 Is this another example of you letting
8 Mr. McGinn know how much you were short to make investor
9 payments for the month?

10 A. Yes.

11 Q. Now, Mr. Cooper, we just look looked at three
12 examples. Did you send other similar e-mails to Mr. McGinn
13 during the time that you worked at the broker-dealer?

14 A. Yes, I did.

15 Q. Who decided where money should come from to pay
16 investors?

17 A. Tim McGinn did.

18 Q. I am handing you now previously admitted
19 Exhibit GA1C. Mr. Cooper, this is a chart. At the top it
20 say Integrated Excellence Sr. Trust 08. Did you keep the
21 books and records for Integrated Excellence Sr. Trust 08?

22 A. Yes, I did.

23 Q. And there are two dates there, July 1st, 2008,
24 and July 15, 2008. I would like to direct your attention
25 to the red lines coming from the trust. It states:

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1 Integrated Excellence Sr. Trust 08 Mercantile account
2 ending in 3983.

3 Could you please tell us what kind of account
4 that was?

5 A. That was an escrow account.

6 Q. And could you remind us again what an escrow
7 account is?

8 A. The escrow account is the account set up to
9 receive investors funds until enough money was received to
10 make the proper investments.

11 Q. And the red line shows fifty thousand dollars
12 going to Mr. McGinn and thirty-five thousand dollars going
13 to Mr. Smith; is that correct?

14 A. That's correct.

15 Q. I am handing you now previously admitted
16 Exhibits GG9, GG30, and GG12. Let's look at GG9 first.
17 What is this Mr. Cooper?

18 A. That is an e-mail from Tim McGinn to
19 Denise Birnbach, who was the branch manager at Mercantile
20 Bank, providing instructions for the following transfers of
21 funds.

22 Q. Okay. It is dated July 1st of 2008?

23 A. Correct.

24 Q. I would like to direct your attention to number
25 four at the bottom. It states: Please wire from

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1 Integrated Excellence Sr. Trust, thirty-five thousand
2 dollars, to an M&T Bank account in the name of David L.
3 Smith, and thirty-five thousand dollars to an M&T Bank
4 account in name of Timothy M. McGinn.

5 Who was this electronic mail message from?

6 A. From Tim McGinn.

7 Q. I would like direct your attention to number
8 one: Please wire the following from McGinn, Smith
9 Transaction Funding Corp., seventy-five thousand dollars to
10 Firstline. And then there are also monies being
11 transferred to TDM Cable Trust and TDM Verifier Trust 08.

12 Could we now look, please, at GG30. Mr. Cooper,
13 what is this?

14 A. This is a confirmation from the bank showing the
15 funds that were wired.

16 Q. I would like to direct your attention to the
17 upper right-hand corner. Is there a date there?

18 A. Yes. 7/1/2008.

19 Q. What does that date refer to?

20 A. The date the wires were funded.

21 Q. Okay. Can we look farther down in this document
22 again?

23 A. Yes.

24 Q. Does it indicate who was receiving the money?

25 A. Yes, it does.

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1 Q. Okay. Is that listed there under beneficiary
2 Timothy M. McGinn?

3 A. That's correct.

4 Q. Is the amount listed, the third line down?

5 A. Thirty-five thousand.

6 Q. Does it indicate where the money was coming
7 from?

8 A. Yes, it does.

9 Q. Is that under originator information?

10 A. Integrated Excellence Sr. Trust.

11 Q. What kind of account was that?

12 A. That was an escrow account.

13 Q. Could we look at the next page, please? What is
14 this, Mr. Cooper?

15 A. Another example of a funds transfer
16 confirmation.

17 Q. Could we look at the upper right-hand corner,
18 please?

19 A. Yes.

20 Q. What is the date?

21 A. 7/1/2008.

22 Q. And it states at the top: Integrated Excellence
23 Senior Trust, dated 5/27/08 McGinn, Smith Capi Holdings
24 Corp Trustee.

25 Was McGinn, Smith Capital Holdings Corporation

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1 the trustee for Integrated Excellence Senior Trust?

2 A. I believe so. I am not sure.

3 Q. Does this indicate who this -- how much this
4 wire was for?

5 A. The wire was for thirty-five thousand.

6 Q. Does it indicate who received it?

7 A. David L. Smith.

8 Q. Does it indicate who sent it?

9 A. Integrated Excellence Senior Trust.

10 Q. Could we look now please at GG12. This is an
11 electronic mail message from Mr. McGinn to Ms. Birnbach,
12 dated July 15th of 2008. Subject, wire. It states:

13 Denise, forgot. One more. Please wire fifteen
14 thousand dollars from Integrated Excellence Trust 08 to an
15 M&T Bank account in the name of Timothy M. McGinn.

16 And it is signed by Mr. McGinn; is that correct?

17 A. That's correct.

18 Q. Tell us again what kind of account this was?

19 A. This was an escrow account.

20 Q. Could we go back now to GG30 to page three.

21 What is this, Mr. Cooper?

22 A. This is a wire confirmation from the bank.

23 Q. Is there a date in the upper right-hand corner?

24 A. Yes, 7/15/2008.

25 Q. Again, it indicates that McGinn, Smith Capital

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1 Holdings Corp. is the trustee?

2 A. Correct.

3 Q. Does it indicate how much the wire is for?

4 A. Fifteen thousand.

5 Q. Does it indicate who received the money?

6 A. Yes, Timothy M. McGinn.

7 Q. Does it indicate where it came from?

8 A. Yes, Integrated Excellence Senior Trust.

9 Q. What kind of account was that?

10 A. That was an escrow account.

11 Q. Was there ever any issue in paying Integrated
12 Excellence investors?

13 A. I believe so. I would have to see the backup,
14 but I believe so.

15 MS. COOMBE: Could we look at the last page
16 of this exhibit, please.

17 BY MS. COOMBE, CONTINUED:

18 Q. What is this, Mr. Cooper?

19 A. That is the wiring instructions to send to the
20 bank to process the wire.

21 Q. Can you tell us what a wire instruction is?

22 A. It is a form you fill out to send to the bank so
23 they know how to transfer the funds. Here, it tells you
24 how much you want to be transferred, where it is coming
25 from, and where it is going to, and it is signed at the

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1 bottom.

2 Q. Okay, and it indicates the amount is fifteen
3 thousand dollars?

4 A. Correct.

5 Q. It is from Integrated Excellence Senior Trust
6 with McGinn, Smith Capital Holdings Corporation as the
7 trustee?

8 A. Correct.

9 Q. And if we look farther down, it indicates that
10 Timothy M. McGinn would be receiving the wire?

11 A. Yes, it does.

12 Q. At the bottom, is there a signature?

13 A. Yes.

14 Q. Do you recognize that signature?

15 A. Yes, I do.

16 Q. Whose is it?

17 A. That is Timothy M. McGinn.

18 Q. I am handing you now previously admitted
19 Exhibit GA1E. At the top it indicates that it is regarding
20 TDMM Cable Junior Trust 09. Did you keep the books and
21 records for this trust?

22 A. Yes, I did.

23 Q. I would like to direct your attention to the red
24 arrow from the trust. There is reference to TDMM Cable
25 Junior Trust 09, Mercantile account ending in 4139. What

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1 kind of account was that, Mr. Cooper?

2 A. That was an escrow account.

3 Q. It indicates that thirty thousand dollars went
4 from that escrow account to Mr. McGinn, and the date is at
5 the top, April 30th of 2009; is that correct?

6 A. That's correct.

7 Q. I am showing you Exhibit GO94, which has not yet
8 been admitted into evidence. Could you please look at that
9 and tell us what it is?

10 A. This is an e-mail from Tim McGinn dated
11 April 30, 2009, to Joan Dixon and Kathy VanBrocklin, again,
12 two employees at Mercantile Bank, instructing them --

13 Q. Could you just stop there, Mr. Cooper.

14 MS. COOMBE: Your Honor, the government
15 moves the admission of Government's Exhibit GO94?

16 THE COURT: GO94?

17 MS. COOMBE: Yes, Your Honor.

18 THE COURT: Any objection? Hearing none,
19 GO94 is received.

20 (Exhibit No. GO94, received.)

21 MS. COOMBE: Could we please look at GO94,
22 Ron.

23 BY MS. COOMBE, CONTINUED:

24 Q. Mr. Cooper, there is an electronic mail
25 message from Mr. McGinn that you mentioned before dated

BRIAN J. COOPER - Direct By Ms. Coombe

1 April 30th of 2009, and it is to Ms. Dixon and
2 Ms. VanBrocklin. Who are they again?

3 A. Bank employees at Mercantile Bank.

4 Q. I would like to direct your attention to number
5 five. It states: Please wire thirty thousand dollars from
6 TDMM Cable Junior Trust 09 to an M&T Bank account in the
7 name of Timothy M. McGinn.

8 Please remind us again what kind of account this
9 was?

10 A. This was an escrow account.

11 Q. I am handing you previously admitted
12 Exhibit GA17. Could you tell us what this is, please?

13 A. This looks like a wire confirmation.

14 Q. Could you tell us what a wire confirmation is?

15 A. The wire confirmation shows the completion of a
16 funds transfer from one bank account to another bank
17 account.

18 Q. Does it indicate who was sending the money?

19 A. The originator was TDMM Cable Junior Trust 09.

20 Q. And that's in the upper left-hand corner?

21 A. That's correct.

22 Q. It indicates the beneficiary as well?

23 A. Yes, Timothy M. McGinn.

24 Q. So could you explain to us who was sending money
25 and who was receiving money?

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1 A. The entity sending the money was TDMM Cable
2 Junior Trust 09. And the receiver of the funds was
3 Timothy M. McGinn.

4 Q. Does it indicate at all how much the amount was
5 that was transferred?

6 A. Yes, down at the middle of the page, thirty
7 thousand dollars.

8 Q. It says amount just above where the screen is
9 cut off?

10 A. Yes.

11 Q. And does it indicate, again, the entity sending
12 the money, TDMM Cable Junior Trust 09, and it indicates
13 McGinn Smith Capital Holdings Corporation again; is that
14 correct?

15 A. That's correct.

16 Q. I am handing you now previously admitted
17 Exhibit GA1D. This is for Integrated Excellence Junior
18 Trust 08, and there is a date, August 29th of 2008.

19 Mr. Cooper, did you keep the books and records
20 for Integrated Excellence Junior Trust 08?

21 A. Yes, I did.

22 Q. Does this chart summarize transactions that
23 occurred on August 29th of 2008?

24 A. Yes, it does.

25 Q. I would like to direct your attention to the red

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1 arrow from the trust. It indicates Integrated Excellence
2 Junior Trust 08, Mercantile account ending in 3994. What
3 kind of account was that?

4 A. That was an escrow account.

5 Q. And it indicates that there were two transfers,
6 one of ninety-seven thousand dollars to Firstline Senior
7 Trust 07, and one of forty-five thousand dollars to TDMM
8 Luxury Cruise Trust 07.

9 Let's talk first about the transfer of
10 ninety-seven thousand dollars to Firstline Senior Trust 07.
11 What is your understanding of how that money was used?

12 A. That money was used to pay investors in the
13 Firstline Trusts, Senior Trust 07.

14 Q. Now, were you familiar with all of the Firstline
15 Trusts, Firstline Trust 07, Firstline Senior Trust 07,
16 Firstline Trust 07 Series B, and Firstline Senior Trust 07
17 Series B?

18 A. Yes, I am.

19 Q. Could we call them the Firstline Trusts this
20 morning?

21 A. Yes.

22 Q. Did you keep the books and records for those
23 trusts?

24 A. Yes, I did.

25 Q. Did there come a point in time when the

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1 Firstline investments did not generate sufficient income to
2 pay investors?

3 A. Yes.

4 Q. After that point, how were investors paid?

5 A. Funds were moved from various sources to make
6 interest payments to the investors.

7 Q. Who made those decisions?

8 A. Tim McGinn.

9 Q. Did Mr. McGinn ever direct you to move money to
10 pay Firstline investors?

11 A. Yes.

12 Q. Did you ever observe that he transferred money
13 himself?

14 A. Yes.

15 Q. I am showing you now previously admitted
16 Exhibit GG17. This is an electronic mail message from you
17 to Mr. McGinn with a copy to Mr. Rees. The subject is
18 interest distributions 9/1. And let's look first at the
19 Firstline entry about halfway down the page, Firstline.

20 Tim, please wire ninety-seven thousand dollars
21 to Firstline Senior Trust account.

22 Who made the decision that this money should be
23 transferred to the Firstline Senior Trust account?

24 A. Tim McGinn.

25 Q. And let's look a little above that. There is an

BRIAN J. COOPER - Direct By Ms. Coombe

1 entry for TDM Luxury Cruise. It says TDM Luxury Cruise,
2 total due is \$90,625.00 less Luxury CC, Inc. What does CC
3 stand for?

4 A. I think Cruise Charter.

5 Q. 7/15 deposit into M&T operating, \$45,387.00.

6 Funds needed to cover shortfall. Tim, please wire
7 forty-five thousand dollars for quarterly interest
8 distributions to TDM Luxury Cruise Trust.

9 Who decided where the money should come from to
10 cover these shortfalls?

11 A. Tim McGinn.

12 Q. I am handing you now previously admitted
13 Exhibit GG18. This is an electronic mail message to
14 Mr. McGinn and to Ms. Birnbach. Can you remind us of who
15 she is?

16 A. Denise Birnbach was an employee at Mercantile
17 Bank.

18 Q. It says subject wires. Denise, please wire the
19 following from Integrated Excellence Junior Trust 08.

20 What kind of bank account was that, Mr. Cooper?

21 A. That was an escrow account.

22 Q. Number one, forty-five thousand dollars to an
23 M&T Bank account in the name of TDM Luxury Cruise Trust.

24 What is your understanding of how this money was
25 used?

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1 A. To pay investors interest payments.

2 Q. And two, ninety-seven thousand dollars to an M&T

3 Bank account in the name of Firstline Senior Trust.

4 What is your understanding of how this money was
5 used?

6 A. Again, to pay investors interest payments.

7 Q. I am showing you now previously admitted

8 Exhibit GG29. What is this, Mr. Cooper?

9 A. This is the fund transfers notification or a
10 wire confirmation.

11 Q. Is there a date in the upper right-hand corner?

12 A. Yes, 8/29/2008.

13 Q. And at the top, does it describe the account
14 that was sending the wire?

15 A. It does. Integrated Excellence Junior Trust.

16 Q. And it says, goes on to say --

17 MS. COOMBE: I am sorry, Ron. Could you just
18 go down?

19 A. Dated 5/28/08 McGinn Smith Capi Holdings Corp.
20 Trustee.

21 BY MS. COOMBE, CONTINUED:

22 Q. And if we look down a little farther, does
23 indicate the amount of the transfer?

24 A. Yes, ninety-seven thousand.

25 Q. Does it indicate who was receiving the transfer?

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1 A. The beneficiary is Firstline Senior Trust.

2 Q. Who was sending the ninety-seven thousand
3 dollars?

4 A. The originator was Integrated Excellence Junior
5 Trust.

6 Q. What kind of account was that?

7 A. That was an escrow account.

8 MS. COOMBE: Could we look at the next page?

9 BY MS. COOMBE, CONTINUED:

10 Q. What is this, Mr. Cooper?

11 A. These are the wire instructions that would be
12 sent to the bank in order to make the fund transfer.

13 Q. Does this relate to the same ninety-seven
14 thousand dollar transfer from the Integrated Excellence
15 Junior Trust escrow account?

16 A. Yes, it does.

17 Q. Is there a signature?

18 A. Yes.

19 Q. Whose signature is that?

20 A. Timothy M. McGinn.

21 MS. COOMBE: Can we look at the next page,
22 please?

23 BY MS. COOMBE, CONTINUED:

24 Q. What is this, Mr. Cooper?

25 A. Again, the fund transfer notification. It was a

BRIAN J. COOPER - Direct By Ms. Coombe

1 wire confirmation from Integrated Excellence Junior Trust
2 dated 5/20/08 to McGinn, Smith Capital Holdings Corp. in
3 the amount of forty-five thousand dollars.

4 Q. Does it indicate who was receiving the money?

5 A. Yes, the beneficiary was TDM Luxury Cruise
6 Trust.

7 Q. Does it indicate who was sending the money?

8 A. Yes, the originator was Integrated Excellence
9 Junior Trust.

10 Q. Is there a signature?

11 A. On the next page there is. This is the wire
12 instructions. Yes, Timothy M. McGinn's signature is on
13 there.

14 Q. If we look at the top of this page, does it
15 indicate that a wire was sent in the amount of forty-five
16 thousand dollars from the Integrated Excellence Junior
17 Trust escrow account to TDM Luxury Cruise?

18 A. Yes.

19 Q. What is your understanding of what that money
20 was used for?

21 A. To pay their investors their interest in TDM
22 Luxury Cruise.

23 Q. I am handing you now previously admitted
24 Exhibit GA1B. That is a chart entitled TDM -- with TDM
25 Verifier Trust 07R. There is date, August 4, 2009.

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1 Does this summarize a transaction from the TDM
2 Verifier Trust 07R Mercantile account to Firstline Senior
3 Trust 07?

4 A. Yes.

5 Q. I would like to direct your attention to the red
6 arrow. Do you see there is a description of an account
7 there, TDM Verifier Trust 07R. Did you keep the books and
8 records for TDM Verifier Trust 07R?

9 A. Yes, I did.

10 Q. What kind of a account was that Mercantile
11 account ending in 4216?

12 A. That was an escrow account.

13 Q. It indicates there was a transfer from the
14 escrow account of sixty-seven thousand dollars to Firstline
15 Senior Trust 07. What is your understanding of what that
16 money was used for?

17 A. To pay investors interest payments in the
18 Firstline Senior Trust 07.

19 Q. Mr. Cooper, so far we have looked at transfers
20 from escrow accounts to Mr. McGinn and Mr. Smith
21 personally, as well as to pay investors in other trusts.

22 Did Mr. McGinn ever direct you to move money
23 from operating accounts to pay Firstline investors?

24 A. Not that I recall.

25 Q. I am handing you previously admitted

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1 Exhibits GF29, GF30, and GF36. Could we look first at
2 GF29. This is an electronic mail message from yourself to
3 Mr. McGinn dated April 28th of 2008, subject May 1st
4 payments.

5 You wrote: Firstline and TDM Cable monthly
6 payments. Please wire seventy-four thousand dollars to
7 cover Firstline interest payments for May 1, 2008. And you
8 provided the name of the trust that needs the money.

9 Do you know whether this money came from an
10 operating account or an escrow account or whether
11 Mr. McGinn followed up and transferred the money that you
12 said was needed to pay investors?

13 A. I can't tell from this. I would have to look at
14 the accounting records.

15 Q. Okay. Could we look now at GF30. This is an
16 electronic mail message dated May 2nd of 2008, from you to
17 Mr. McGinn, and you forwarded him the e-mail that we just
18 looked at, which is GF29; is that correct?

19 A. That's correct.

20 Q. Based on your experience and work on the
21 Firstline books and records, was it typical that Mr. McGinn
22 would follow up and make transfers so that investors could
23 be paid?

24 A. Yes.

25 Q. I would like to look now at GF36. This is an

BRIAN J. COOPER - Direct By Ms. Coombe

1 electronic mail message dated October 1st of 2008 from you
2 to Mr. McGinn with a copy to Mr. Rees. You indicate that
3 you are moving eighty-three thousand dollars from TDM
4 Luxury Cruise operating account to TDM Verifier Trust 08,
5 that you will record it as a loan at one percent short
6 term. If you could please wire one hundred and sixteen
7 thousand dollars to Firstline Trusts.

8 What is your understanding of why you were
9 asking Mr. McGinn to wire that money?

10 A. The eighty-three thousand?

11 Q. The one hundred and sixteen thousand dollars?

12 A. The one hundred and sixteen thousand was to
13 cover investor interest payments.

14 Q. Mr. Cooper, you mentioned that you also worked
15 on the books and records for the Four Funds; is that
16 correct?

17 A. That's correct.

18 Q. Were interest payments to investors in the Four
19 Funds ever reduced or eliminated while you worked for the
20 broker-dealer?

21 A. Yes.

22 Q. I am showing you now previously admitted
23 Exhibits GB4 and GB7. Let's start with GB4. What is this?

24 A. This is a letter to investors explaining the
25 reduction in interest payments they would be receiving or

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1 interest rate. I believe that's what this is. Yes.

2 Q. What about GB7?

3 A. GB7 is a letter to investors explaining the
4 elimination of the interest payment.

5 Q. As a result of these letters, did any investors
6 stop receiving interest payments in the Four Funds?

7 A. Yes.

8 Q. Could you explain to us how that worked?

9 A. The investors in the higher risk tranche of the
10 funds were originally receiving ten and quarter percent
11 interest. They were originally reduced to five percent
12 interest and then to zero.

13 Q. Did any investors in the Four Funds continue to
14 receive the full amount of their payments even after that
15 occurred?

16 A. Yes, they did.

17 Q. How did you learn about which investors would
18 continue to receive the full amount of their payments?

19 A. I received a list from Patricia Sicluna of
20 selected investors that would continue to receive their
21 interest payments.

22 Q. What is your understanding about where
23 Ms. Sicluna received that information?

24 A. I believe she received the information from
25 Tim McGinn.

BRIAN J. COOPER - Direct By Ms. Coombe

1 Q. Could you tell us who Ms. Sicluna is?

2 A. Ms. Sicluna has worked for the broker-dealer a
3 long time. I believe twenty plus years. She handled all
4 the back office documents and related information for the
5 investors.

6 Q. Was there any common characteristic of these
7 investors who would continue to receive the full amount of
8 their payments?

9 A. Other than that they were a group of family
10 members, those seemed to be the common characteristics.

11 Q. Did you make up a name for these investors?

12 A. I called them the preferred investors.

13 Q. Why did you call them that?

14 A. Because they were still receiving their interest
15 payments while all the other investors were discontinued
16 receiving interest payments.

17 Q. When did these supplemental payments to the
18 preferred investors begin?

19 A. I believe it was the early part of 2008.

20 Q. Where did the money come from to pay them?

21 A. McGinn, Smith Transaction Funding Corp.

22 Q. I am handing you previously admitted
23 Exhibit GB1B. GB1B, Mr. Cooper, this is a chart that says
24 MSTF payments to the Four Funds investors. Do you see on
25 the left, there is an entry Four Funds 10.25 percent

BRIAN J. COOPER - Direct By Ms. Coombe

1 interest per PPM. What does that refer to?

2 A. That is the interest payment that was due to the
3 investors.

4 MS. COOMBE: Could we look at the next
5 slide, please?

6 BY MS. COOMBE, CONTINUED:

7 Q. And was there a letter that went out to
8 investors telling them that their payments had stopped?

9 A. Yes.

10 Q. Do you see there are two group of investors,
11 regular investors and what you called preferred investors?

12 A. Correct.

13 MS. COOMBE: Next slide, please.

14 BY MS. COOMBE, CONTINUED:

15 Q. And is it your understanding that money from
16 MSTF was used to continue to pay those preferred investors?

17 A. Yes.

18 MS. COOMBE: Could we look at the next
19 slide, please?

20 BY MS. COOMBE, CONTINUED:

21 Q. It says MSTF payments to Joe Cornacchia. Are
22 you familiar with Mr. Cornacchia?

23 A. Yes, I am.

24 Q. Are you aware of whether he was receiving
25 repayments on a loan involving SAI?

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1 A. I wasn't aware what the funds were for, but I
2 was aware he was receiving -- continuing to receive five
3 thousand dollars a month.

4 MS. COOMBE: Next slide, please. And the
5 next slide.

6 BY MS. COOMBE, CONTINUED:

7 Q. Is it your understanding that that money that
8 was paid to him came from MSTF?

9 A. Yes.

10 MS. COOMBE: Could we look at the next
11 slide?

12 BY MS. COOMBE, CONTINUED:

13 Q. Is it your understanding that there was some
14 other non-MSTF investors, some of whom had invested in SAI?

15 A. Yes.

16 Q. Had the SAI investment stopped paying?

17 A. Yes, it did.

18 MS. COOMBE: Could we look at the next
19 slide, please?

20 BY MS. COOMBE, CONTINUED:

21 Q. That indicates that those payments had stopped.

22 MS. COOMBE: The next slide, please.

23 BY MS. COOMBE, CONTINUED:

24 Q. And it is your understanding that those
25 preferred investors continued to receive payments from

BRIAN J. COOPER - Direct By Ms. Coombe

1 MSTF?

2 A. Yes.

3 Q. Who directed all of these payments that we have
4 just looked at?

5 A. Tim McGinn.

6 MS. COOMBE: I would like to look at the
7 next page, please.

8 BY MS. COOMBE, CONTINUED:

9 Q. Mr. Cooper, have you had a chance to look at a
10 summary spreadsheet that supports these charts?

11 A. Yes, I have.

12 Q. Did you check your records to make sure that all
13 of the amounts corresponded to interest payments that the
14 preferred investors otherwise would not have been receiving
15 absent Mr. McGinn's direction?

16 A. Yes, I did.

17 Q. Did you ever talk to Mr. Rees about all of these
18 payments to non-MSTF investors?

19 A. Yes, I did.

20 Q. When did you talk to him?

21 A. It was after a few of the payments were being
22 made. I went into his office and was asking him how this
23 worked, how certain investors still get their interest
24 payments and others do not.

25 Q. What did he say?

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1 A. He kind of rolled his eyes and put his hands in
2 the air and shrugged his shoulders. It wasn't his
3 decision. He didn't make that decision.

4 Q. What was your understanding about what he meant
5 by those gestures?

6 MR. DREYER: Objection.

7 THE COURT: Sustained.

8 BY MS. COOMBE, CONTINUED:

9 Q. What was your reaction to learning about these
10 payments, Mr. Cooper?

11 A. I felt --

12 MR. JONES: Irrelevant.

13 THE COURT: Overruled.

14 A. I felt it wasn't correct.

15 BY MS. COOMBE, CONTINUED:

16 Q. Why not?

17 A. Because these investors invested together as a
18 group of investors. And if some are discontinued not
19 receiving interest payments, they all should be not
20 receiving interest payments.

21 Q. Did you ever talk to Mr. Shea about these
22 payments that non-MSTF investors were receiving from MSTF?

23 A. Yes, I did.

24 Q. When did you talk to him?

25 A. When Brian Shea was trying to reconcile the

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1 books of MSTF and to understand what the funds were used
2 for and how come the funds were paid out to these
3 investors.

4 Q. What did you tell him?

5 A. I told him that a preferred list was generated
6 and that these investors were continuing to receive their
7 full ten and quarter interest payment.

8 Q. Did you ever raise this issue with Mr. McGinn,
9 himself?

10 A. I did not.

11 Q. Why not?

12 A. I guess I just wasn't comfortable doing that
13 with him.

14 Q. Why weren't you comfortable doing that with him?

15 A. I didn't feel it was my place.

16 Q. Why didn't you feel it was your place?

17 A. I felt it was either Dave Rees' or Brian Shea's.

18 Q. I am showing you now previously admitted
19 Exhibit GB1C. This chart has the title payments from the
20 Four Funds for payroll. Directing your attention to the
21 left side of the chart, do you see there is a reference to
22 the Four Funds, and there are three different funds listed
23 under there. Did you keep the books and records for those
24 Four Funds?

25 A. Yes, I did.

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1 Q. These indicate that money was transferred on
2 November 14th of 2008 in the amounts of seventy-five
3 thousand dollars and fifty thousand dollars. Did you
4 decide on your own to transfer that money?

5 A. No, I didn't.

6 Q. Who instructed you to transfer the money?

7 A. Either David Smith or Tim McGinn.

8 MS. COOMBE: Could we look at the next page,
9 please.

10 BY MS. COOMBE, CONTINUED:

11 Q. This is a similar chart showing money that went
12 from the Four Funds to MSTF on November 26, 2008, in the
13 amounts of fifty thousand dollars, three different
14 transactions. Did you decide on your own to transfer this
15 money?

16 A. No, I did not.

17 Q. Who directed you to transfer this money?

18 A. Again, either Dave Smith or Tim McGinn.

19 MS. COOMBE: Could we look at the next page
20 please?

21 BY MS. COOMBE, CONTINUED:

22 Q. April 14th of 2009, transfers from the Four
23 Funds to MSTF of one hundred thousand dollars, fifty
24 thousand dollars, and one hundred thousand dollars. Did
25 you decide on your own to transfer this money?

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1 A. No, I did not.

2 Q. Who directed you to transfer this money?

3 A. Again, Dave Smith or Tim McGinn.

4 Q. Mr. Cooper, did there come a point in time where
5 FINRA was conducting an examination at the broker-dealer in
6 the spring of 2009?

7 A. Yes.

8 Q. Did that examination and investigation have any
9 effect on your work?

10 A. It did.

11 Q. Could you please tell us about how it affected
12 your work?

13 A. It changed focus on my daily activities to
14 focusing on the FINRA examination and required me to put in
15 many additional hours to work on that examination.

16 Q. What kind of work did you have to do?

17 A. Collect documents, prepare documents to send to
18 FINRA, make electronic copies of all the documents. And
19 copy all the files for FINRA.

20 Q. Did you work with anyone else?

21 A. Yes, I did.

22 Q. Who did you work with?

23 A. I worked with Matt McGinn on the preparation of
24 documents for FINRA.

25 Q. Did you work with anyone else?

BRIAN J. COOPER - Direct By Ms. Coombe

1 A. Yes, I worked with David Smith, Tim McGinn,
2 Joe Carr going through books and records of all the Trusts
3 and Funds to go over all the account transactions that took
4 place.

5 Q. Where did you work with them?

6 A. In the board room at 99 Pine Street.

7 Q. How much time did you spend working on this?

8 A. A lot.

9 Q. How about Matt McGinn, how much time did he
10 spend?

11 A. He also spent a lot of time on this.

12 Q. And Mr. Smith?

13 A. He spent a lot of time on it also.

14 Q. What was the purpose of this work in the board
15 room?

16 A. To identify the accounting transactions that
17 were recorded in the books and to provide proper backup for
18 those transactions.

19 Q. What was the environment like at this point?

20 A. Stressed.

21 Q. What do you mean?

22 A. It seemed like a lot of pressure from FINRA
23 trying to get answers to their examination.

24 Q. Were there any issues with no backup
25 documentation existing?

BRIAN J. COOPER - Direct By Ms. Coombe

1 A. Yes.

2 Q. I am handing you now previously admitted
3 Exhibit GH2. This is a letter dated September 30, 2009.
4 It is from FINRA to Mr. David Franceski requesting
5 documents from the broker-dealer.

6 I would like to direct your attention to the
7 second page to item number five. It states:

8 In connection with the entities listed in item
9 number one, please provide all documentation related to
10 loans made payable to the following individuals:
11 David Smith, Lynn Smith, Tim McGinn, Matthew Rogers, and
12 Mario Bustamante, including, but not limited to, loan
13 origination documents, promissory notes, repayment
14 information, and any other documents. Additionally, please
15 identify whether there were/are any other loans made
16 payable to other individuals or entities not previously
17 identified.

18 Mr. Cooper, as of September 30th of 2009, was
19 there any documentation related to any loans made to
20 Mr. McGinn, Mr. Smith or Mr. Rogers?

21 A. Not to my knowledge.

22 Q. Were there any promissory notes?

23 A. Not to my knowledge.

24 Q. Did anyone ever tell you what the interest rate
25 would be for any of these supposed loans?

BRIAN J. COOPER - Direct By Ms. Coombe

1 A. Not at that time.

2 Q. Did anyone ever give you a repayment schedule?

3 A. No.

4 Q. Did anyone ever tell you how long the term of
5 the loans would be before September 30th of 2009?

6 A. No, they did not.

7 Q. Did Mr. McGinn, Mr. Smith or Mr. Rogers ever
8 provide any collateral?

9 A. No.

10 Q. Did Mr. McGinn, Mr. Smith or Mr. Rogers ever
11 provide any personal guarantees?

12 A. Not to my knowledge.

13 Q. Were any promissory notes created after FINRA
14 made this request reflected in GH2?

15 A. Yes, they were.

16 Q. Were you involved in that process?

17 A. Yes, yes, I was.

18 Q. What was your role?

19 A. To provide a list of the funds taken and the
20 dates that the funds were taken.

21 Q. And I just want to remind you to pull the
22 microphone up closer to your mouth.

23 After you made the list of the money that had
24 been taken, what happened next?

25 A. There was a discussion on what would be created

BRIAN J. COOPER - Direct By Ms. Coombe

1 for a loan document and then that would be provided to
2 Kim Spath to create the promissory note or loan document.

3 Q. Who had asked you to make a list of the money
4 that was taken?

5 A. Tim McGinn and David Smith.

6 Q. You mentioned Ms. Spath, who was she?

7 A. She was Joe Carr's legal secretary.

8 Q. What happened after you provided information to
9 Ms. Spath?

10 A. The documents were created.

11 Q. I am handing you previously admitted
12 Exhibit GD13. This is an electronic mail message from you
13 to Mr. McGinn dated October 13, 2009, and there is a copy
14 to Mr. Carr, subject TDM Cable loans. Now, this is after
15 FINRA had made the request for loan documentation, correct,
16 Mr. Cooper?

17 A. That's correct.

18 Q. And you wrote: Tim, here are how the loans
19 currently appear on the balance sheet.

20 And are there any loans listed there to
21 Mr. Smith?

22 A. Yes, there is.

23 Q. Could you tell us where that is, please?

24 A. It says loan-DLS, six hundred and seventy-seven
25 thousand.

BRIAN J. COOPER - Direct By Ms. Coombe

1 Q. And is there any money listed that went to
2 Mr. McGinn?

3 A. Yes, loan-TMM, seven hundred and seventy-five
4 thousand three hundred and forty-one dollars.

5 Q. And how about to Mr. Rogers?

6 A. Also a loan-Matt R, four hundred and sixty-six
7 thousand dollars.

8 Q. Why did you prepare this list for Mr. McGinn?

9 A. I believe I was preparing this so he knew what
10 funds were taken. He wanted to make the proper
11 documentation.

12 Q. I am handing you previously admitted
13 Exhibit GD21? What is this, Mr. Cooper?

14 A. This is a list of various loan transactions from
15 the different funds.

16 Q. And let's look first at the last page of this
17 exhibit. Could you tell us what this is, the typewritten
18 portion of this?

19 A. Yes. I put this spreadsheet together. I called
20 it a grid note summary. And a grid note summary, a grid
21 note to me represents like an open line of credit with a
22 fixed amount like, say, four million dollars in credit they
23 could take, this is over time.

24 And in this case, the first two on here were
25 changed from being a grid note to just a note with the term

BRIAN J. COOPER - Direct By Ms. Coombe

1 of five years, and the rate was either going to be six
2 percent or three percent.

3 Q. Why did you prepare this typewritten part of
4 this document?

5 A. So the loan documents could be created.

6 Q. And you see at the top there is entries for
7 Cruise Charter Ventures; McGinn, Smith Transaction Funding,
8 and TDM Cable Funding, LLC.

9 And then underneath, it says, not asked for by
10 FINRA. There is entries for NEI, MS Funding, MS Holdings,
11 and Integrated Excellence Senior Trust 09.

12 What does that "not asked for by FINRA" refer
13 to?

14 A. These entities were not listed on the request
15 for the FINRA examination.

16 Q. Were any efforts made to create any
17 documentation for those amounts?

18 A. Yes. Not for FINRA, but for books and records.

19 Q. I would like to direct your attention, again, to
20 the top. Whose handwriting is that on this document?

21 A. That is my handwriting.

22 Q. And you see there is a date 9/30/2012. What
23 does that refer to?

24 A. It may be the end of the term.

25 Q. You see -- you had typed six years as the term.

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1 Where did you get that information from?

2 A. Tim McGinn or David Smith.

3 Q. And in the handwriting you have five years,
4 where did you get that information from?

5 A. Again, either Tim McGinn or David Smith.

6 Q. Under rate, the typewritten version says six
7 percent. Where did you get that information from?

8 A. Again, Tim McGinn or David Smith.

9 Q. And then in handwriting it says three percent?

10 A. Again, that was Tim McGinn or David Smith.

11 Q. Did you have any information about the term or
12 rate of any of these loans before FINRA asked for
13 documentation?

14 A. No, I did not.

15 Q. I would like to direct your attention now to the
16 first page. Could you tell us what the typewritten portion
17 of this is?

18 A. These are the funds or lenders. It shows the
19 lender, the borrower, the date, the amount, and the rate
20 and the term, and it is a list of funds taken.

21 Q. This has the lower interest rate of three
22 percent?

23 A. Correct.

24 Q. And the term of six years?

25 A. Yes.

BRIAN J. COOPER - Direct By Ms. Coombe

1 Q. What was your purpose in creating this?

2 A. To have a list of the transactions that were --
3 or the funds that were recorded in the books and records
4 for Tim and Dave to review.

5 Q. Where did you get the information about the rate
6 and term?

7 A. From Tim and Dave.

8 Q. There is some handwriting on there. It says

9 B. Shea, whose handwriting is that?

10 A. That's my handwriting.

11 Q. What does that refer to?

12 A. Those are the funds that he was responsible for.

13 Q. I would like to direct your attention to the
14 next page, please. What is this?

15 A. Again, another spreadsheet outlining the funds
16 that were taken.

17 Q. Okay, and how about the next page?

18 A. Also another spreadsheet summarizing those funds
19 that were taken.

20 Q. I am handing you now previously admitted
21 Exhibits GD14 and GD16.

22 MS. COOMBE: Ron, could we look at GD14 and
23 GD16 side by side?

24 BY MS. COOMBE, CONTINUED:

25 Q. Mr. Cooper, let's focus first on the typewritten

BRIAN J. COOPER - Direct By Ms. Coombe

1 version of these two pages. First of all, are these two
2 pages similar, GD14 and the first page of GD16?

3 A. The only changes are there is checkmarks and
4 squiggly lines on GD16.

5 Q. Do you recognize the handwriting for the
6 checkmarks and the squiggly lines?

7 A. It looks like Tim McGinn's.

8 Q. I would like to direct your attention now to the
9 first page of GD16. Could you tell us -- let's first look
10 in the upper left hand corner. Is there a date there?

11 A. Yes, 10/26/2009.

12 Q. What is the significance of that?

13 A. That's the date this was printed out of
14 QuickBooks, and prepared out of QuickBooks.

15 MS. COOMBE: Ladies and gentlemen, do you
16 have something up on your screen that is interfering with
17 your ability to see? We have a little technical snafu.
18 There we go. Thanks, Ron.

19 BY MS. COOMBE, CONTINUED:

20 Q. I am sorry. Could you tell us again when that
21 date refers to?

22 A. The date that it was printed or created out of
23 QuickBooks.

24 Q. Who prepared this?

25 A. I did.

BRIAN J. COOPER - Direct By Ms. Coombe

1 Q. Why did you prepare this?

2 A. To provide backup for the funds that were taken.

3 Q. And whose handwriting is on this document other
4 than the 9/30/12?

5 A. That is my handwriting.

6 Q. How about 9/30/12?

7 A. That's Tim McGinn's handwriting.

8 Q. And do you see the handwriting at the top, it
9 says, TDM Cable Funding, LLC, TM loan underneath it. What
10 does this refer to?

11 A. TDM Cable Funding, LLC, is the set of books and
12 TM loan is the borrower who borrowed the money from TDM
13 Cable Funding, LLC.

14 Q. So who is the borrower for this page?

15 A. Tim McGinn.

16 Q. I would like to -- so those transactions that
17 are listed there, are those amounts of money that
18 Mr. McGinn took from TDM Cable Funding, LLC?

19 A. That's correct.

20 Q. And you see they are described as fees, some of
21 them?

22 A. Yes.

23 Q. The January 30, 2007, entry?

24 A. Yes.

25 Q. And then March 28, 2007, entry?

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1 A. Yes.

2 Q. And the July 12, 2007, entry?

3 A. Yes.

4 Q. Could I direct your attention to your
5 handwriting at the bottom of the page, now?

6 A. Okay.

7 Q. It states: Grid note from 10/2/06, six-year
8 term, and you had six percent interest. And you crossed
9 that out and put three percent interest.

10 Where did the information come from for these
11 notes that you took?

12 A. Tim McGinn.

13 Q. And then it states: Lender from TDM Cable
14 Funding, LLC; borrower Timothy M. McGinn.

15 A. Correct.

16 Q. Mr. Cooper, there is letters on the first page
17 of GD14 to the right of the amounts under increase column.
18 Do you see that?

19 A. Yes, I do.

20 Q. I am handing you now previously admitted
21 Exhibit GD19. You can keep that. What is this,
22 Mr. Cooper?

23 A. This is support to back up those transactions in
24 QuickBooks.

25 Q. And so there is a circled B at the top, how does

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1 that fit in with GD14 which we were just looking at?

2 A. This represents the ninety-two thousand dollars
3 that was transferred from TDM Cable Funding, LLC to
4 Tim McGinn.

5 Q. And if you flip through the rest of this
6 document, is this additional backup that refers to the
7 letters that are on GB14?

8 A. Yes, it is.

9 Q. I would like to direct your attention back to
10 GD16. Did you ever provide this to anyone?

11 A. Tim McGinn.

12 Q. And are you aware of whether it was eventually
13 provided to Ms. Spath?

14 A. I do not know.

15 Q. Could you look at the next page, please? This
16 is a promissory note dated October 2nd of 2006 in the
17 amount of three hundred and fifty thousand dollars and
18 change. It is to Timothy M. McGinn. It is from TDM Cable
19 Funding, LLC. And could we look at the signature page,
20 please, which would be the -- whose signature is that?

21 A. Tim McGinn.

22 Q. Is it your understanding that these were
23 prepared and executed after FINRA requested them?

24 A. Yes.

25 Q. And the rest of Exhibit GD16, are these other

BRIAN J. COOPER - Direct By Ms. Coombe

1 promissory notes that were requested after FINRA requested
2 them?

3 A. Yes.

4 Q. I am handing you now previously admitted
5 Exhibits GD15 and GD18.

6 MS. COOMBE: Could we look at those side by
7 side, please?

8 BY MS. COOMBE, CONTINUED:

9 Q. Are there any similarities between these two
10 documents, Mr. Cooper?

11 A. Yes.

12 Q. Is it easier to tell us the differences?

13 A. Yes.

14 Q. Okay.

15 A. The checkmarks and the squiggly lines.

16 Q. Whose handwriting is on these documents other
17 than the checkmarks and squiggly lines?

18 A. This is my handwriting.

19 Q. I take it that is not your handwriting, the
20 checkmarks and squiggly lines?

21 A. No, it is not.

22 Q. Okay. I would like to direct your attention now
23 to GD18. Is there a date in the upper left-hand corner?

24 A. Yes, 10/26/2009.

25 Q. What does that date refer to?

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1 A. That's the date this document was created.

2 Q. Who created this document?

3 A. I did.

4 Q. Why did you create it?

5 A. To provide a list to Tim, I believe Tim and Dave
6 so they knew where that the funds were coming from these
7 trusts.

8 Q. I would like to direct your attention to the top
9 of the page. It says TDM Cable Funding, LLC, M Rogers
10 loan. What does that refer to?

11 A. That means money borrowed or taken by
12 Matthew Rogers from this trust or fund.

13 Q. Underneath you will see that there are entries
14 for three hundred and fifty thousand dollars, for
15 eighty-six thousand dollars, and for thirty thousand
16 dollars. And do you see that two of those are
17 characterized as fees?

18 A. Yes.

19 Q. And do you see there is some handwriting there
20 to the left, whose handwriting is that?

21 A. I can't tell whose handwriting that is. Those
22 dates, I am not sure.

23 Q. And underneath it says, grid note from 10/2/06,
24 six-year term, six percent interest is crossed out to three
25 percent interest. Lender TDM Cable Funding, LLC. Borrower

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1 Matthew Rogers. Where did you get that information?

2 A. Tim McGinn.

3 Q. Could you look now please at GD18, the second
4 page. That is a promissory note dated October 3rd of 2006
5 for three hundred and fifty thousand dollars from TDM Cable
6 Funding, LLC to Matthew Rogers. If we look at the
7 signature page, please. There is a signature there.

8 Is it your understanding that this note and the
9 other notes attached to GD18 were prepared and executed
10 after FINRA requested them?

11 A. Yes.

12 Q. I am handing you now previously admitted --

13 THE COURT: Let's take the morning break
14 now, members of the jury. Don't discuss the case among
15 yourselves or anyone else. We will be back in fifteen
16 minutes. Mr. Minor.

17 COURT CLERK: Court stands for the morning
18 recess.

19 (Whereupon, the proceedings were held in
20 open court out of the presence of the Jury.)

21 THE COURT: Mr. Cooper, do not discuss your
22 testimony with anyone over the break. Do you understand?

23 THE WITNESS: Yes, sir.

24 (Whereupon, a brief recess was taken.)

25 THE COURT: You may continue.

BRIAN J. COOPER - Direct By Ms. Coombe

1 MS. COOMBE: Thank you, Your Honor.

2 BY MS. COOMBE, CONTINUED:

3 Q. I am handing you now previously admitted
4 Exhibit GD17. Could you please tell us what this is?

5 A. This is a printout from Quicken Books dated
6 10/26/2009.

7 Q. Who prepared this printout from the Quicken
8 Books?

9 A. I did.

10 Q. Why did you prepare it?

11 A. To provide a list of the transactions from the
12 funds taken from TDM Funding, LLC to DLS, which is the
13 David Smith loan.

14 Q. Whose handwriting is on this document?

15 A. My handwriting is on the bottom. The checkmarks
16 and squiggly mark I believe is Tim McGinn's.

17 Q. At the top it says TDM Cable Funding, LLC, DLS
18 loan. What does that refer to?

19 A. David Smith borrowed money from this fund.

20 Q. And you see there are amounts listed there,
21 three hundred and fifty thousand, eighty-six thousand,
22 ninety-six thousand, thirty thousand, seventy-five
23 thousand. Do you see that the January 30, 2007; March 28,
24 2007; and July 12th of 2007 transactions are described as
25 fees?

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1 A. Yes.

2 Q. Where did you get the information for your
3 handwriting on this document?

4 A. From David Smith or Tim McGinn.

5 MS. COOMBE: And could we look at the next
6 page, please?

7 BY MS. COOMBE, CONTINUED:

8 Q. This is a promissory note dated October 2nd of
9 2006. It is for three hundred and fifty thousand dollars.
10 It is to Mr. Smith -- or from Mr. Smith. He promises to
11 pay TDM Cable Funding, LLC.

12 MS. COOMBE: Could we please look at the
13 signature page?

14 BY MS. COOMBE, CONTINUED:

15 Q. Do you recognize that signature?

16 A. Yes.

17 Q. Whose is it?

18 A. David Smith's.

19 Q. Is it your understanding that this and other
20 copies of the promissory notes attached to GD17 were not
21 prepared and executed until after FINRA requested them?

22 A. That's correct.

23 Q. Mr. Cooper, all of the documents that we have
24 just looked at and we looked at before the break, and I am
25 just going to read the exhibit numbers into the record

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1 GD21, GD14, GD16, GD19, GD15, GD18, and GD17, did you keep
2 all of those documents in one place?

3 A. Yes.

4 Q. Where did you keep them?

5 A. In my credenza next to my desk.

6 Q. Were they segregated in any kind of folder or
7 anything?

8 A. Yes, they were in its own folder.

9 Q. Why did you keep all of these documents together
10 in a folder?

11 A. Because it was a project -- part of the FINRA
12 projects that I was working on, and it was just easier to
13 keep all these loans together.

14 Q. I am handing you now previously admitted
15 Exhibit GD20. This is an electronic mail message from you
16 to Georgia Goldstein with a copy to Ms. Spath. Who is
17 Ms. Goldstein?

18 A. She was the secretary at the office.

19 Q. Georgia, Kim is working up a loan document for
20 Matthew Rogers. Once completed we need to overnight it to
21 him with a return envelope back to us next day. Here are
22 the mailing instructions. Please let me know if you have
23 any questions. Thank you.

24 Were you involved in getting some newly created
25 promissory notes down to Mr. Rogers?

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1 A. Yes, I was.

2 Q. What was your involvement?

3 A. Putting the package together and giving it to
4 Georgia Goldstein to mail.

5 Q. Mr. Cooper, we have looked at a lot of
6 transactions that were booked as loans this morning. And
7 you were responsible for the TDM Cable Funding, LLC books
8 at one point; is that correct?

9 A. Yes, it is.

10 Q. Did you ever book any of the transactions that
11 are characterized as loans on the books and records?

12 A. Yes.

13 Q. How did you learn about these transactions?
14 Back at the time they occurred, how did you learn that they
15 had occurred?

16 A. Either when I was doing the bank reconciliation
17 or I was notified by Dave Rees.

18 Q. Why did you book those as loans?

19 A. Because they couldn't be booked as anything else
20 because of the PPM. It did not describe what these funds
21 were used for to Tim McGinn and David Smith and
22 Matthew Rogers personally. So other than that, they had to
23 be recorded as loans.

24 Q. Did Mr. Rees ever give you any directions about
25 how to book money that Mr. McGinn, Mr. Smith, and

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1 Mr. Rogers received personally in connection that was money
2 raised from investors?

3 A. I don't recall directly.

4 Q. I am handing you now previously admitted
5 Exhibit GA14. This is an electronic mail message dated
6 November 7th of 2008 from Mr. McGinn to Joan Dixon, who is
7 Ms. Dixon?

8 A. She is a bank employee at Mercantile bank.

9 Q. Could you look down at the bottom, please?
10 Mr. McGinn wrote: Joan, please execute the
11 following, and there is an MSTF transaction to his personal
12 bank account, and then there is another transaction,
13 Fortress Trust to NEI Capital.

14 And 3, please issue check from NEI Capital, LLC
15 in the amount of forty thousand dollars payable to
16 Waterville Membership Services and overnight same to
17 Waterville Membership Services.

18 Did you keep the books and records for NEI
19 Capital LLC and Fortress Trust 08?

20 A. Yes, I did.

21 Q. Are you familiar with this transaction of forty
22 thousand dollars to Waterville Membership Services?

23 A. Vaguely.

24 Q. What is your understanding of what Waterville
25 Membership Services was?

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1 A. I believe Waterville Membership Services was a
2 golf club in Ireland. I am not entirely sure.

3 Q. Mr. Cooper, do you have GD21 up there? We
4 looked at it previously.

5 A. I do not.

6 MS. COOMBE: Could we look at GD21 on the
7 screen? Could we look at the fourth page?

8 BY MS. COOMBE, CONTINUED:

9 Q. Here, Mr. Cooper, I found a copy of it for you.
10 Do you see the third entry down that states August 1st
11 2008, McGinn, Smith Transaction Funding. Borrower
12 Timothy M. McGinn, grid six years, six percent, one hundred
13 and thirty thousand dollars.

14 Did Mr. McGinn ever instruct you to make any
15 changes as to how this transaction was recorded in the
16 books and records?

17 A. Yes.

18 Q. What did he tell you?

19 A. He wanted to show that the funds were either due
20 from or due to NEI and not McGinn, Smith Transaction
21 Funding.

22 Q. Is that what happened?

23 A. The funds actually came from McGinn, Smith
24 Transaction Funding to Tim McGinn.

25 Q. Did you do what he asked you to do?

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1 A. Yes, I did.

2 Q. I am handing you now what is marked as
3 Exhibit GB44. Could you tell us what this is, please?

4 A. This is a printout from QuickBooks from McGinn,
5 Smith Transaction Funding set of books, and it is a list of
6 transactions showing monies taken by Tim McGinn represented
7 as a loan from McGinn, Smith Transaction Funding.

8 Q. There is a date in the upper left-hand corner,
9 October 26, 2009. What does that refer to?

10 A. That's the date this document was created.

11 Q. Did you create this document?

12 A. Yes.

13 Q. There are a number of highlighted entries. What
14 do those show?

15 A. Those show the funds received by Mr. McGinn from
16 McGinn, Smith Transaction Funding.

17 Q. And if you look down at the bottom, the
18 handwriting on the left, whose handwriting is that?

19 A. That's mine.

20 Q. Is there any handwriting that is someone else's?

21 A. Yes, lower right-hand corner.

22 Q. Whose is that?

23 A. That look like Tim McGinn's.

24 Q. Does any of this relate to Mr. McGinn's
25 instructions to make changes to the accounting records?

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1 A. Yes, it does.

2 Q. What portion?

3 A. One hundred and thirty thousand.

4 Q. Is that on the top of the computer screen that
5 we are looking at right now?

6 A. Yes.

7 Q. It says DT NEI, one hundred and thirty thousand
8 dollars, what does that mean?

9 A. Due to NEI.

10 Q. What does that refer to?

11 A. It is showing -- they are indicating that McGinn
12 Smith Transaction funding is going to have a liability to
13 NEI for one hundred and thirty thousand dollars.

14 Q. I am handing you now GB49. Could you please
15 look at the last page? What is this, Mr. Cooper?

16 A. This is NEI's books, and it shows an asset due
17 from McGinn, Smith Transaction Funding, and these are the
18 total funds due from McGinn, Smith Transaction Funding to
19 NEI.

20 Q. And you see the entry highlighted is
21 November 2nd of 2009?

22 A. Yes.

23 Q. There is memo, TMM paid MSTF s/b NEI, what does
24 that refer to?

25 A. I think that means Tim McGinn put one hundred

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1 and thirty thousand dollars in McGinn, Smith Transaction
2 Funding when really he wanted the one hundred and thirty
3 thousand to go into NEI.

4 Q. After you changed books and records, it didn't
5 show that he had gotten money from MSTF, is that correct?

6 A. Money shows coming from MSTF to Tim McGinn.

7 Q. And after this November 2, 2009, entry, it looks
8 like it came from NEI, correct?

9 A. Correct.

10 Q. Mr. Cooper, could you just move those documents
11 so I could put the screen down. Thank you.

12 Mr. Cooper, did there ever come a point in time
13 when you were asked to work on a large copy project?

14 A. Yes.

15 Q. When was that?

16 A. After the FINRA examination or during the FINRA
17 examination.

18 Q. Can you tell us about what was involved in the
19 copy project and how it came about?

20 A. We were making copies of all the documents in
21 the office, going through all the filing cabinets, copying
22 everything, date stamping copies for FINRA, and making
23 other copies.

24 Q. What happened to the other copies that you made?

25 A. Some of the copies went to storage in Clifton

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1 Park. I believe some copies went to David Smith's house,
2 and some copies went to Joe Carr's house.

3 Q. What is your understanding about why some
4 documents were moved to Mr. Carr's house?

5 A. I don't know. I believe they were being put
6 there so they wouldn't be found.

7 MR. JONES: Objection.

8 MR. DREYER: Objection.

9 THE COURT: That may be stricken. Jury is
10 instructed to disregard it. No foundation for that
11 opinion.

12 BY MS. COOMBE, CONTINUED:

13 Q. Mr. Cooper, were you involved in ever moving any
14 copies of documents that you had been involved in preparing
15 to Mr. Carr's house?

16 A. Yes, I was.

17 Q. What was your involvement?

18 A. Carrying the boxes to Joe Carr's house and
19 putting them in his basement.

20 Q. Did anyone ever tell you why those boxes were
21 being taken to Mr. Carr's house?

22 A. No.

23 Q. Did you have -- did anyone ever tell you why
24 those boxes were taken to Mr. Carr's house instead of to
25 Mr. Smith's house with the other copies or to the storage?

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1 A. No, they did not.

2 Q. Do you have any understanding of why they were
3 taken to Mr. Carr's house based on your work at the
4 broker-dealer during this time?

5 A. My only understanding was they were taken there
6 for safeguard. I am not sure.

7 Q. Had anyone ever expressed to you why these
8 additional copies were being made of records and being
9 taken off site from the broker-dealer?

10 A. What I understood was there was a lot of
11 pressure in the office with the FINRA examination, and
12 there was thought that -- my opinion or thought was that
13 something was going to happen. As such --

14 MR. JONES: Objection to his opinion, Your
15 Honor.

16 THE COURT: No. I am going allow it, go
17 ahead.

18 A. -- as such the F.B.I. came in and seized all the
19 documents and records in the office, which makes sense, I
20 guess, why copies were made --

21 MR. JONES: Objection.

22 MR. DREYER: Objection. Pure speculation.

23 THE COURT: Overruled. Continue your
24 answer.

25 A. Which relates to why other copies were made to

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1 move off site.

2 MS. COOMBE: I have no further questions.

3 THE COURT: Defense may cross exam.

4 MR. DREYER: May I go first, Your Honor?

5 THE COURT: Yes, Mr. Dreyer.

6

7 CROSS-EXAMINATION BY MR. DREYER:

8 Q. Good morning, Mr. Cooper.

9 A. Good morning.

10 Q. Let's start with your last comment about the
11 records that were removed from the premises of McGinn and
12 Smith. I believe you said you were part of a large copying
13 project, correct?

14 A. Correct.

15 Q. In other words, copies were made?

16 A. Correct.

17 Q. It is the copies that were moved off site,
18 correct?

19 A. Correct.

20 Q. Do you know Mr. Carr?

21 A. Yes, I do.

22 Q. Who is Mr. Carr?

23 A. Mr. Carr was our legal counsel for McGinn and
24 Smith.

25 Q. And so many of the copies of the documents that

1 being first duly sworn, was examined and testified as
2 follows under oath:

3

4 DIRECT EXAMINATION BY MS. COOMBE:

5 Q. Good morning.

6 A. Good morning.

7 Q. Could you please introduce yourself to the
8 ladies and gentlemen of the jury?

9 A. My name is Alyssa Daversa. I am a retired
10 Special Agent with the Internal Revenue Service Criminal
11 Investigation. I retired on September 30, 2010, after
12 twenty-five years of experience. I currently work on a
13 contract basis for the Internal Revenue Service to provide
14 services on the McGinn, Smith investigation.

15 Q. Can you tell us about your education, please?

16 A. I have a Bachelor of Science degree in economics
17 from the State University of New York at Albany.

18 Q. Could you tell us about the types of
19 investigations you handled when you were a special agent
20 for the Internal Revenue Service Criminal Investigation?

21 A. Well, I conducted numerous criminal
22 investigations relating to Internal Revenue Code criminal
23 violations, currency and money, banking violations, money
24 laundering. I was a member of the money laundering expert
25 witness from 2004 to the time I retired in 2010. I also

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1 was on the joint terrorism task force investigating
2 terrorism.

3 Q. Before you retired were you assigned or at all
4 involved in an investigation involving McGinn, Smith &
5 Company, Incorporated, David Smith, and Timothy McGinn?

6 A. Yes, approximately December of 1999 I
7 participated in the investigation of McGinn, Smith and
8 various McGinn, Smith entities.

9 Q. What was your role in the investigation before
10 you retired?

11 THE COURT: Did you say 1999?

12 THE WITNESS: I am sorry, 2009.

13 BY MS. COOMBE, CONTINUED:

14 Q. What was your role in the investigation before
15 you retired?

16 A. I was the lead case agent for the Internal
17 Revenue Service.

18 Q. Was there a period of time during which you were
19 retired and you were not involved in the investigation?

20 A. Yes, from October 1st, 2010, until September,
21 mid-September 2011.

22 Q. What happened in mid-September 2011?

23 A. The IRS contracted me to come back to provide
24 services relative to the investigation and interviewing
25 witnesses and analyzing documents, things like that.

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1 Q. Can you tell us over the course of your career,
2 have you received any kind of training?

3 A. Yes. I initially received basic training at the
4 Federal Law Enforcement Training Center, which consists of
5 about six months, which included basic police training,
6 federal income tax for five weeks, special investigative
7 techniques, which is determining taxpayers' income through
8 methods approved for specific items, bank deposits methods,
9 network.

10 After that, I received advanced training in
11 money laundering, terrorism financing, numerous other,
12 identity theft, and various advanced CP trainings
13 throughout my career.

14 Q. Have you ever provided any training to anyone?

15 A. Yes, I was an instructor for money laundering
16 and at various CPEs related to special agents. And then I
17 also was a resident lead instructor at the Federal Law
18 Enforcement Training Center on two different details as an
19 agent providing special agent basic training.

20 And then also previous to my contract with the
21 IRS to come back and work on the McGinn, Smith
22 investigation, I was providing instruction to special agent
23 basic trainees at the Federal Law Enforcement Training
24 Center.

25 Q. Do you hold any professional certifications?

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1 A. I am a certified fraud examiner and a certified
2 fraud specialist.

3 Q. Can you tell us what those two titles and
4 certifications mean?

5 A. A certified fraud examiner requires completing a
6 four-part exam relative to the analysis of transactions,
7 determining fraud for litigation purposes. And a certified
8 fraud specialist is similar to that, although I did not
9 take an exam for that. I was grandfathered in based on my
10 experience and education.

11 Q. I am going to show you now government's
12 Exhibit GE1C. I believe it is previously admitted, and I
13 am going to put up the screen for you. Could you tell us
14 what this is, please?

15 A. This is a hierarchy chart relative to the
16 various McGinn, Smith entities and their ownership.

17 Q. Who prepared this chart?

18 A. I did.

19 Q. What did you rely on in preparing it?

20 A. Various records, income tax records, records
21 from the Department of State determining ownership, and
22 then internal records from McGinn, Smith concerning the
23 trustee obligations for each of these trusts.

24 Q. Okay. On the left there is a blue circle for
25 Mr. McGinn, a pink circle for Mr. Smith, and a black circle

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1 for other. There is also a yellow circle for McGinn, Smith
2 Holdings, LLC. On the first box that is up there, would
3 you tell us what that is, please?

4 A. That is McGinn, Smith Capital Holdings
5 Corporation. It was established in January of 1989, and it
6 shows the ownership of twenty-five and a half percent
7 Mr. McGinn, twenty-five and half percent Mr. Smith, and
8 forty-nine percent other.

9 Q. Do you know whether Mr. McGinn and Mr. Smith
10 controlled the entity that is other there?

11 A. Yes.

12 Q. Could we look at the next part, please? What
13 entity is this?

14 A. This is TDM Cable Funding, LLC.

15 Q. I would just like to direct your attention back
16 up to McGinn, Smith Capital Holdings Corporation. It
17 indicates that it was a trustee for seventeen trusts?

18 A. Yes, that's correct.

19 Q. Okay. Next, please. What is that?

20 A. This is another entity TDMM Cable Funding, LLC.

21 Q. That again shows the ownership?

22 A. Yes.

23 Q. Could we look at the next slide, please?

24 A. That is NEI Capital, LLC and its ownership.

25 Q. And to move on to McGinn, Smith Holdings, LLC,

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1 is it ultimately controlled by Mr. McGinn and Mr. Smith?

2 A. Yes.

3 Q. Next slide, please?

4 A. McGinn, Smith Funding, LLC and its ownership.

5 Q. Could we look at the next slide, please? What
6 are those under the TDM Cable Funding, LLC?

7 A. Those are the trusts that relate to TDM Cable
8 Funding, LLC in terms of the affiliated LLC managing or
9 making the investment for those trusts.

10 Q. Could we look at the next slide, please?

11 A. That is the trust that falls under TDMM Cable
12 Funding, LLC.

13 Q. Next slide, please?

14 A. Fortress Trust 08 is the trust that was handled
15 by NEI Capital, LLC.

16 Q. Next slide, please?

17 A. Those are the trusts that were under McGinn,
18 Smith Funding, LLC as related to the investments.

19 Q. Just to clarify, the trustees for all of these
20 trusts was McGinn, Smith Capital Holdings Corporation?

21 A. Yes, that's correct.

22 Q. Is there one more slide here?

23 A. Yes.

24 Q. Could you explain that, please?

25 A. Those two trusts, Integrated Excellence Senior

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1 Trust 08 and Integrated Excellence Junior Trust 08 did not
2 have a particular LLC associated with them. So they are
3 just directly under the trustee, McGinn, Smith Capital
4 Holdings Corporation.

5 Q. Could we look at the next page, please? Could
6 you tell us what this is?

7 A. This is the ownership structure for McGinn,
8 Smith Holdings, LLC. And fifty percent is the blue dot for
9 Mr. McGinn, thirty percent for Mr. Smith, twenty percent --
10 I believe that's incorrect, but twenty percent for other.

11 Q. Mr. Smith actually owned --

12 A. Owns fifty percent.

13 Q. And Mr. McGinn thirty percent?

14 A. Correct.

15 Q. Could we look at the next slide, please?

16 A. That is McGinn, Smith Advisors, LLC.

17 Q. And the next slide, please?

18 A. And the Four Funds, FIIN, FEIN, TAIN, FAIN.

19 Q. And the next slide, please?

20 A. McGinn, Smith Funding, LLC, which is also under
21 McGinn, Smith Holdings.

22 Q. And the next slide, please?

23 A. McGinn, Smith Transaction Funding Corporation,
24 which was held by McGinn, Smith Holdings, LLC.

25 Q. The next slide, please?

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1 A. NEI Capital, LLC which was also held by McGinn,
2 Smith Holdings, LLC.

3 Q. Now, are there any more slides?

4 A. I don't think so.

5 Q. Okay. I am going to show you now previously
6 admitted Exhibits GF1A and GF1A support. Could we please
7 look at GF1A? Could you tell us what this is, please?

8 A. This is a summary chart of the e-mails that
9 Mr. Guzzetti sent to all brokers regarding the availability
10 of Firstline Trust 07 Series B available for sale after the
11 bankruptcy date of 1/25 2008.

12 Q. Were you involved in the preparation of this
13 chart?

14 A. Yes.

15 Q. Does it accurately summarize the electronic mail
16 messages that Mr. Guzzetti sent to all brokers following
17 the Firstline bankruptcy?

18 A. Yes, it does.

19 Q. If we could look now at GF1A support. Could you
20 tell us what this is, please?

21 A. These are the backup e-mails that are summarized
22 on GF1A from Mr. Guzzetti to all brokers, and they are in
23 date order.

24 Q. And the e-mails for each one of the entries on
25 the chart is there?

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1 A. Yes.

2 MS. COOMBE: Could we look at GF18, please?

3 BY MS. COOMBE, CONTINUED:

4 Q. And I will show it to you. I am handing you now
5 previously admitted Exhibit GF18. Could you tell us what
6 this is, please?

7 A. This an e-mail from Patricia Sicluna to
8 Andrew Guzzetti and it is detailing that Tim asked for a
9 list of the Firstline Series B and TDM Verifier Trust 08
10 uncollected, ticketed, and collected sales.

11 Q. And Ms. Sicluna was providing Mr. McGinn with
12 that information?

13 A. Yes.

14 Q. Can you orient us when this was sent, on
15 January 7th of 2008?

16 A. Correct. It is a few weeks before the
17 bankruptcy.

18 Q. Okay, and it says at the top Andy, FYI, Tim
19 asked me for this today. I meant to copy you. This is as
20 of today?

21 A. That's correct.

22 Q. I am showing you now previously admitted
23 Exhibits GF1B and GF1B support.

24 MS. COOMBE: Could we look at GF1B? Thank
25 you, Ron. You are ahead of me.

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1 BY MS. COOMBE, CONTINUED:

2 Q. Could you tell us what this is, please?

3 A. This is a summary of the Firstline
4 post-bankruptcy sales, and it summarizes the tickets, the
5 contracts, subscription agreements for Firstline Senior
6 Trust 07 Series B, and Firstline Senior Trust 07 after the
7 bankruptcy date of 1/25/08.

8 Q. Does this chart accurately reflect the
9 subscription agreements that were reviewed?

10 A. Yes, it does.

11 Q. Are those all included in GF1B support?

12 A. Yes, these are in date order backing up this
13 chart.

14 Q. Okay. If we could just look at one example,
15 could we look at GF1B support, please?

16 A. Yes.

17 Q. This is a ticket for Doctor Crist, and he
18 testified earlier in the trial. If we could please look at
19 the subscription agreement?

20 A. Okay.

21 Q. Could we look at the next page, please? It has
22 got Mr. Crist's signature there dated January 28th of 2008.
23 Can you tell us when the bankruptcy was?

24 A. January 25, 2008.

25 Q. Could we look at the next page, please? Who

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1 signed this?

2 A. Timothy McGinn.

3 Q. What date?

4 A. January 29, 2008.

5 Q. And if we could go back to look at GF1B again,
6 please. Could you explain to the jury how this chart was
7 created and how it relates to the support documentation?

8 A. The first column is investor name, last name,
9 first name. Then the contract date, which is on the date
10 the certificate is issued, the amount of their purchase,
11 the subscription agreement lists who signed that, which
12 principal, and the date it was signed. And then the type
13 of investment, which series of the Firstline, senior or
14 junior trust.

15 Q. So this chart just summarizes the subscription
16 agreement and ticket information that's found in GF1B
17 support?

18 A. Yes.

19 Q. I am showing you now previously admitted
20 Exhibit GF16. This is an electronic mail message between
21 Mr. Rabinovich and Mr. McGinn. And if we could look at the
22 next page, please. There is also some e-mails to
23 Ms. Birnbach at Mercantile Bank indicating that money
24 should be sent to Adirondack Trust Company for credit to
25 Stewart's Shops Corporation as more fully described below.

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1 Now Mr. Rabinovich has reflected in this e-mail
2 his father put up six hundred thousand dollars, he
3 understood that to be for a bridge loan?

4 A. Yes, that's correct.

5 Q. Did you look into what that money was actually
6 used for, the six hundred thousand dollars?

7 A. The six hundred thousand dollars came into the
8 Firstline Trust 07 Series B account, and then it was
9 transferred out to McGinn, Smith Funding, five hundred and
10 ninety-nine thousand dollars. And that went towards a
11 payment of seven hundred and eighty-two thousand, eight
12 hundred and twelve dollars and fifty cents to Stewart's
13 Shops Corporation.

14 Q. It didn't go to Firstline Security Incorporated?

15 A. No, it went in into Firstline Trust 07 Series B
16 and then out to the MS Funding, LLC account.

17 Q. I am showing you now previously admitted
18 Exhibit GF34. This is an electronic mail message dated
19 May 12th of 2008. It is from Jeff Smith to Mr. Guzzetti,
20 Mr. Smith, Mr. McGinn, Mr. Livingston. The subject is
21 weekly report, report for May 5th. It says that Mr. Smith
22 was the vice-president of institutional sales.

23 Could we look at the next page, please? Could
24 we look at the last paragraph? It states:

25 As far as Andrew Nigrelli, who I think is my

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1 strongest lead so far, his compliance department is
2 currently reviewing the Firstline Series B deal. I should
3 hear something from him early next week.

4 Now, this was sent in May of 2008. Could you
5 remind us of when the bankruptcy occurred?

6 A. January 25, 2008.

7 Q. And this electronic mail message went to both
8 Mr. McGinn and Mr. Smith?

9 A. Yes, that's correct.

10 Q. I am handing you previously admitted
11 Exhibit GB1A and GB1A support. Could you tell us what this
12 chart shows?

13 A. This chart shows McGinn, Smith Transaction
14 Funding Corporation and the payments directly out of that
15 3083 Mercantile account to Mr. McGinn. The dates are
16 listed on the side of the amounts for a total of two
17 hundred and thirty thousand dollars paid directly to him.

18 Q. Could we look at GB1A support?

19 A. Yes.

20 Q. Could you just hold up GB1A so that the jury
21 could see it? Could you explain to the jury what that is
22 and how it fits in with the chart that we just looked at?

23 A. These are the bank statements that related to
24 McGinn, Smith Transaction Funding Corporation, and they
25 would list out the debt amounts from that account that are

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1 going to Mr. McGinn's account. There are also e-mails
2 attached from Mr. McGinn directing the transfer of those
3 monies.

4 MS. COOMBE: Could we look at the next page,
5 please, Ron, the next page.

6 BY MS. COOMBE, CONTINUED:

7 Q. Is this an example of the electronic mail
8 messages that you found where Mr. McGinn directed the
9 transactions that are summarized on GB1A?

10 A. Yes. He would direct these transfers from the
11 account at Mercantile Bank into his own bank account.

12 Q. You see number two, please wire the following
13 items from McGinn, Smith Transaction Funding Corp, and you
14 see it says one hundred thousand dollars to CMS Financial
15 Services, and then the one that relates to the chart is the
16 next one, B, fifty thousand dollars to M&T Bank?

17 A. Yes, that's correct.

18 Q. Account name of Timothy M. McGinn. And are
19 there also wire confirmations in this package?

20 A. Yes, there are some wire confirmations
21 associated with the various transfers as well.

22 MS. COOMBE: Could we look at the next page,
23 please?

24 BY MS. COOMBE, CONTINUED:

25 Q. Is that a wire confirmation?

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1 A. Yes, it is.

2 Q. And is that for the same fifty thousand dollar
3 transaction that was in that e-mail that we just looked at?

4 A. Yes.

5 Q. Is there this type of backup for every one of
6 the transactions listed on GB1A?

7 A. There is backup. I would have to look sure and
8 make sure that they all have wire confirmations. I don't
9 know that without looking through them. Yes, there is.

10 Q. Are there also e-mails for each one of those
11 transactions?

12 A. Yes.

13 Q. I am handing you now previously admitted
14 Exhibit GB1B and GB1B Support?

15 A. Okay.

16 Q. And we are going to go ahead and look at -- you
17 are familiar with these charts that we have looked at
18 before during the trial. They show payments from MSTF to
19 the Four Funds investors and Mr. Cornacchia and to other
20 non-MSTF investors?

21 A. Yes, that's correct.

22 Q. Okay. We can just look through the charts.

23 MS. COOMBE: If we could look at the next
24 page, please. Can I have that back, please? Thank you.
25 Could we put it up on the Elmo.

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1 BY MS. COOMBE, CONTINUED:

2 Q. Could you tell us what this is, please?

3 A. This is a summary schedule for McGinn, Smith
4 Transaction Funding Corporation, and it relates to
5 Mercantile Bank 3083 and the three buckets that Mr. Shea
6 discussed concerning payments to non-MSTF investors. The
7 first bucket being the Four Funds interest payments. The
8 second being Cornacchia, and the third investing in
9 non-MSTF interest.

10 It is a summary schedule that I created using
11 bank records, looking at the exhibits that Mr. Shea had
12 prepared and doing my analysis, analyzing the e-mails and
13 interest schedules and wire transfers associated with these
14 transactions.

15 Q. Okay. So there are several different columns
16 here. The first one is the date, that's the date of the
17 transaction?

18 A. Yes.

19 Q. And then check and debits, what does that refer
20 to?

21 A. It is just whether a check was issued or a debit
22 on that account made payable to National Financial Services
23 or a check was issued to a particular entity or person.

24 Q. The next column, debt amount?

25 A. That is the amount that was transacted or

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1 conducted.

2 Q. And then if we go on, there is a comments
3 column?

4 A. The comments relate to comments that Mr. Shea
5 had put on his schedules that he had prepared when he was
6 analyzing these accounts in determining what these non-MSTF
7 investor payments were for.

8 Q. Then there is a miscellaneous column?

9 A. Correct. That tells whether there is a debit
10 memo associated with that transaction or a wire transfer or
11 a check, so on and so forth.

12 Q. Then there is a column, e-mail, what does that
13 refer to?

14 A. If there is an e-mail directing the transfer of
15 these funds.

16 Q. And were those e-mails all sent by the same
17 person?

18 A. Yes, Timothy McGinn.

19 Q. And then the next column is wire instructions,
20 what does that refer to?

21 A. If there is a wire transaction attached that we
22 saw in the bank records, it would have an X or if it was
23 not available.

24 Q. What does interest schedule refer to?

25 A. That relates to the interest schedule for the TM

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1 supplemental payments that Brian Cooper prepared relative
2 to this these Four Funds, supplemental payments to non-MSTF
3 investors.

4 Q. Could you please hold up GB1B support, the
5 binder, for the jury. Can you explain to them what that is
6 and how it relates to this chart that we have up on the
7 screen?

8 A. This binder is divided into three parts. Bucket
9 one, bucket two, bucket three. And it is the bank records,
10 e-mails, wire transfers, Internet -- or I am sorry,
11 interest schedules that relate to each of those
12 transactions.

13 Q. So all of the documents you relied on for the
14 chart are found in that binder?

15 A. Yes, that's correct.

16 Q. So if someone wanted to look up one of those
17 e-mails, they could look under the appropriate date and
18 find it in there?

19 A. Yes, that's correct.

20 Q. I am handing you now Government's Exhibit 13,
21 which is not yet in evidence. Could you tell us what this
22 is, please?

23 A. This is a bank statement for McGinn, Smith
24 Transaction Funding Corporation, Mercantile account 3083
25 for June 30, 2008, to July 31, 2008.

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1 Q. Are these copies of documents that are also
2 found in the support binder that we were just looking at?

3 A. Yes.

4 MS. COOMBE: Your Honor, I move the
5 admission of Government's Exhibit 13.

6 THE COURT: Any objection?

7 MR. DREYER: No objection.

8 MR. JONES: No.

9 THE COURT: Received.

10 (Exhibit No. 13, received.)

11 BY MS. COOMBE, CONTINUED:

12 Q. Could we look at Exhibit 13, please? Does this
13 relate to a specific transaction on the chart?

14 A. Yes, it does.

15 Q. And if we could just go back to GB1B Support for
16 a moment. Which transaction does this relate to?

17 A. It relates to the bucket one, 7/17 debit memo
18 for one hundred and twenty-one thousand, three hundred and
19 eight dollars and seventy-six cents.

20 Q. I don't see that number on your spreadsheet.
21 Can you explain to us what it relates to?

22 A. It relates to the -- can you move that over just
23 a little bit? Okay. Go to the left again. I am sorry.
24 The ninety-two thousand, three hundred and one dollar and
25 twenty-six cents debit and the twenty-nine thousand, seven

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1 dollars and fifty cents debit?

2 Q. And do you know whether that ninety-two
3 thousand, three hundred and one dollar and twenty-six cent
4 transaction is one of the wires alleged in the indictment
5 for mailings?

6 A. Yes, it is. It is for a check.

7 Q. Okay, and so this indicates that on July 17,
8 2008, the amount of ninety-two thousand and change was
9 debited. Can we go ahead now and look at -- can you
10 explain to us why it is a different amount under
11 miscellaneous debit memo?

12 A. That is the total amount for the debit memo. It
13 was one debit out of that account, and it broke out into
14 two checks.

15 Q. Could we go back now to Exhibit 13. And could
16 you tell us what this is again, please?

17 A. Well, there are several things here, but the
18 first part is a McGinn, Smith Transaction Funding Corp.
19 bank statement from Mercantile Bank account number 3083,
20 relating to the month June 30, 2008, to July 31, 2008, for
21 that transaction.

22 Q. Okay. Can you tell us what page we would find
23 the information about that transaction on?

24 A. It is on page two, about three quarters of the
25 way down, 7/17 debit memo.

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1 MS. COOMBE: Okay. Could we look at the
2 next page, please?

3 BY MS. COOMBE, CONTINUED:

4 Q. Could you just tell us what a debit memo is?

5 A. It is just a deduction from, you know, internal
6 banking function to deduct money from that account and
7 credit it towards something else, the purchase of a check
8 or transfer to another account.

9 MS. COOMBE: Could we look at the next page,
10 please?

11 BY MS. COOMBE, CONTINUED:

12 Q. Is there anything related to that transaction
13 here?

14 A. Yes. There is a debit memo on the right-hand
15 column in the middle, the second debit memo. It is
16 miscellaneous debit for that amount.

17 MS. COOMBE: Okay, and could we look at the
18 next page, please?

19 BY MS. COOMBE, CONTINUED:

20 Q. This is an electronic mail message from
21 Mr. Cooper to Ms. VanBrocklin at Mercantile Bank?

22 A. Yes, that is correct.

23 Q. And if you could look at number two, it says:
24 Please overnight check in the amount of ninety-two
25 thousand, three hundred and one dollars and twenty-six

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1 cents payable to National Financial Services. Please send
2 this check to the attention of Brian Cooper, and he
3 provides the address of the broker-dealer in Albany; is
4 that correct.

5 A. Yes, that is correct.

6 Q. Do you know where Mercantile Bank, where
7 Ms. VanBrocklin is located?

8 A. Boca Raton, Florida I believe.

9 Q. Is there anything in this exhibit?

10 A. There is a check. I am sorry, an interest
11 schedule and then a check.

12 Q. Okay. Could you tell us what this is, please?

13 A. This is the Brian Cooper, Tim McGinn
14 supplemental interest payments schedule that he prepared
15 relative to the Third Albany Income Notes interest payment
16 to the investors listed on this schedule, the Fishers and
17 the Sacks and Mr. Cohen.

18 And this is the breakdown. On the left column
19 there is their investment. In the middle column is amount
20 of interest associated with that investment. And the third
21 column is their name and then the two totals totaling the
22 check amount of ninety-two thousand, three hundred and one
23 dollars and twenty-six cents.

24 Q. So that amount would go to MFS. Can you explain
25 to the ladies and gentlemen of the jury what happened after

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1 that?

2 A. This particular situation, the check would be
3 deposited in their accounts. They maintained accounts at
4 National Financial Services.

5 MS. COOMBE: Could we look at the next page,
6 please? And the page after that.

7 BY MS. COOMBE, CONTINUED:

8 Q. Is there a check here that relates to the
9 ninety-two thousand transaction that we have been talking
10 about?

11 A. Yes, Check Number 617201 in the amount of
12 ninety-two thousand, three hundred and one dollars and
13 twenty-six cents. And it is for TAIN and FEIN interest,
14 ten and quarter percent.

15 Q. Now, that is just one example of this type of
16 documentation is in that binder for every entry that is on
17 GB1B?

18 A. Yes, that's correct.

19 Q. I am showing you now previously admitted Exhibit
20 GB8. On GB1B there was a second bucket I think you
21 referred to it as involving payments to Mr. Cornacchia?

22 A. Yes.

23 Q. Could you tell us what this is, please?

24 A. This is an e-mail from Timothy McGinn to
25 Mr. Cornacchia dated July 15, 2008, and he is informing him

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1 that he is going to be wiring five thousand dollars to his
2 Wachovia account, and he will continue to send five
3 thousand dollars on the fifteenth of each month through
4 2008.

5 MS. COOMBE: Could we go back to GB1B
6 Support, please?

7 BY MS. COOMBE, CONTINUED:

8 Q. And if you look at the blue, that's the
9 Mr. Cornacchia payments?

10 A. Yes, that's correct.

11 Q. If we could look over to the right, that first
12 column is e-mail and the second -- I can't tell. The first
13 column is e-mail over there, and that indicates the e-mail
14 that we just looked, that first checkmark, right?

15 A. Right. If there is an e-mail available to
16 support that transfer that we were able to document. If
17 there is a wire instruction that documents that transfer,
18 and whether or not there was an interest schedule. There
19 were no interest schedules associated with the Cornacchia
20 payments because it was a verbal agreement from what we had
21 seen in our analysis.

22 Q. So if the jury were to look in that binder, they
23 would find the backup documentation as indicated with those
24 Xs?

25 A. Yes, that's correct.

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1 Q. I am handing you now Government's Exhibit 14,
2 which is not yet admitted. Is Government's Exhibit 14 some
3 documentation relating to one of the transactions in the
4 third bucket and the GB1B Support that we have been talking
5 about?

6 A. Yes, it is similar information. McGinn and
7 Smith Transaction Funding Corporation bank statement, debit
8 memos, e-mail, and a response from someone at the bank
9 stating that that transaction was completed.

10 MS. COOMBE: Your Honor, I move the
11 admission of Government's Exhibit 14.

12 THE COURT: Any objection?

13 MR. DREYER: No objection.

14 THE COURT: Received.

15 (Exhibit No. 14, received.)

16 MS. COOMBE: Thank you, Your Honor. Could
17 we please look at 14?

18 BY MS. COOMBE, CONTINUED:

19 Q. And this -- we want to look at March 20, 2009 --
20 the March 23, 2009, payment; is that correct?

21 A. Yes.

22 Q. Okay, and what page is that on?

23 A. It is on page two. There is a debit memo on
24 March 23rd for five thousand, five hundred and eleven
25 dollars.

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1 Q. And right above it is a wire transfer to
2 Mr. Cornacchia?

3 A. Yes.

4 Q. Could we look at the next page?

5 A. On the next page there is miscellaneous debit
6 memo for five thousand, five hundred and eleven dollars.

7 Q. Is it your understanding that this transaction
8 is one of the transactions alleged in the indictment as a
9 mail or wire fraud count?

10 A. Yes.

11 MS. COOMBE: Could we look at the next page,
12 please?

13 BY MS. COOMBE, CONTINUED:

14 Q. Could you tell us what this is?

15 A. This an e-mail transmission from Mr. McGinn to
16 Denise Birnbach and Joan Dixon and Katherine VanBrocklin at
17 Mercantile Bank instructing the wire -- I am sorry, the
18 checks from McGinn and Smith Transaction Corporation to be
19 overnighted to Burton Fisher, and he lists out the amounts
20 of the various checks, which total five thousand, five
21 hundred and eleven dollars.

22 Q. And that's towards the bottom of the page,
23 correct?

24 A. Yes, that's correct.

25 Q. Okay.

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1 MS. COOMBE: Could we look at the next page
2 please. And the next page.

3 BY MS. COOMBE, CONTINUED:

4 Q. Could you tell us what this is?

5 A. This document is a fax that was sent from the
6 bank indicating that these transactions had been completed,
7 and they are bracketed and they say done.

8 Q. Next page, please.

9 A. That's it.

10 Q. All right. Could we go back to GB1B Support,
11 please. Now, did you include every transaction that
12 Mr. Shea had on his spreadsheet in this summary chart?

13 A. No.

14 Q. Why not?

15 A. At the time I prepared this chart I only
16 included the transactions that I could verify were in fact
17 non-MSTF investor payments that we had support to
18 corroborate that, so I didn't include every one.

19 MS. COOMBE: Could we please look at GB1A
20 again?

21 BY MS. COOMBE, CONTINUED:

22 Q. That shows again the transactions where
23 Mr. McGinn took money directly from MSTF?

24 A. Yes, that's correct.

25 Q. I am handing you now previously admitted

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1 Exhibits GB1D and GB1D Support, GB44, GD10, GB49, GB51.

2 Could you tell us what this is, please?

3 A. This is a summary chart basically showing the
4 accounting entries as they were on the books for McGinn,
5 Smith Transaction Funding, NEI Capital, LLC before
6 November 2, 2009. And then what they appear to look like
7 after November 2, 2009.

8 Q. So before November 2, 2009, how did the books of
9 those two entities look?

10 A. McGinn, Smith Transaction Funding books
11 reflected that there was a loan due from Timothy McGinn of
12 one hundred and thirty thousand dollars, and then NEI books
13 due from Timothy McGinn was a loan of two hundred and ten
14 thousand dollars.

15 Q. So in other words, it looked like Mr. McGinn
16 owed --

17 MR. DREYER: Objection, Your Honor.

18 THE COURT: Sustained as to form. Rephrase.

19 BY MS. COOMBE, CONTINUED:

20 Q. Could you explain who owed who money in the MSTF
21 books?

22 A. Yes. Mr. McGinn owed MSTF one hundred and
23 thirty thousand dollars and NEI two hundred and ten
24 thousand dollars.

25 Q. Based on your review of the bank records, where

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1 did that one hundred and thirty thousand dollars come from
2 that's reflected on the MSTF books?

3 A. It came out of the McGinn, Smith Transaction
4 Funding Corporation bank account.

5 Q. It didn't come from NEI Capital, LLC?

6 A. No.

7 MS. COOMBE: Could we please look at GB44.

8 BY MS. COOMBE, CONTINUED:

9 Q. This is a QuickBooks entry dated 10/26 2009, and
10 does it show the two hundred and thirty thousand dollars
11 that Mr. McGinn had taken from MSTF?

12 A. Yes, it does.

13 Q. Okay.

14 MS. COOMBE: And could we go back to GB1D,
15 please? And could we look at GD10.

16 BY MS. COOMBE, CONTINUED:

17 Q. Could you tell us what this is?

18 A. This is the loan account on the books of NEI
19 Capital, LLC for Timothy McGinn. And it shows that he has
20 a balance owed to that LLC of two hundred and ten thousand
21 dollars or he has a loan in that amount.

22 MS. COOMBE: Okay. If we could go back to
23 GB1D.

24 BY MS. COOMBE, CONTINUED:

25 Q. Could you tell us how the books and records have

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1 changed on November 2, 2009?

2 A. Brian Shea was directed to make that change --

3 MR. DREYER: Objection, Your Honor.

4 THE COURT: Overruled.

5 A. Brian Shea was directed to make that change by
6 Mr. Smith.

7 BY MS. COOMBE, CONTINUED:

8 Q. What was the change that was made?

9 A. On November 2, 2009, he changed the amount of
10 the loan due from Timothy McGinn to zero on the books of
11 McGinn, Smith Transaction Funding, and he added that to the
12 amount due from Timothy McGinn to NEI making that three
13 hundred and forty thousand dollars. It is a one hundred
14 and thirty thousand dollar increase to the NEI books and a
15 decrease to the MSTF books.

16 Q. Based on your review of the records, is that
17 consistent with what actually happened?

18 A. No.

19 Q. Why not?

20 A. Because what actually happened was Mr. McGinn
21 received the money from McGinn, Smith Transaction Funding
22 Corporation bank account.

23 Q. And you have referenced some other exhibits that
24 support those entries that Mr. Shea has previously
25 testified about?

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1 A. Yes, that's correct.

2 Q. Were you ever involved in the execution of any
3 search warrants in connection with the investigation of
4 Mr. McGinn and Mr. Smith?

5 A. Yes, I was.

6 Q. Could you tell us when the search warrants were
7 executed?

8 A. On April 20th of 2010 we executed search
9 warrants at numerous homes and business locations of
10 Mr. McGinn and Mr. Smith.

11 Q. Are you familiar with the records that were
12 recovered during the execution of those search warrants?

13 A. Yes, I am.

14 Q. I am handing you now previously admitted
15 Exhibits GB30, GB32, GB46, GB41A, GB41B, and GB41C. Could
16 we please look at GB30?

17 A. Yes.

18 Q. Could you tell us what this is, please?

19 A. This is handwritten letter found in Mr. Smith's'
20 residence in Saratoga, New York, and it is from Mr. Smith
21 and Mr. McGinn to the attention of Jay Kaplowitz et al.,
22 Gersten, Savage, and it is dated October 10, 2009.

23 Q. Could we please look at GB32. Could you tell us
24 what this is and whether it was recovered during the search
25 warrants, and if so, from where?

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1 A. Yes, this was recovered from the search warrant
2 executed at Mr. Smith's home in Saratoga, New York, and it
3 has exhibits attached referencing to this letter that was
4 sent to Gersten, Savage to Mr. Kaplowitz's attention.

5 MS. COOMBE: Could we look at GB41A, B, and
6 C.

7 BY MS. COOMBE, CONTINUED:

8 Q. Could you tell us what those are?

9 A. GB41A are the spreadsheets prepared by
10 Brian Shea with regards to the McGinn, Smith Transaction
11 Funding non-MSTF investor payments relating to the Four
12 Funds, Mr. Cornacchia, and non-MSTF SAI investor interest
13 payments.

14 Q. Could you tell us where that was found, please?

15 A. That was also found in Mr. Smith's home in
16 Saratoga, New York.

17 MS. COOMBE: Could we please look at GB41B?

18 BY MS. COOMBE, CONTINUED:

19 Q. Could you tell us what this is, please?

20 A. These are accounting records for the due from
21 account of McGinn, Smith Advisors and McGinn, Smith Capital
22 Holdings for the books of McGinn, Smith Transaction
23 Funding, and it lists a series of payments on 10/12/09 that
24 are under the heading of due from McGinn, Smith Advisors
25 and McGinn, Smith Capital Holdings.

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1 Q. Could you tell us where this was found, please?

2 A. This was found at Mr. Smith's home in Saratoga,
3 New York.

4 Q. GB41C, please?

5 A. This is a handwritten schedule listing out fees
6 owed to McGinn, Smith Advisors and McGinn, Smith Capital
7 Holdings, various information about totals for the Four
8 Funds and the allocation of the fees to MSTF, which is
9 McGinn, Smith Transaction Funding, with a series of
10 spreadsheets attached and the various documents relating to
11 those calculations.

12 Q. Where was that found?

13 A. Mr. Smith's home in Saratoga, New York.

14 Q. GB46, please.

15 A. GB46 is a series of spreadsheets relating to the
16 month end capital estimates with handwriting notes on the
17 majority of the pages and then some handwritten documents
18 relating to calculations about month end capital estimates,
19 the net capital.

20 Q. Where was this found?

21 A. Mr. Smith's home in Saratoga, New York.

22 Q. Could we please look now at GL6. I am handing
23 you Exhibit GL6, which I believe was previously admitted.
24 This is an electronic mail message dated April 12th of 2007
25 among a Mr. Schmitz, Mr. Smith, Mr. Lasch and a Mr. Welles.

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1 MS. COOMBE: If we could look down at the
2 middle of the first page. Actually if we could look at the
3 second page just for a moment.

4 BY MS. COOMBE, CONTINUED:

5 Q. Is Mr. Welles outlining an agenda for an
6 upcoming meeting?

7 A. Yes.

8 MS. COOMBE: Could we look now at the first
9 page in the middle?

10 BY MS. COOMBE, CONTINUED:

11 Q. There is a response from Mr. Smith. It states:
12 As opposed to the response from ML, I plan to be far more
13 effusive in my praise of the agenda as laid out. It is
14 comprehensive but focused. There appears to be
15 sufficient -- I am not going to read the next word -- to
16 confuse our clients or at the very least, distract them
17 long enough from asking any difficult questions. Finally,
18 after review, there appears to be nothing on the agenda
19 that falls under my expertise, thus I assume that I will
20 not have any responsibility of preparing for the meeting.
21 I plan on wearing one of my expensive suits, looking
22 confident, and concentrate on introducing the three of you
23 without forgetting any of your names. While working on the
24 presentation over the weekend, if any of you need to
25 contact me, I can be reached at my second home in Vero Beach.

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1 With warmest regards, Dave. And there is in parentheses
2 Smith. Did Mr. Schmitz write back?

3 A. Yes.

4 Q. He wrote: That was pretty damn funny of you
5 Smith. I laughed out loud. I really did. It would have
6 been even funnier if it wasn't the, and there are a bunch
7 of symbols, truth and a smilely face.

8 I am handing you now Government's Exhibit GL10.

9 MS. COOMBE: Can we go to the second page,
10 please?

11 BY MS. COOMBE, CONTINUED:

12 Q. This is an electronic mail message from the
13 bottom from Ryan Rogers to Mr. Smith and Mr. McGinn. He
14 was a senior vice-president at McGinn, Smith Advisors, LLC
15 in New York. Did you understand him to have any other
16 employment with the broker-dealer?

17 A. No.

18 Q. Do you know if he worked as a broker?

19 A. Yes.

20 Q. In New York City?

21 A. Yes, he did.

22 Q. Mr. Rogers wrote: Any possibility the three of
23 us could have a ten minute conference call this weekend --
24 I am sorry, this week. Please let me know.

25 Mr. McGinn wrote back, sure. Subject?

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1 Mr. Rogers responded Pine Street.

2 If we could look at the first page at the
3 bottom. I am not going to read the first word, ladies and
4 gentlemen. Quit wasting my time. Just sell the -- I am
5 not going to read the word -- I give you to help restore my
6 rapidly shrinking net worth. On further reflection, I
7 would love to talk with you on any subject including any
8 personal problems you might be having. As I have always
9 stated, my door is always open. My time is your time. Let
10 me know when it is convenient for you. With warmest
11 regards, your best friend.

12 MS. COOMBE: Could we look at the next page
13 please.

14 BY MS. COOMBE, CONTINUED:

15 Q. Davey.

16 Mr. Rogers wrote back, if you look at the first
17 page: Are you both available now.

18 I am handing you now Exhibit GL13. That is an
19 electronic mail message dated April 21st of 2009 from
20 Mr. Smith to Mr. Guzzetti. And it is forwarding a message
21 that Ms Sicluna had sent to Mr. Guzzetti regarding Verifier
22 07R Redemptions. And there is a list of total yet to be
23 redeemed and a list of investors to be redeemed; is that
24 correct?

25 A. Yes.

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1 Q. At the bottom Mr. Guzzetti had asked, please get
2 me the list of redemptions we have not paid yet.

3 Do you have any understanding of what the term
4 redemptions means?

5 A. That means that when an investor's maturity term
6 came about, if they wanted to get out of the investment,
7 they would be redeemed.

8 MS. COOMBE: And if we could look up at the
9 top of that e-mail, please.

10 BY MS. COOMBE, CONTINUED:

11 Q. Mr. Smith wrote: Andy, Jeff is collecting
12 thirty thousand dollars tomorrow. Which squeaky wheel
13 should we take care of? Zapelta or Kohl?

14 Do you have any understanding of who Zapelta or
15 Kohl are?

16 A. I believe they are investors.

17 Q. Do you have any understanding about what the
18 squeaky wheel refers to?

19 A. People that would complain about not being
20 redeemed or being paid their investment back.

21 Q. I am handing you now Government's Exhibit GE17.
22 At the bottom this is an electronic mail message from
23 Mr. Guzzetti to all brokers advertising the deals for the
24 day?

25 A. Yes, that's correct.

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1 MS. COOMBE: Could we look at the top,
2 please?

3 BY MS. COOMBE, CONTINUED:

4 Q. It is an electronic mail message from Mr. McGinn
5 writing back to Mr. Guzzetti. He writes: Andrew, I am
6 going to get involved here. We absolutely need to close
7 this deal. The letter I proposed will be sent out to every
8 bondholder in prior Verifier deals. I don't understand the
9 reluctance of the RRs.

10 Do you understand what that refers to?

11 A. Registered representatives.

12 Q. To get some help. I don't need to be paid. I
13 definitely do not want to preempt their relationship with
14 clients. But the truth is that this deal is slow moving
15 and it must, must in all caps, get done, Tim.

16 I am handing you now government Exhibit GE3.
17 This is an electronic mail message from Mr. Guzzetti to
18 Mr. McGinn, Mr. Smith, and some other people.

19 MS. COOMBE: If we could go to the second
20 page, please.

21 BY MS. COOMBE, CONTINUED:

22 Q. Is Mr. Guzzetti proposing the purchase of some
23 research program that would cost thirty-six to forty
24 thousand dollars a year?

25 A. Yes.

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1 MS. COOMBE: Could we look at the first
2 page, please.

3 BY MS. COOMBE, CONTINUED:

4 Q. At the bottom Mr. McGinn wrote back, this is the
5 first time I am hearing about this. I need to know more,
6 much more, including what the returns would be and what
7 benefits, if any, would enure to the rest of the firm.

8 MS. COOMBE: Could we look above that at
9 what Mr. Smith wrote.

10 BY MS. COOMBE, CONTINUED:

11 Q. He wrote: More evidence that the inmates are in
12 control. What -- and I am not going to read those words,
13 ladies and gentlemen -- is going on? I am the CEO and no
14 one has even approached me about spending forty thousand
15 dollars. At this point the answer is no.

16 And he goes on to explain that there has to be a
17 complete cost benefit analysis. Did Mr. Guzzetti write
18 back?

19 A. Yes.

20 Q. He wrote: Curt has followed the correct
21 procedures by coming to me for my input. This possibly
22 large expenditure, plus my complete lack of knowledge about
23 our Boston operations, required me to bring the request to
24 you gentlemen. You can be sure that all expenditure
25 requests far less than this are run by you gentlemen before

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1 a decision is made. He indicates that he will be available
2 to discuss the matter.

3 I am handing you now Exhibits GK13 and GL9?

4 MS. COOMBE: Could we look at GK13, please.

5 BY MS. COOMBE, CONTINUED:

6 Q. This is an electronic mail message dated
7 January 14th of 2009 from Mr. Smith to Mr. McGinn. He
8 wrote: Tim, I need two pieces of information from you by
9 tomorrow morning if possible. He wants the current balance
10 of Lynn's loan. And two, my value for Mr. Cranberry. This
11 has to be quite accurate as I am meeting with my estate
12 attorney tomorrow afternoon, and Lynn and I have to shift
13 money around between us and our respective net worths are
14 critical in determining that number. I also need this
15 information for my financial statement for the insurance
16 departments and Coventry is crawling up my -- I am not
17 going to read that word.

18 Ms. Daversa, are you familiar with -- do you
19 have any understanding of what financial statement
20 Mr. Smith is referring to in the last sentence?

21 A. Yes, the financial statements that were provided
22 to Pennsylvania and Texas.

23 MS. COOMBE: Could we looking at GL9,
24 please?

25 BY MS. COOMBE, CONTINUED:

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1 Q. This is an electronic mail message dated January
2 20th of 2009 from a man with a very difficult to pronounce
3 name. So I am just going to call him Mr. N, to Mr. McGinn
4 and Mr. Smith, he wrote: The Pennsylvania Insurance
5 Department acknowledged receipt of Tim M's 2007 tax return,
6 but they continue to ask us why Tim is not able to provide
7 reviewed financial statements for 2007. Can you tell me
8 how we should explain that?

9 Do you have an understanding of whether this has
10 any relationship to the personal financial statements that
11 were filed with Pennsylvania?

12 A. Yes, I believe it directly relates to that.

13 Q. Mr. Smith wrote back: I thought the answer was
14 provided by our consultant, I can't remember his name, that
15 if Tim was not active in the business and gave his
16 MS Capital Holding proxy to me, that it would not be
17 necessary to provide his financials. Tim's financials are
18 quite complicated and include investments in a large number
19 of private partnerships and LLCs that in today's
20 environment are quite illiquid and difficult to evaluate.
21 Now that the financials require a review instead of a
22 compilation, the time to prepare and the cost have grown
23 considerably. That is a cost that we would all like to
24 avoid during these difficult times.

25 Are you familiar with any other reason why

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1 Mr. McGinn would want to avoid filing his personal
2 financial statements in Pennsylvania in 2009?

3 MR. JONES: Objection.

4 MR. DREYER: Objection.

5 THE COURT: Sustained. No foundation.

6 BY MS. COOMBE, CONTINUED:

7 Q. I am handing you now Government's Exhibit GD1A.
8 Going back to GL9 for a moment, by January of 2009, are you
9 aware of whether Mr. McGinn and Mr. Smith had received any
10 money which they had not reported on their tax returns
11 because they claimed that they were loans?

12 A. Yes.

13 Q. Are you aware of whether any of those
14 transactions were reported as loans on personal financial
15 statements filed with Pennsylvania and Texas?

16 A. They were not.

17 Q. Do you have any understanding of why Mr. McGinn
18 would want to avoid filing his personal financial
19 statements in Pennsylvania?

20 MR. JONES: Objection.

21 MR. DREYER: Objection.

22 THE COURT: Overruled. You may answer.

23 A. I believe because he was not --

24 MR. JONES: Objection. She believes.

25 THE COURT: Sustained as to that.

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1 A. The loans were not --

2 MR. JONES: Objection.

3 THE COURT: Overruled. Answer the question.

4 A. The loans were not reflected on the financial
5 statements.

6 MS. COOMBE: Could we look at GD1A, please.

7 BY MS. COOMBE, CONTINUED:

8 Q. Could you tell us what this is, please?

9 A. This is a summary chart of the monies that were
10 dispersed from the LLCs directly to Mr. McGinn, Mr. Smith,
11 and Mr. Rogers during the time period 2006 to 2009.

12 Q. Could you please read the amounts that each
13 gentleman received?

14 A. Timothy McGinn received one million, three
15 hundred and six thousand, one hundred forty-two dollars.
16 David Smith received one million, five hundred thirty-two
17 thousand dollars. And Matthew Rogers received nine hundred
18 and seventy-three thousand dollars.

19 Q. Now, does this chart reflect every penny that
20 Mr. McGinn and Mr. Smith took from the LLCs that were
21 affiliated with the trusts?

22 A. No, this chart represents the monies that took
23 on the characteristic of fees that we were able to match up
24 with disbursements from the LLCs associated with the
25 purchase of that investment. McGinn, Smith & Company

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1 underwriting fees were also paid around the same time, and
2 they paid themselves. So those were included in this
3 chart.

4 Q. Why did you engage in that analysis instead of
5 just listing every penny that Mr. McGinn, Mr. Smith and
6 Mr. Rogers had taken from the LLCs?

7 A. We took a conservative approach to make sure
8 that the monies had the characteristic of fees so there was
9 no chance that they were loans.

10 Q. I am handing you previously admitted Exhibits
11 GJ3, GJ9, GJ5, GJ11, GJ7, and GJ13. Could you tell us what
12 those are, please?

13 A. These are certified blue ribbon copies of
14 official tax filings for the years 2006, 2007, 2008 for
15 Mr. Smith and Mr. McGinn and their respective spouses.

16 MS. COOMBE: Could we go back to GD1A,
17 please?

18 BY MS. COOMBE, CONTINUED:

19 Q. Have you reviewed those returns and can you tell
20 us whether Mr. McGinn reported any of the 1.3 million
21 dollars that he had received on his 2006, 2007 or 2008 tax
22 returns?

23 A. No, that income is not reported.

24 Q. Based on your review of the income tax returns
25 for Mr. Smith, did he report any of 1.5 million dollars

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1 that he had received in 2006, 2007, and 2008?

2 A. None of that income is reported.

3 Q. I am handing you now Government's Exhibits GJ2,
4 4, 6, 8, 10, and 12.

5 MS. COOMBE: Could we look at GJ2, please?

6 BY MS. COOMBE, CONTINUED:

7 Q. And could you tell us what this is?

8 A. This is an official blue ribbon copy of a
9 certificate of assessments and payments for David Smith's
10 transcript of account for the calendar year 2006 with the
11 Internal Revenue Service.

12 Q. Does that have some relationship to the 2006
13 return that we just talked about?

14 A. Yes, this transcript details all of the events
15 that occur for that particular calendar year for that
16 taxpayer regarding withholdings, returns filed, payments
17 made, inquiries by the Internal Revenue Service,
18 extensions, anything that happens within your account
19 relative to that year.

20 Q. Are GJ4, 6, 8, 10, and 12 other examples of
21 certificates?

22 A. Yes.

23 Q. Or transcripts, I should say?

24 A. Yes.

25 Q. I am handing you now Exhibit GJ1A, which has

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1 been previously admitted. Could you tell us what this is,
2 please?

3 A. This is a summary chart of a monies diverted
4 from the various McGinn, Smith trust and related entities
5 to Mr. McGinn, Mr. Smith, and Mr. Rogers.

6 Q. Who prepared this chart?

7 A. I did.

8 Q. What did you rely on?

9 A. I relied on bank records, internal accounting
10 records, e-mails.

11 Q. I would like to direct your attention -- did you
12 prepare a binder of support documentation for this chart?

13 A. Yes, I did.

14 Q. I am showing you what is marked as GD1A. Could
15 you look at this and tell me if it is the support for GJ1A?

16 A. Yes, it is.

17 Q. We will just fix that label so it says GJ1A.

18 Could you just hold that up and show it to the jury and
19 explain to the jury what is in that binder, please?

20 A. This has monthly tabs for each year starting in
21 December -- I am sorry, October of 2006 and it documents
22 all the monies received by Mr. McGinn, Mr. Smith, and
23 Mr. Rogers including e-mails, internal accounting records,
24 bank statements, wire transfers, and some documentation for
25 the various LLC entities.

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1 Q. Now, let's look back at GJ1A. Were all of the
2 transactions reflected on this chart booked as loans
3 eventually?

4 A. Yes, eventually.

5 Q. Are you aware of whether there is any evidence
6 that they were legitimate loans?

7 MR. JONES: Objection.

8 MR. DREYER: Objection.

9 THE COURT: Overruled.

10 A. I didn't find anything other than the accounting
11 entry to substantiate that they were bona fide loans.

12 BY MS. COOMBE, CONTINUED:

13 Q. And for the 2006 and 2007 transactions, were you
14 familiar with the accounting records regarding these
15 transactions?

16 A. Yes.

17 Q. And for the 2006 transactions, how were they
18 originally classified in the accounting records?

19 A. As fees.

20 Q. Are you familiar with whether Mr. Smith
21 described the money, the three hundred and fifty thousand
22 dollars that he had received in 2006, as other income to
23 his accountant?

24 A. Yes, he did.

25 Q. How about in 2007, are there accounting entries

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1 that simultaneously describe these transactions as fees and
2 loans?

3 A. Yes.

4 Q. All right. I would like to start with the 2006
5 entry. There is a PPM date and then you have a column
6 transaction generating payment traceable to trust. Could
7 you tell us what that refers to?

8 A. That refers to the raise for TDM Cable Trust 06
9 that generated the payment through TDM Cable Funding, LLC
10 in the amounts of four hundred and seven thousand three
11 hundred and forty-one dollars to Mr. McGinn and four
12 hundred and seven thousand dollars to Mr. Smith.

13 Q. Okay, and the disbursing bank account is listed
14 next to that, and it was a Mercantile account for TDM Cable
15 Funding, LLC; is that correct?

16 A. Yes, that's correct.

17 Q. Now, these particular transactions, do you know
18 if that four hundred and seven thousand dollar number is
19 comprised of more than one transaction?

20 A. Yes, that's the total for the calendar year
21 2006.

22 Q. And for the first transaction in October, do you
23 remember approximately how much Mr. McGinn and Mr. Smith
24 each received?

25 A. Three hundred and fifty thousand dollars.

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1 Q. Do you know whether there was any bridge loan
2 involved in those payments?

3 A. Yes, there was.

4 Q. And did you look to see whether the bridge loan
5 was ever repaid?

6 A. Yes, it was repaid with investor money.

7 Q. Okay.

8 MS. COOMBE: If we could look at 2007,
9 please. Could we zoom out just a little bit, Ron?

10 BY MS. COOMBE, CONTINUED:

11 Q. And did Mr. McGinn and Mr. Smith take money from
12 more than one LLC in 2007?

13 A. There were multiple raises during 2007 that had
14 separate LLCs associated. So the disbursements are listed
15 separately if they were from two different LLCs, and that
16 is done for income tax purposes because they are their own
17 entity.

18 Q. Okay, and if we could look -- the first one is
19 from TDM Cable Funding, LLC. How much did Mr. McGinn
20 receive in 2007?

21 A. One hundred and eighty-eight thousand dollars.

22 Q. How about Mr. Smith?

23 A. One hundred and eighty-two thousand dollars.

24 Q. Okay, and is there another LLC listed for 2007?

25 A. Yes. MS Funding, LLC.

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1 Q. How much did Mr. McGinn receive from McGinn,
2 Smith Funding, LLC in 2007?

3 A. Well, there is two lines of the payment they
4 received. There was a repayment of fifty-seven thousand
5 dollars that they each repaid for the net amount for
6 Mr. McGinn of three hundred and ninety thousand, three
7 hundred and one dollars. And Mr. Smith four hundred and
8 thirty-one thousand dollars.

9 Q. Now, those first amounts for three hundred and
10 ten thousand dollars, what raise were those in connection
11 with?

12 A. The Firstline Trust 07 and Firstline Senior
13 Trust 07.

14 Q. I am handing you now previously admitted
15 Exhibits GD2 and GD3. You just mentioned some repayments.
16 Are these related at all to repayments reflected on your
17 summary chart?

18 A. Yes.

19 Q. Could you tell us what this is, please?

20 A. GD2 is a personal check written by David Smith
21 to MS Funding in the amount of fifty-seven thousand
22 dollars.

23 Q. And could we look at GD3, please?

24 A. GD3 is a debit memo from the personal account of
25 Timothy McGinn to the credit of McGinn, Smith Funding.

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1 Q. Did you look at the McGinn, Smith Funding, LLC
2 bank account at this time to see what activity there was?

3 A. Yes.

4 Q. What did you find?

5 A. That the Firstline payment was to be made and
6 there wasn't enough money to cover that.

7 Q. When you say the Firstline payment, what do you
8 mean, who was getting paid?

9 A. Firstline Security, Inc.

10 MS. COOMBE: Could we please go back to
11 GJ1A. Could we look at the 2008 entries, please?

12 BY MS. COOMBE, CONTINUED:

13 Q. Now, the first name is to the left. It says
14 2008, but that PPM date, the first one is December 17,
15 2007. Why is that?

16 A. The 2007 date reflects the date on the PPM, but
17 Mr. Smith and Mr. McGinn are cash basis taxpayers. So 2008
18 is the year the disbursement was made, so that is the
19 calendar year in which they reported it as income. So
20 that's why it is different.

21 Q. Could you tell us -- let's look over to the
22 right. The first amounts, each sixty thousand dollars,
23 what raise were those in connection with?

24 A. TDM Verifier Trust 08.

25 Q. And the next amount for eighteen thousand

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1 dollars, what raise?

2 A. TDM Verifier Trust 09.

3 Q. Are there totals there for the entire amount
4 from MS Funding, LLC?

5 A. Yes. Mr. McGinn is seventy-eight thousand
6 dollars and Mr. Smith is sixty thousand dollars.

7 Q. I am showing you now Exhibits GN21, GN22, and
8 GO81. Could we look at GN21, please?

9 A. Yes.

10 Q. Could I take those back from you so we could put
11 them up on the Elmo. I changed my mind. I will just have
12 you talk about them.

13 A. Okay.

14 Q. Could you explain to us what GN21 is?

15 A. GN21 is a wire house message details. It is
16 just a confirmation of the wire and the instructions on the
17 beneficiaries, senders, AD number, the bank, all the
18 information relating to the transfers of funds.

19 Q. Is GN22 a similar document?

20 A. Yes.

21 Q. Do those relate to wire transfers to Mr. McGinn
22 and Mr. Smith related to TDM Verifier Trust 08, which we
23 just look at on GJ1A?

24 A. Yes, they do.

25 Q. And are you familiar with whether those are --

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1 could we look at those, are those amounts each for sixty
2 thousand dollars?

3 A. This one is for fifty thousand dollars on
4 1/28/08. This one is for nineteen thousand, five hundred
5 dollars. And there is one for thirty thousand, five
6 hundred.

7 Q. Are you aware that these wire transfers
8 reflected in GN21 and 22 relate to the securities fraud
9 charge in the indictment?

10 A. Yes.

11 Q. Could you just tell us what GO81 is, please?

12 A. GO81 is an e-mail from Mr. McGinn to
13 Denise Birnbach at Mercantile Bank requesting her to
14 execute various wires.

15 Q. Okay.

16 A. And a wire number five of nineteen thousand,
17 five hundred dollars from McGinn and Smith Funding, LLC to
18 his personal bank account.

19 Q. And are you familiar with whether that's one of
20 the overt acts alleged in the indictment?

21 A. Yes.

22 Q. Okay, and if we could look at the next entry for
23 Fortress Trust 08 and NEI Capital, LLC. Does this show
24 that Mr. McGinn and Mr. Smith took any money from NEI
25 Capital, LLC in connection with the Fortress Trust 08

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1 raise?

2 A. Yes, it does.

3 Q. How much did they take?

4 A. Timothy McGinn received two hundred and ten
5 thousand dollars, and David Smith received three hundred
6 and sixty thousand dollars.

7 Q. Now, these are all totals of multiple days that
8 money was taken, correct?

9 A. Correct.

10 Q. And I am going to show you now GN23, GN24, and
11 GN25 and G090. Could you tell us what GN23 and GN24 are?

12 A. These are, again, wire transfer confirmations
13 directing the wire transfers of monies from NEI Capital,
14 LLC.

15 Q. Did they relate to specific --

16 A. To the personal bank account of Timothy McGinn.

17 Q. Are you familiar with whether those wire
18 transfers are specific examples of transactions reflected
19 in GJ1A?

20 A. Yes, they are.

21 Q. And are you familiar with whether those are
22 specific allegations of securities fraud in the indictment?

23 A. Yes.

24 Q. And GN25, could you tell us what that is,
25 please?

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1 A. Again, wire transaction details concerning
2 transfers of NEI Capital, LLC to the personal bank account
3 of David Smith.

4 Q. Is that GN24 or GN25?

5 A. GN24.

6 Q. Okay, and does that again relate back to GJ1A
7 and also securities fraud count in the indictment?

8 A. Yes.

9 Q. And finally GN25?

10 A. These are wire transfer requests or details
11 regarding wire transfers from NEI Capital, LLC to the
12 personal bank account of Matthew Rogers.

13 Q. And, again, that relates to GJ1A and some of the
14 specific allegations and counts in the indictment?

15 A. Yes, that's correct.

16 Q. Could you look at G090, please, and tell us what
17 that is?

18 A. G090 is an e-mail from Timothy McGinn to
19 Katherine VanBrocklin and Joan Dixon at Mercantile Bank
20 asking to execute the following wires, and there are a
21 number of wires listed, including wires from NEI Capital,
22 LLC to McGinn, Smith & Company to Mr. Smith's personal bank
23 account and to Mr. McGinn's personal bank account.

24 Q. Are you aware of whether that relates to overt
25 act ninety in the indictment?

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1 A. Yes.

2 Q. I am handing you previously admitted
3 Exhibit GA14. This is an electronic mail message dated
4 November 7, 2008. And you see at the bottom Mr. McGinn
5 directed that a check be sent by overnight mail to pay for
6 a membership at Waterville Membership Services, a golf
7 course, for Mr. Rogers; is that correct?

8 A. Yes, that's correct.

9 Q. Okay.

10 MS. COOMBE: If we could go back to GJ1A,
11 please and look at the 2009 amounts.

12 BY MS. COOMBE, CONTINUED:

13 Q. Did Mr. McGinn and Mr. Smith also take money in
14 2009?

15 A. Yes, they did.

16 Q. And they took money in connection with the TDM
17 Verifier Trust 09 raise?

18 A. Yes.

19 Q. And how much did they take?

20 A. Mr. Smith received eighteen thousand dollars.

21 Q. Okay, and could you tell us, the next column
22 down, the transactions from TDMM Cable Funding, LLC --
23 well, first, January 19th, the TDM Cable Junior Trust 09,
24 how much did they take?

25 A. Mr. McGinn received twenty-four thousand dollars

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1 and Mr. Smith received twenty-four thousand dollars.

2 Q. Okay, and then there is another entry in
3 connection with the TDMM Benchmark Trust 09 raise. How
4 much did they take?

5 A. Mr. McGinn received eight thousand, five hundred
6 dollars and Mr. Smith received fifty thousand dollars.

7 Q. Are there totals reflected there for 2009?

8 A. Yes, the totals received for TDMM Cable Funding,
9 LLC for Mr. McGinn was thirty-two thousand, five hundred
10 dollars and Mr. Smith was seventy-four thousand dollars.

11 Q. Okay. I would like to direct your attention to
12 the bottom right-hand corner. There are totals, first of
13 all, to the right. Could you tell us what those are, the
14 1.3 and 1.5 million dollar numbers?

15 A. Those numbers relate specifically to the monies
16 received from LLCs or McGinn and Smith entities related to
17 the trust.

18 Q. And then there are some other amounts here. Why
19 is the Integrated Excellence Senior Trust amounts, why are
20 they the listed separately?

21 A. These are listed separately because they came
22 directly out of the trust account, not through an LLC and,
23 therefore, we considered that to be other income because it
24 didn't flow through the LLC and have tax treatment as it
25 relates to that entity.

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1 Q. Is other income taxed at a higher rate than
2 capital gains?

3 A. Yes.

4 Q. And then finally, TDMM Cable Junior Trust 09,
5 why is that there?

6 A. The same reason. It was considered to be other
7 income directly paid from the trust. It didn't flow
8 through the LLC.

9 Q. Now, by labeling it as other income, do you mean
10 to suggest that is was appropriate or legitimate to take
11 that money directly from the trust?

12 MR. DREYER: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MS. COOMBE, CONTINUED:

15 Q. Are you familiar with how the IRS taxes money
16 that is stolen --

17 MR. JONES: Objection.

18 MR. DREYER: Objection.

19 BY MS. COOMBE, CONTINUED:

20 Q. -- on a tax return?

21 THE COURT: Overruled. If she knows.

22 A. As other income.

23 BY MS. COOMBE, CONTINUED:

24 Q. And then underneath there is MSTF, why is that
25 two hundred and thirty thousand dollars listed separately?

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1 A. That was money taken directly out of McGinn,
2 Smith Transaction Funding, which is a corporation and had
3 the same tax treatment as other income.

4 Q. All right. If we could look over to the left
5 now. Could you explain those entries for us, please?

6 A. The first line is the sub-total as it relates to
7 monies received directly through LLC of three million,
8 eight hundred and eleven thousand, one hundred and
9 forty-two dollars. The additional Integrated Excellence
10 Senior Trust and TDMM Cable Senior Trust brought the total
11 diversions from trusts to three million, nine hundred
12 twenty-six thousand, one hundred and forty-two dollars.
13 And then if you add in the two hundred and thirty thousand
14 dollars from MSTF, the grand total is four million, one
15 hundred fifty-six thousand, one hundred and forty-two
16 dollars.

17 Q. And that GD1A binder that you showed the jury
18 earlier, if they look through it, would they be able to
19 find examples of the wires transfers and e-mails that you
20 talked about in connection with a few of the transactions?

21 A. Yes.

22 Q. And there are also bank statements and other
23 supporting documentation?

24 A. Yes.

25 THE COURT: I believe we will take our

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1 morning break now, members of the jury. Don't discuss the
2 case among yourselves or anyone else, and we will be back
3 in fifteen minutes.

4 (Whereupon, the proceedings were held in
5 open court out of the presence of the Jury.)

6 THE COURT: Ms. Daversa, don't discuss your
7 testimony over the break.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Mr. Minor.

10 COURT CLERK: Court stands for the morning
11 recess.

12 (Whereupon, a brief recess was taken.)

13 (Whereupon, the proceedings were held in
14 open court in the presence of the Jury.)

15 THE COURT: Ms. Coombe, you may continue.

16 MS. COOMBE: Thank you, Your Honor. Could
17 we look back at GD1A for a moment, please?

18 BY MS. COOMBE, CONTINUED:

19 Q. I will bring you a copy. And this is the binder
20 labeled GD1A?

21 A. Yes.

22 Q. So this does support GD1A, as well as the
23 exhibit we were talking about right before the break, the
24 spreadsheet with more details about these transactions?

25 A. Yes, that's correct.

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1 Q. And that is GJ1A?

2 A. Yes, that's correct.

3 Q. I am showing you now Exhibits GK1B and GK1B
4 support example. Could you tell us what this is, please?

5 A. GK1B is a summary schedule of LOTUS
6 spreadsheets, and these were spreadsheets that were
7 prepared by Mr. McGinn and kept on his computer in his
8 residence in Florida. This summarizes various information
9 from those spreadsheets. And then also information
10 relating to the raises for TDM Cable Trust 06 and various
11 trusts through these LLCs, TDM Cable Funding, LLC, McGinn,
12 Smith Funding, LLC, and so forth on the left-hand column.

13 Q. Okay, and over toward the right where we were
14 just looking, for the transactions listed there. I have an
15 actual amount raised, LOTUS amount to be raised, actual
16 amount to be received. What is the difference between the
17 actual amounts and LOTUS amounts?

18 A. Well, this compares the actual amount received
19 by Mr. McGinn, Mr. Smith, and Rogers directly from the LLC,
20 and then the purported amount as listed on the LOTUS
21 spreadsheet prepared by Mr. McGinn associated with that
22 distribution.

23 Q. Okay, and if we could look over to the right,
24 please. There is a column that says terminology. The
25 first one says Tim, Dave, and Matthew. Where did this

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1 information in the terminology come from?

2 A. That came from the LOTUS spreadsheets.

3 Q. And the next one, could you read the next one
4 for us, please?

5 A. The next terminology?

6 Q. Yes.

7 A. Boys and vig.

8 Q. Do you have any understanding what boys refers
9 to?

10 A. I believe it is Mr. McGinn, Mr. Smith, and
11 Mr. Rogers.

12 MR. JONES: Objection to what she believes.

13 THE COURT: Overruled.

14 BY MS. COOMBE, CONTINUED:

15 Q. Do you have any understanding of what vig refers
16 to?

17 A. It refers to vigorish, which is the cut or the
18 take generally referred to in a gambling or bookmaking
19 operations about the percentage of the take.

20 Q. Could you look at the GK1B support, please?

21 A. Yes.

22 Q. This is some rather small typewriting, but can
23 you just tell us what it is?

24 A. These are the actual printouts of the LOTUS
25 spreadsheets Mr. McGinn maintained on his computer. And

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1 there is one for each amount listed on the summary
2 spreadsheet. In some instances there were more than one.
3 And they are basically calculations to determine the future
4 profit earned relative to that investment, and it is just a
5 whole series of repayments, schedules, amortizations,
6 calculating the profit. And then there is an area on the
7 spreadsheets that generally refers to the amount of
8 proceeds and the use of proceeds and then calculate their
9 profit, which has been referred to in the terminology
10 section.

11 Q. You mentioned an amortization schedule. Does
12 that have anything to do with the amounts of money that
13 Mr. McGinn and Mr. Smith received that they did not report
14 on their tax returns?

15 A. No, these relate to loans that are going to the
16 entities borrowing money from the trust.

17 Q. I am handing you now GK1B support, a binder.
18 What I gave you before, is that just an example, and this
19 is all of the support?

20 A. Yes, that's correct.

21 Q. Okay, and if you could just hold it up and just
22 tell the jury generally how that works with the chart?

23 A. There are tabs associated with the various LLCs,
24 and then there is a series of LOTUS spreadsheets associated
25 with that. And then the ones that we selected that were

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1 most closely related to the odd amount received by
2 Mr. McGinn, Mr. Smith, and Mr. Rogers.

3 Q. Have you done any analysis of how Mr. McGinn and
4 Mr. Smith used the money that they received from the LLCs
5 that they did not report to the IRS?

6 A. Yes.

7 Q. And have you prepared a summary chart showing
8 that analysis?

9 A. Yes, a disposition of proceeds chart.

10 Q. Okay. Could we please --

11 MS. COOMBE: I am going to move the
12 admission of Exhibits GL1A and GK1A at this time as
13 modified as discussed before we started this morning.

14 THE COURT: Received.

15 (Exhibit No. GL1A, GK1A, received.)

16 MS. COOMBE: Your Honor, is it acceptable
17 for me to use the prior version just so that the witness
18 has a copy of the current and the other one will be
19 published to the jury?

20 THE COURT: You may.

21 MS. COOMBE: Thank you Your Honor.

22 BY MS. COOMBE, CONTINUED:

23 Q. Please don't publish that to the jury.

24 A. Yes.

25 Q. Could we look at GL1A, please?

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1 A. Yes.

2 Q. Could you tell us what this is, please?

3 A. This is the disposition of proceeds relating to
4 David Smith, and it refers to the monies that were spent on
5 various personal items associated with the distributions he
6 received from the LLCs.

7 Q. Now, if you add up all of this money, is it the
8 full amount of money that he took from the LLCs?

9 A. No, it is not.

10 Q. Why not?

11 A. Because it wasn't possible to track every
12 dollar. You might be doing an analysis, you look at the
13 balance before the money comes in and then what is it is
14 used for, and what the balance is after that amount of
15 money that came in is. So you try to track generally what
16 it has been spent on.

17 Q. Can you tell us what items you found that he had
18 used the money for?

19 A. Yes. He put eight hundred and ten thousand
20 dollars into an investment account at NFS. He paid one
21 hundred forty-five thousand, ninety-two dollars in income
22 tax, federal and state I believe that is. He paid one
23 hundred forty-five thousand, four hundred and forty-five
24 dollars in mortgage payments and taxes relative to his home
25 in Florida. He paid eighty-six thousand, three hundred

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1 thirty-four dollars relative to mortgage payments and taxes
2 for his home in Saratoga. And he had country club payments
3 in the amount of fifty-seven thousand, nine hundred
4 twenty-eight dollars, which reflected dues and expenses at
5 various country clubs, Orchid Island, Schuyler Meadows,
6 Waterville, and Saratoga.

7 Q. I am handing now GL1A support. Would you please
8 tell us what this is?

9 A. This is the support binder that backs up the
10 amounts that are listed on this disposition of proceeds
11 schedule, and we conducted interviews of various people and
12 contacted various third-parties to document the majority of
13 these expenses.

14 Q. Could you just describe for the jury generally
15 what is in that binder?

16 A. It would be checks, summaries of payments made,
17 invoices for country club dues, things of that nature,
18 receipts for home, real estate taxes and mortgage
19 statements, memorandas of interview.

20 Q. Could we look at GK1A, please? Do you want me
21 to take that back? Are you running out of room?

22 A. Yes, I don't want to drop anything else.

23 Q. Thank you. Could you tell us what this is,
24 please?

25 A. GK1A is the disposition of proceeds for

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1 Timothy McGinn, and it is a similar summary schedule for
2 the payments, source of -- use of funds of the payments
3 that he received, distributions from the LLCs, and what he
4 spent it on. And this was -- lists out various payments to
5 include loan repayments to the Smiths of two hundred
6 fifty-five thousand dollars, alimony payments to his
7 ex-wives of one hundred and forty-seven thousand, nine
8 hundred forty-two dollars, income taxes of eighty-nine
9 thousand, six hundred and forty-two dollars, an investment
10 account at NFS for sixty-two thousand, two hundred and
11 fifty-two dollars, expenses related to thoroughbred race
12 horses in the amount of thirty-nine thousand, four hundred
13 and fifty-eight dollars, mortgage payments -- I am sorry,
14 and real estate expenses relative to his Boca Raton home in
15 the amount of sixty-three thousand, eight hundred and eight
16 dollars, and mortgage payments and real estate taxes
17 relative to his Niskayuna home and a deck in the amount of
18 one hundred and twenty-nine thousand, nine hundred
19 ninety-seven dollars.

20 Q. Do you remember how much that deck cost?

21 A. It was seventy-five thousand dollars. And then
22 country clubs fees, dues, and miscellaneous expenses
23 totaling fifty-four thousand, four hundred and fourteen
24 dollars at Schuyler Meadows, Waterville Golf Club, and Pine
25 Tree Golf Club.

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1 Q. I am showing you now GK1A support. Could you
2 please tell the jury what this is?

3 A. That is a similar binder. It supports the
4 payments that are reflected on this schedule and they also
5 include documentation relative to those payments, either
6 through interviews, invoices, canceled checks, so on and so
7 forth.

8 Q. I will take that back. Thank you. I am handing
9 you now Exhibits GK2, GK3, GK4, GK5, GK6, GK7, and GL5.
10 Could we look first please at GK2?

11 A. Yes.

12 Q. Could you tell us what this is, please?

13 A. This is a promissory note for Timothy McGinn for
14 a loan from McGinn, Smith Incentive Savings Plan and Trust,
15 and it is dated June 23, 1993.

16 Q. Do you know where GK2 was found during the
17 execution of the search warrants?

18 A. It was in Mr. Smith's personal residence in
19 Saratoga, New York.

20 Q. And could we look at page three of this, and did
21 Mr. McGinn sign this and date it?

22 A. Yes, he did.

23 Q. Could we look at the page before this? Did
24 Mr. Smith also date and sign this as well as Mr. McGinn?

25 A. Yes, he did.

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1 Q. If we could look at page five, please? Is this
2 a repayment schedule?

3 A. Yes, it is.

4 Q. Does it have a stated interest rate?

5 A. Yes, eight percent.

6 Q. Scheduled payments?

7 A. Yes.

8 Q. Could we look at GK3, please? Do you know where
9 this was found?

10 A. Mr. Smith's residence in Saratoga, New York.

11 Q. And this was a promissory note originally dated
12 September 10th of 2003 between Mr. McGinn and Lynn Smith,
13 and does it have an amount and also a stated interest rate?

14 A. Yes, the amount is, I believe, four hundred and
15 sixty-five thousand dollars.

16 Q. That is the second handwritten one. What about
17 the original amount?

18 A. Six hundred and fifty thousand dollars.

19 Q. Do you have any understanding of why there is an
20 amount and then crossed out and different dates and amounts
21 written down?

22 A. I do not.

23 Q. And do you see at the bottom it was dated and
24 Mr. McGinn dated it as of 7/30/03 as well?

25 A. Yes.

ALYSSA DAVERSA - Direct By Ms. Coombe

1 Q. And the -- actually the handwritten date is
2 actually earlier than the typewritten date?

3 A. Right.

4 Q. Could we look at the bottom?

5 A. Yes.

6 Q. Could you tell us what that is, please?

7 A. That's a notary signature acknowledging that
8 Mr. McGinn was present himself when it was signed.

9 Q. Who was lending money to whom here?

10 A. Lynn Smith was loaning money to Mr. McGinn.

11 Q. Could we look at GK4, please? This is a
12 handwritten note signed Tim. It says: DLS, more to come.
13 Interest calculated on both loans through 8/31/03 at P plus
14 one percent.

15 Do you have any understanding of what that
16 refers to?

17 A. Prime, plus one percent.

18 Q. And then: Okay, question mark, thanks a
19 million, actually 1.065 million, for your help, Tim.

20 At the bottom, is there additional handwriting?

21 A. Yes, there is.

22 Q. Does it indicate paid and amounts and dates and
23 interest?

24 A. Yes, it does.

25 Q. Does it reflect that there were payments made

ALYSSA DAVERSA - Direct By Ms. Coombe

1 and interest paid on this amount of money that Mr. McGinn
2 borrowed from Mr. Smith?

3 A. It does.

4 Q. Could we look at GK5, please? This is a
5 handwritten note: David, you loaned to me three hundred
6 thousand dollars as follows: Twenty-five thousand dollars
7 on 5/18; two hundred and seventy-five thousand dollars on
8 5/19. Enclosed is principal of two hundred thousand
9 dollars plus interest at 6.75 percent for the three hundred
10 thousand dollars through -- can you tell on the original
11 whether that is 6/8?

12 A. 6/8 it appears to be.

13 Q. Thanks, Tim.

14 Again, the amount of principal is stated and the
15 interest rate is stated?

16 A. Yes, that's correct.

17 Q. And this is a loan between Mr. McGinn and
18 Mr. Smith?

19 A. Yes.

20 Q. Could we look at GK6, please? And I neglected
21 to ask you, do you know where GK4 and GK5, which we just
22 looked at, where they were found?

23 A. Mr. Smith's personal residence in Saratoga, New
24 York.

25 Q. GK6, where was that found?

ALYSSA DAVERSA - Direct By Ms. Coombe

1 A. Mr. Smith's personal residence in Saratoga, New
2 York.

3 Q. This is dated, the typewritten date is
4 October 17th of 2003. And it is regarding a loan of money,
5 initially -- the typewritten part says Capital Center
6 Credit Corporation. It is crossed out with Lynn Smith.
7 The dates are changed and the amounts are changed. Is
8 there a stated amount that was borrowed in both the
9 typewritten and handwritten parts?

10 A. Yes.

11 Q. Is there a stated interest rate?

12 A. Yes.

13 Q. Does it actually date it at the bottom?

14 A. Yes.

15 Q. There is no signatures?

16 A. No.

17 Q. Could we look at GK7, please? Could you tell us
18 where this was found?

19 A. Mr. Smith's personal residence in Saratoga, New
20 York.

21 Q. Again, there is a typewritten part dated
22 September 10th of 2003, six hundred and fifty thousand
23 dollars. The rate is prime plus one percent a year. And
24 is it signed by Mr. McGinn?

25 A. It is.

ALYSSA DAVERSA - Direct By Ms. Coombe

1 Q. And then there is another set of dates, October
2 15th of 2009, nine hundred and seventy thousand dollars and
3 Mr. McGinn's signature is there?

4 A. I believe that is 2004.

5 Q. Well, thank you. And if we look at the bottom?

6 A. Yes.

7 Q. What is that?

8 A. It is a notary acknowledging that Mr. McGinn
9 presented himself when it was signed.

10 Q. That was updated as well in 2004?

11 A. Yes.

12 Q. Do you know where this was found?

13 A. Mr. Smith's personal residence in Saratoga, New
14 York.

15 Q. Finally, could we look at GL5. Do you know
16 where this was found?

17 A. Same location, Mr. Smith's personal residence in
18 Saratoga, New York.

19 Q. This is a demand note, is that another -- can
20 you tell us what a demand note is, please?

21 A. I believe it is to demand payment at the term,
22 when the term ends.

23 Q. It is dated April 7, 2005, for thirty thousand,
24 and Mr. Livingston is promising to pay Mr. Smith thirty
25 thousand dollars. There is a stated rate of interest and

ALYSSA DAVERSA - Direct By Ms. Coombe

1 there is a date at which it will all be due; is that
2 correct?

3 A. Yes, that's correct.

4 Q. It is dated and Mr. Livingston has signed it?

5 A. Yes.

6 Q. Could we look at the bottom? There is no
7 signature for the notary; is that correct?

8 A. No.

9 Q. I am handing you now GD4, GK8, GK9, GK10. Could
10 you tell us generally what these documents relate to?

11 A. These documents relate to the purchase of
12 Mr. McGinn's home in Florida and his application for a
13 mortgage at Mercantile Bank relative to that purchase.

14 Q. All right. Let's look at GD4, please. This is
15 and handwritten note on Mr. McGinn's stationery. It is
16 dated 5/29/07. It states, Crystal, I will have my
17 assistant fax to you a copy of my pay stub Thursday. Also,
18 I have received cash payments totalling three hundred and
19 forty-five thousand dollars so far this year from
20 affiliated entities. I would forecast total income for
21 2007 of approximately 1.2 million.

22 Have you had a chance to look at Mr. McGinn's
23 2007 return?

24 A. Yes.

25 Q. It is GJ11. I believe it is up there.

ALYSSA DAVERSA - Direct By Ms. Coombe

1 A. Yes.

2 Q. How much did he report for 2007?

3 A. Total income is five hundred and thirty-seven
4 thousand, eight hundred and fifty dollars.

5 Q. Okay. Could we look back at GJ1A, your analysis
6 of the money that was taken from the LLCs?

7 A. Yes.

8 Q. Does that indicate how much he received in 2007?

9 A. As of that date, he had received one hundred and
10 eighty-eight thousand dollars from TDM Cable Funding and
11 three hundred and ten thousand dollars, less the
12 fifty-seven thousand dollar repayment, from McGinn, Smith
13 Funding, LLC.

14 Q. And if you add that to the amount that he
15 reported to the IRS on his return, what kind of number do
16 you get?

17 A. Approximately 1.1 million.

18 Q. Is that consistent with what he told the bank he
19 was going to make that year?

20 A. Yes, that's correct.

21 Q. Now, he didn't report that whole 1.1 million
22 dollars to the IRS, did he?

23 A. It is not reflected on this return.

24 Q. Could you please look at page three of GD4?
25 Could you tell us what the top part of this is?

ALYSSA DAVERSA - Direct By Ms. Coombe

1 A. That is an internal bank document for Mercantile
2 Bank checking on an inquiry for an account. It says what
3 the current balance is as of 4/30/07, the balance amount
4 being four million, eighty-two thousand, nine hundred and
5 sixty-eight dollars and fifty-nine cents. And it has some
6 transactions listed subsequent to that current balance date
7 about transactions within the account.

8 Q. Could we look at the bottom, please?

9 A. Yes.

10 Q. There is a handwritten note. Mr. McGinn is
11 fifty percent owner and managing member of McGinn, Smith
12 Funding, LLC. He intends to provide the cash required by
13 drawing two hundred thousand dollars from this account.

14 Did you look at the McGinn, Smith Funding, LLC
15 account to see what money was in the account at this time?

16 A. Yes, I did.

17 Q. What did you find?

18 A. That the two sources of money in that account
19 were five hundred thousand dollars from Burton Fisher and
20 three million dollars from Stewart's Shops.

21 Q. Mr. McGinn signed and dated this; is that
22 correct?

23 A. Yes, that's correct.

24 Q. All right. Could you look at GK8, please?
25 Could we look in the middle? It says: I wired in two

ALYSSA DAVERSA - Direct By Ms. Coombe

1 hundred and fifty thousand dollars yesterday from
2 Mercantile Bank in Boca Raton, and Mr. McGinn is writing to
3 Crystal Martin. Do you have any understanding of who
4 Ms. Martin was at the time?

5 A. I think she was the mortgage loan officer at the
6 bank.

7 Q. He goes on to write: I was the chairman of the
8 board at Pointe Bank for seven years. Pointe Bank was
9 acquired by Mercantile in May of 2005. Of the two hundred
10 and fifty thousand dollars, ninety thousand came from a
11 personal account at Mercantile.

12 Why is Mr. McGinn explaining to Ms. Martin where
13 money is coming from?

14 A. Usually when you make a down payment for a
15 mortgage --

16 MR. JONES: Objection to usually.

17 THE COURT: Overruled.

18 A. Generally when you make a down payment relative
19 to a mortgage in the purchase of a home, the bank will
20 require documentation to show where the funds come from.
21 Sometimes people will get loans or gifts from parents or
22 things to help facilitate that sale. And the bank wants to
23 know if you are going to have an obligation or if it has
24 been a gift from your parents, they want to have a gift
25 letter.

ALYSSA DAVERSA - Direct By Ms. Coombe

1 Q. Did you look at the account activity in
2 Mr. McGinn's Mercantile account at the time?

3 A. Yes, I did.

4 Q. And did you look to see where the money came
5 from?

6 A. The ninety thousand dollars reflected in this
7 e-mail is from the MS Funding payment of two hundred
8 thousand dollars made in May of 2007.

9 Q. Based on your analysis of those records, what
10 was the source of this ninety thousand dollars that
11 Mr. McGinn used in connection with the purchase of a second
12 home in Florida?

13 A. It was from MS Funding, LLC.

14 Q. And what kind of money was in that account at
15 the time?

16 A. Investor money.

17 Q. Could we look at GK9, please? Could we start by
18 looking at page fifteen of the exhibit? Could you tell us
19 what this is, please?

20 A. It is a uniform residential loan application
21 that most people prepare when they apply for a mortgage,
22 initial document.

23 Q. Okay. If we look at the bottom, are there
24 Mr. McGinn's initials on each page of this uniform loan
25 application?

ALYSSA DAVERSA - Direct By Ms. Coombe

1 A. Yes.

2 Q. Okay. That's page fifteen and page sixteen at
3 the bottom, page seventeen?

4 A. Yes.

5 Q. Page eighteen actually has a signature?

6 A. Yes, that's correct.

7 Q. And page nineteen?

8 A. Signature again.

9 Q. And page twenty?

10 A. Signature, and then a bank signature, the person
11 who interviewed him.

12 Q. Could we go back and look at page seventeen,
13 please? Did Mr. McGinn include the four hundred and seven
14 thousand dollars and change that he had received from TDM
15 Cable Funding, LLC in 2006 which he had not paid tax on as
16 a liability?

17 A. No, he did not.

18 Q. Did Mr. McGinn include the three hundred and ten
19 thousand dollars that he had received in connection with
20 the Firstline raise on this mortgage application?

21 A. Well, it is reflected in the ninety thousand
22 dollar payment amount.

23 Q. It is not reflected as a loan or a liability?

24 A. Not as a liability, no.

25 Q. What about the one hundred and eighty-eight

ALYSSA DAVERSA - Direct By Ms. Coombe

1 thousand dollars that Mr. McGinn had received from McGinn,
2 Smith Funding, LLC?

3 A. It is not listed as a liability, no.

4 Q. And then Mr. McGinn had not paid tax on this
5 money claiming that it was a loan, a liability?

6 A. That's correct.

7 Q. Could you look at page nineteen, please? And I
8 am sorry. Page twenty. Do you see the signature in the
9 middle of the page?

10 A. Yes.

11 Q. And then if we could look at the upper right,
12 are there -- there are declarations that are being made
13 under penalty of perjury; is that correct?

14 A. Yes, that's correct.

15 Q. Do you see H?

16 A. Yes.

17 Q. Could you read that response, please?

18 A. Is any part of the down payment borrowed and the
19 checkmark is no.

20 Q. Was that statement consistent with Mr. McGinn's
21 treatment of the money that he had received in connection
22 with the -- how he had been filing his tax returns or in
23 connection with the money that he had received in
24 connection with the Firstline Trusts?

25 A. Can you repeat that question?

ALYSSA DAVERSA - Direct By Ms. Coombe

1 Q. Let me try to ask a better question. Based on
2 your understanding of the facts of this case, is there
3 anything that is inaccurate about that statement or
4 accurate?

5 MR. JONES: Objection. That calls for an
6 opinion.

7 THE COURT: Overruled.

8 A. He is stating that he has no liabilities and
9 none of the money is borrowed.

10 BY MS. COOMBE, CONTINUED:

11 Q. Did you notice anything else unusual about the
12 loan applications?

13 A. Yes.

14 Q. What else did you notice?

15 A. There were two applications. The first
16 application listed a substantial holdings in stocks and
17 bonds. And then the second application, the stocks and
18 bonds were not reflected, and he used the bank account of
19 McGinn, Smith Funding, LLC listing the fifty percent
20 ownership there of that one million dollars sum of money.
21 So there was a change between the two applications from
22 stocks and bonds on one and no listing of that bank
23 account. And then the subsequent application, the stocks
24 and bonds were removed, and the bank account is listed.

25 Q. Could we look at GK10, please. Is this

ALYSSA DAVERSA - Direct By Ms. Coombe

1 information that was received from the bank from the
2 mortgage application file?

3 A. Well, this is something that they pull up in
4 their own files. It is bank record, but, yes, it is part
5 of a file they use for their assessment in determining a
6 loan, approving a loan.

7 Q. If you look at page fourteen, do you see at the
8 bottom there is some handwriting, used fifty percent?

9 A. Yes, that's correct.

10 Q. Based on your experience in reviewing bank
11 records and mortgage applications in your twenty-five years
12 as a special agent for the Internal Revenue Service
13 Criminal Investigation, do you have any understanding of
14 what that means?

15 A. The bank used that number and relied on that
16 when approving his loan.

17 Q. I am handing you now Exhibit GE1D and GE1D
18 support.

19 MS. COOMBE: Your Honor, there may be some
20 disagreement among the parties about whether this
21 particular exhibit has been admitted into evidence yet. So
22 I am going to offer it again at this time. GE1D and GE1D
23 Support.

24 THE COURT: Already received.

25 BY MS. COOMBE, CONTINUED:

ALYSSA DAVERSA - Direct By Ms. Coombe

1 Q. Could we look at GE1D, please?

2 A. Yes.

3 Q. Could you tell us what this is?

4 A. This is a summary schedule that lists the
5 various raises, the total raise amount, the fees paid
6 directly to the broker-dealer, the disclosed underwriting
7 fees relative to those raises, and then monies paid from
8 the LLCs directly to the broker-dealer, and then totals
9 reflecting that, and then there is a percentage amount that
10 reflects the total fees paid directly to the broker-dealer
11 from any of the McGinn, Smith entities, and how that
12 relates to the total raise amount of just over thirty-seven
13 million dollars.

14 Q. Okay. And the raise amount was just over
15 thirty-seven million dollars. The disclosed underwriting
16 fees were approximately 2.2 million dollars?

17 A. That's correct.

18 Q. Can you tell us the total amount of fees that
19 were paid directly to the broker-dealer?

20 A. 6.3 million dollars or six million, three
21 hundred eighty-four thousand, two hundred and nineteen
22 dollars.

23 Q. Have you calculated a percentage?

24 A. That is 17.24 percent.

25 Q. Now, does this chart reflect every dollar that

ALYSSA DAVERSA - Direct By Ms. Coombe

1 went to the -- that went to any McGinn, Smith entity in
2 connection with these raises?

3 A. This reflects monies paid to McGinn, Smith &
4 Company.

5 Q. Only money paid that was paid to the
6 broker-dealer?

7 A. That's correct.

8 Q. So that 17.24 percent, does that reflect every
9 penny of the raised money that was not used for
10 investments?

11 A. No.

12 Q. And I also gave you GE1D support. Could you
13 tell us what that is, please?

14 A. That is a listing of the trusts, the date of the
15 payment, the amount, and the total that ties into the
16 summary schedule. Then it also has some entries relative
17 to how they were booked in their internal accounting
18 records of McGinn, Smith & Company. And some notes about,
19 just general comments that we found in our analysis.

20 Q. I am handing you now Government's Exhibit GA1G.

21 MS. COOMBE: Your Honor, the government
22 moves the admission of GA1G.

23 THE COURT: No objection, received.

24 (Exhibit No. GA1G, received.)

25 BY MS. COOMBE, CONTINUED:

ALYSSA DAVERSA - Direct By Ms. Coombe

1 Q. Could you tell us what this is, please?

2 A. This is a chart, a pie chart that basically
3 shows of the seventeen trusts, approximately thirty-seven
4 million dollars was raised from investors. And these are
5 the total funds that went to the broker-dealer being
6 McGinn, Smith & Company or the individual principals,
7 Mr. McGinn, Mr. Smith, and Mr. Rogers.

8 The seventeen percent reflects the previous
9 summary chart we just talked about, fees directed to the
10 broker-dealer. And the eleven percent is the summary
11 chart, GJ1A, which is eleven percent of the trust monies
12 that went to the principals for a total of twenty-eight
13 percent of the thirty-seven million dollars going to the
14 broker-dealer or McGinn, Smith, and Rogers.

15 Q. So this shows that at least twenty-eight percent
16 of the money raised in connection with the seventeen trusts
17 went to either Mr. McGinn, Mr. Rogers or Mr. Smith or to
18 the broker-dealer?

19 A. That's correct.

20 Q. It doesn't show all the money that was not used
21 in the investments, does it?

22 A. No.

23 MS. COOMBE: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

ALYSSA DAVERSA - Direct By Ms. Coombe

1 MS. COOMBE: Your Honor, I have no further
2 questions.

3 THE COURT: Defense.

4 MR. DREYER: May I go first, Your Honor?

5 THE COURT: You may, Mr. Dreyer.

6 MR. DREYER: Yes. Thank you.

7 CROSS-EXAMINATION BY MR. DREYER:

8 Q. Good morning, Ms. Daversa.

9 A. Good morning, Mr. Dreyer.

10 Q. Ms. Daversa, I want to begin by calling your
11 attention to the loans that were taken from TDM Cable in
12 2006, and I believe you testified and it has been
13 introduced into evidence that two components of those loans
14 to Mr. Smith and to Mr. McGinn consisted of a three hundred
15 and fifty thousand dollar payment and a fifty-seven
16 thousand dollar payment for a total of four hundred and
17 seven thousand; is that correct?

18 A. Yes, that's correct.

19 Q. And the testimony that you gave today pointed
20 out that at some point in time in 2007, in other words,
21 after the calendar year 2006 closed, and they are on a cash
22 basis for tax purposes. So sometime in 2007, there was a
23 further disposition of fifty-seven thousand dollars by both
24 Mr. McGinn and Mr. Smith. Do you recall that?

25 A. Yes, that's correct.

ALYSSA DAVERSA - Cross By Mr. Dreyer

1 Q. All right. So going back to the issue of what
2 occurred in 2006 and 2007, do you recall at any point along
3 this way in all the investigation that you have conducted
4 seeing any notations or comments from the defendants or
5 their attorneys that the loans that were taken by
6 Mr. McGinn and Mr. Smith from the operating companies or
7 from the LLCs were intended to be an asset to the operating
8 company and/or the LLC. Do you understand my question?

9 A. I understand your question.

10 Q. Yes. And you have seen references to those
11 claims, correct?

12 A. I saw entries made after October of 2007 that
13 reflected those payments as loans, but they were previously
14 listed as fees. Those are the only documents that I have
15 ever seen that reflect it as a loan.

16 Q. Well, long before this investigation started, I
17 believe you testified this morning, that long before this
18 investigation started and in May of 2007 when there came a
19 time that as a result of the Firstline transaction, money
20 was being raised to give to the asset based borrower
21 Firstline, there was a shortfall, correct?

22 A. Yes, that's correct.

23 Q. So Mr. McGinn and Mr. Smith each wrote a check
24 for fifty-seven thousand dollars, the combined total of
25 which was used to fund the asset based borrower, correct,

1 MR. BELLISS: The Government calls
2 Christopher Rattiner to the stand.

3

4 CHRISTOPHER RATTINER, having been called as a
5 Witness, being first duly sworn, was examined and testified
6 as follows under oath:

7

8 DIRECT EXAMINATION BY MR. BELLISS:

9 Q. Good afternoon, Mr. Rattiner.

10 A. Good afternoon.

11 Q. I think you can actually pull that.

12 Mr. Rattiner, we now know your name. Where do you live?

13 A. I live in New Jersey.

14 Q. Can you give the jury a little bit of background
15 on your education?

16 A. Bachelor's of Science in finance.

17 Q. Are you currently employed?

18 A. I am.

19 Q. By whom?

20 A. By FINRA.

21 Q. Tell us again what FINRA stands for?

22 A. Financial Industry Regulatory Authority.

23 Q. How long have you been with FINRA?

24 A. Almost twelve years.

25 Q. Where is your office located?

CHRISTOPHER RATTINER - Direct By Mr. Belliss

1 A. In Woodbridge, New Jersey.

2 Q. Do you work with Mr. Rowen?

3 A. I do.

4 Q. Do you have a specific job title?

5 A. Principal examiner.

6 THE COURT: Slow down a little bit.

7 BY MR. BELLISS, CONTINUED:

8 Q. How long have you been an examiner with FINRA?

9 A. Twelve years.

10 Q. Generally what does a FINRA examiner do?

11 A. We look at broker-dealers and the activities of
12 broker-dealers, so practice, financials, operations.

13 Q. Are you familiar with the term Regulation D?

14 A. I am.

15 Q. Could you explain slowly in plain English to the
16 jury what Regulation D is?

17 A. Sure. Firms are able to raise money and offer
18 securities either through a private means or a public
19 means. Regulation D is an exemption from offering them to
20 the public market. It is usually restricted from anywhere
21 from six months to twelve months.

22 Q. And the targeted investors for a Regulation D
23 offering, are they different in any way from the general
24 public?

25 A. It depends. Regulation D, there is three rules,

CHRISTOPHER RATTINER - Direct By Mr. Belliss

1 504, 505, and 506. Each one allows for certain
2 non-credited investors, would be investors that have less
3 than a million dollars net worth or less than two hundred
4 thousand dollars income.

5 Q. In your capacity as a FINRA examiner, have you
6 ever conducted any cyclical examination of a broker-dealer?

7 A. Yes.

8 Q. Roughly how many?

9 A. Over the year you do anywhere between six and
10 twelve a year probably.

11 Q. Have you conducted any cause based examinations?

12 A. No.

13 Q. Ever heard of a broker-dealer called McGinn,
14 Smith & Company?

15 A. Yes.

16 Q. Where is McGinn, Smith & Company headquartered?

17 A. They were in Albany, New York.

18 Q. Is it all right if I refer to them as the
19 broker-dealer?

20 A. Sure.

21 Q. Is it accurate to say that the broker-dealer had
22 been subject to regulation by FINRA over the past several
23 years?

24 A. Yes, they are the broker-dealer.

25 Q. Were you aware that McGinn, Smith was subjected

CHRISTOPHER RATTINER - Direct By Mr. Belliss

1 to a 2008 cyclical examination by FINRA?

2 A. Yes.

3 Q. Did you have any part in the 2008 examination?

4 A. I did not.

5 Q. Were there examinations by FINRA of McGinn,
6 Smith in 2009?

7 A. Yes.

8 Q. What was the general basis for the examination
9 or examinations?

10 A. It was a routine examination in 2009, and I was
11 a part of it. There are also cause exams, and the cause
12 exams were result of arbitration. I believe the customers
13 were Mr. Chang and Mr. Steinbridgener (phonetically).

14 Q. Very briefly without getting into the details of
15 any arbitrations, what is an arbitration involving a
16 broker-dealer?

17 A. Any customer has the ability to, without going
18 into a courtroom, has the ability to bring arbitration
19 against a broker-dealer for, you know, wrong that they feel
20 has been done to them or their account.

21 Q. When did the 2009 cause based examination begin
22 about?

23 A. I believe the second quarter of 2009.

24 Q. Were you involved in those examinations?

25 A. They sort of folded into the routine exam. So

CHRISTOPHER RATTINER - Direct By Mr. Belliss

1 eventually I did become involved, you know, with those
2 exams, but it was all, you know, it is three separate exams
3 that sort of fell into one.

4 Q. Who else was involved in 2009?

5 A. Steve Rowen. We had a few cause examiners. One
6 would be Randy Pearlman. One would be Gary Jacks
7 (phonetically). Their supervisor, Robert McCarthy, Steve's
8 supervisor on this exam, and my supervisor on this exam,
9 Michael Paulson.

10 Q. Concerning the 2009 exams that were going on,
11 were there any particular investments that you and your
12 fellow examiners were particularly focused on?

13 A. We were looking at what we called the Four
14 Funds.

15 Q. Did they have acronyms?

16 A. Yes.

17 Q. What were they?

18 A. The were FEIN, FIIN, FAIN, and TAIN.

19 Q. And were you also focusing on an entity called
20 TDM Cable Funding, LLC?

21 A. Yes.

22 Q. What was the relationship between TDM Cable
23 Funding, LLC and any of the investments that McGinn, Smith
24 offered under Regulation D?

25 A. What we had seen was that one of the entities, I

CHRISTOPHER RATTINER - Direct By Mr. Belliss

1 believe it was FIIN, had loan money to TDM Cable or made an
2 investment with TDM Cable.

3 Q. Cable Funding, LLC?

4 A. Correct.

5 Q. In connection with TDM Cable Funding, LLC, was
6 there also a related trust called TDM Cable Trust 06?

7 A. Yes.

8 Q. What was the relationship, if you know, between
9 TDM Cable Trust 06 and TDM Cable Funding, LLC?

10 A. I believe it was an entity to raise the funds
11 and deliver them to TDM Cable Funding.

12 Q. What was TDM Cable Funding going to do with the
13 money?

14 A. TDM Cable Funding, from what I recall, was going
15 to buy triple play contracts where they were buying out
16 cable contracts I believe in two developments down in
17 Florida.

18 Q. In connection with your examination, did you
19 review any bank records or accounting records for TDM Cable
20 Funding, LLC?

21 A. Yes.

22 Q. Was there anything that was of interest in your
23 examination?

24 A. Yes.

25 Q. What was of interest?

CHRISTOPHER RATTINER - Direct By Mr. Belliss

1 A. We had seen loans going to individual members
2 that -- the initials TDM, being Timothy McGinn,
3 David Smith, and Matt Rogers. Slightly after the time that
4 the monies were received by the entity, there were loans
5 sent out to those individuals.

6 Q. Based upon your experience in reviewing
7 unregistered investments pursuant to Regulation D, is it at
8 all unusual to see monies flowing to individuals as opposed
9 to the broker-dealer, itself?

10 A. Yes.

11 Q. Do you remember the approximate amount of these
12 payments?

13 A. A little over a million dollars.

14 Q. To whom?

15 A. To Mr. McGinn, Mr. Smith, and Mr. Rogers.

16 Q. What was the approximate breakdown?

17 A. About three fifty each. Mr. McGinn received
18 three hundred and fifty-two thousand.

19 Q. During your 2009 examination of the
20 broker-dealer, did you and colleagues ever question
21 Mr. Smith or Mr. McGinn about the payments to Mr. Smith and
22 Mr. McGinn?

23 A. Yes.

24 Q. When and what setting were the questions asked?

25 A. We were having a background review. It was on

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1 Tuesday, September 22nd. It was in the afternoon where we
2 had a session, you know, sort of a meeting to discuss
3 logistics, things of that sort with the firm, and during
4 that conversation that conversation had occurred.

5 Q. Who was at the meeting?

6 A. That meeting was -- it was the examiners on our
7 side, and on their side it was Mr. McGinn, Mr. Smith,
8 Mr. Guzzetti, Brian Shea. I think that was -- I am not
9 sure if Joe Carr was there or not, but I believe that was
10 the individuals that were present.

11 Q. Do you see Mr. Smith in the courtroom today?

12 A. I do.

13 MR. DREYER: We will stipulate that it is
14 the same Mr. Smith, Your Honor.

15 THE COURT: So noted.

16 BY MR. BELLISS, CONTINUED:

17 Q. Do you see Mr. McGinn in the courtroom?

18 MR. JONES: Same.

19 THE COURT: So noted.

20 BY MR. BELLISS, CONTINUED:

21 Q. Do you know if the McGinn, Smith accountant
22 named Brian Shea was also present?

23 A. Yes, I believe he was.

24 Q. Who is Brian Shea?

25 A. Brian Shea was the firm's accountant.

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1 Q. Did you have any interactions with Mr. Shea
2 during 2009?

3 A. Yes, he was a main point of contact for us.

4 Q. How would you characterize his demeanor during
5 your interaction with him?

6 A. Well, we had questions for him. Frankly, he
7 just seemed nervous. He would have a hesitation to his
8 answers.

9 Q. Getting back to that meeting on September 22,
10 2009, it took place at McGinn, Smith in Albany?

11 A. Yes.

12 Q. Were Mr. McGinn and Mr. Smith shown copies of
13 either bank records or balance sheets that reflected those
14 payments moving?

15 A. I don't recall whether we had them. We wouldn't
16 have had printouts ourself. I don't recall if Mr. Shea had
17 brought in a printout, but at that point we were looking at
18 disks, and we didn't have access to a printer.

19 Q. Were Mr. Smith and Mr. McGinn asked what the
20 payments were for?

21 A. We asked them that, what the payments were for.

22 Q. What responses were you given?

23 A. Initially I had been told that the amounts were
24 actually fees received as part of the deal.

25 Q. Who said that?

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1 A. That was Mr. Smith.

2 Q. Did Mr. McGinn say anything?

3 A. Mr. McGinn then chimed in and said actually they
4 were loans, not fees, to the individual namesakes.

5 Q. Based upon your experience, is it possible for a
6 payment to an individual to be a fee and a loan at the same
7 time?

8 A. No.

9 Q. How did Mr. Smith's description of the payments
10 as fees and Mr. McGinn's description of the payments as
11 loans strike you?

12 A. It was high when it was first mentioned as a
13 fee. The quick calculation was approximately forty
14 percent, which on a private placement would be, you know,
15 astronomical.

16 Q. If, in fact, TDM Cable Funding, LLC was making
17 legitimate loans to Mr. Smith and Mr. McGinn, are there any
18 documents or records that you would have wanted to have
19 reviewed?

20 A. Yes, and prior to that, we would have wanted to
21 see that in the private placement memorandum.

22 Q. What specific types of records or documents in
23 connection with the loans would you be looking for?

24 A. At the time of the meeting we had requested
25 whether or not there loan agreements in place, you know, to

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1 show what these loans were and what sort of interest rate
2 they were holding, what maturity dates would have been on
3 those loans.

4 Q. I show you Exhibit GH2. I will pop up the
5 screen right in front of you. What is this document?

6 A. That is letter that we wrote on September 30,
7 2009, to Mr. Franceski who was the firm's counsel at that
8 time.

9 Q. Item number one, you are asking for accounting
10 files; is that right?

11 A. That's correct.

12 Q. Two of the entities involved in the middle item
13 number one are MSTF and the TDM Cable Funding, LLC; is that
14 right?

15 A. That's correct.

16 Q. Why were you interesting in TDM Cable Funding,
17 LLC?

18 A. Based on the bank statements, review of the bank
19 statements showed those loans, so we wanted to see what
20 else we weren't seeing. Prior to this letter being written
21 as part of that September 22nd, prior to our meeting, I had
22 sat down with Brian Shea, and Mr. Shea had shown me on his
23 computer some of the Quicken files that existed.

24 And at that point, there are approximately forty
25 to fifty entities that frankly we weren't aware of, which

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1 is where we came up with this list of names. At the time
2 we didn't know of many of these names. So when we went
3 back to the offices a week later, we had drafted up this
4 letter to gather as much as information as we could in the
5 Quicken format.

6 Q. If you could look at item number four. What are
7 you asking for in that request?

8 A. We wanted to make sure that the files were up to
9 date, and if they were not up to date, to identify that to
10 us. That is to ensure that, again, what we are receiving
11 is accurate and current.

12 Q. Would you want to know if accounting records had
13 somehow been changed?

14 A. Absolutely.

15 Q. Why?

16 A. Because then obviously the information that we
17 are receiving is not accurate as of a certain date. And
18 what we were looking at, you know, was to be what was --
19 was to be real data that was provided and what was in the
20 system at that time.

21 Q. On item number five on page two, you were
22 looking for loan documentation between McGinn, Smith
23 entities and Mr. McGinn and Mr. Smith, and some other
24 folks; is that right?

25 A. Correct.

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1 Q. Did you get some responses from McGinn, Smith in
2 the fall of 2009?

3 A. We did.

4 Q. I show you Exhibit GH6. What is that document?

5 A. This is a document from Gersten and Savage who
6 we were told at the time had created private placement
7 memorandas for the Four Funds. We had requested
8 information on, you know, the different entities, and
9 Gersten and Savage had responded to us with, you know, some
10 Quicken files that we had requested.

11 Q. If you go to page two, there is a table?

12 A. Correct.

13 Q. Those are presumably the accounting records that
14 were contained on that submission to you; is that right?

15 A. That is right.

16 Q. Item number eight is MSTF. Item number twelve
17 is TDM Cable Funding, LLC; is that right?

18 A. That's correct.

19 Q. Again, if those accounting records that were
20 being submitted to you on that date were not in fact
21 accurate, would you have wanted to know that?

22 A. Yes, we would have.

23 Q. Why would you want to know that?

24 A. Again, to be able to verify what the
25 documentation said before and what the changes were, and

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1 what was the reason for those changes.

2 Q. I show you Exhibit GH10. Do you recognize that
3 document?

4 A. I do.

5 Q. What is it?

6 A. This is a response in response to our
7 September 30th letter. This one is dated November 16th
8 from Mr. Brian Shea to Randy Pearlman, a colleague of mine.

9 Q. You had asked for loan documentation; is that
10 right?

11 A. That's correct.

12 Q. And if you flip to the first promissory note
13 that's attached to the cover letter, who is the lender and
14 who is the borrower in this promissory note?

15 A. In this case the lender is TDM Cable Funding and
16 the borrower is Mr. McGinn.

17 Q. What's the interest rate?

18 A. The interest rate is three percent.

19 Q. When was this loan due to be paid back?

20 A. This loan was due to be paid back on October 1,
21 2012.

22 Q. If you go to the signature page of that
23 promissory note, is there a date block by Mr. McGinn's
24 signature?

25 A. No, there is not.

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1 Q. Is there anywhere on that document?

2 A. Solely on the first page where it says

3 October 2, 2006.

4 Q. Up in the upper right-hand corner?

5 A. That's correct.

6 Q. Any mention in that exhibit as to when these

7 promissory notes were actually signed by Mr. McGinn,

8 Mr. Smith, and anyone else?

9 A. No specific reference. However, the paragraph
10 above Mr. McGinn's signature references that this note has
11 been executed and delivered on the date specified above by
12 the duly authorized representative of the maker, which
13 would lead me to believe that it was executed on October 2,
14 2006.

15 Q. And if, in fact, promissory notes that are
16 attached to that exhibit had been signed on a date
17 different, is that something you would have wanted to have
18 known?

19 A. Yes.

20 Q. Is there anything unusual about the promissory
21 notes themselves as you look at them here today?

22 A. When we first received these in the office, it
23 had looked to us that it was a possibility that these were
24 original signatures. We thought that was quite odd
25 obviously because we had been told that these were created

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1 a long time ago.

2 That was really the main -- the other thing is
3 that each of the notes really are identical. Each one has
4 for whatever reason a due date of just one day less than
5 six years. We weren't sure what the reasoning for that
6 would be. And the percentage terms were typically between
7 three and six percent for the ones that we had been
8 provided.

9 Q. After you received this exhibit, did you come to
10 learn when, in fact, those promissory notes had been
11 created?

12 A. Yes.

13 Q. When did you learn that information?

14 A. We learned that in February 2010 during
15 testimony. It was indicated to us by Mr. Carr, the firm's
16 counsel, that he had created the document on or around
17 November 2, 2009. And they were signed subsequent to that
18 date.

19 Q. I show you Exhibit GH13. What is this document?

20 A. This is a letter from the McGinn, Smith counsel,
21 Joe Carr, to Randy Pearlman in regards to a request that we
22 had made on February 2nd. We were looking to see
23 specifically when the notes were signed, who the signatory
24 of each document -- who the signatory was for each
25 document. And this is the firm's response to our letter.

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1 Q. And pages two and three of the exhibit, what do
2 they reflect?

3 A. Two and three of the exhibit reflect other loans
4 that had not been previously identified to the staff.

5 Q. I think we are looking at page two on the
6 screen, and then page three, what is that showing?

7 A. Right. So page two is Cruise Charter Ventures.
8 These loans were made to the individuals, but we had not
9 received previous promissory notes. Then on page three
10 were loans that were made by TDM Cable Funding, but these
11 we did receive the notes on.

12 Q. I show you Exhibit GH14. What is this exhibit?

13 A. This is a letter from the staff to
14 Mr. Franceski, the firm's attorney, requesting certain
15 items. Based on our testimony, we had some follow-up
16 questions.

17 Q. Turning to page two, Item Number Ten. You are
18 asking for more documentation of the loans; is that
19 correct?

20 A. That's correct.

21 Q. And that last sentence talks about what
22 information concerning any loans that don't have a
23 promissory note; is that right?

24 A. That's right.

25 Q. Looking an Item Number Eleven, did you ask for

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1 some Quicken files for NEI Capital. Why were you asking
2 for accounting records for NEI Capital?

3 A. Prior to the testimony -- I don't remember if it
4 was Mr. McGinn or Mr. Smith that had brought it to our
5 attention, but we were not aware of NEI Capital, and we did
6 not have any documentation regarding NEI Capital.

7 Q. I show you GH15, McGinn, Smith response; is that
8 correct?

9 A. That's correct.

10 Q. If you could scroll down. Concerning Item
11 Number Ten, it talks about a schedule of loan transactions
12 which was pertaining to your request for loans between
13 McGinn, Smith entities and the principals; is that right?

14 A. That's right.

15 Q. If you flip I think to the third or fourth page,
16 one more, please?

17 A. Yes.

18 Q. That last page there. Talks about various loan
19 transactions not evidenced by promissory notes; is that
20 correct?

21 A. That's correct.

22 Q. If you look at the last NEI entry there, there
23 is a loan from NEI to Mr. McGinn and the date is
24 November 2, 2009, for one hundred and thirty thousand
25 dollars at three percent with a maturity term of six years?

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1 A. Yes.

2 Q. Based upon the representation in this letter,
3 who would you assume the lender was?

4 A. The lender in this case would be NEI Capital.

5 Q. And when would the loan have been made?

6 A. It appears 11/2/2009.

7 Q. In fact, if that information was not correct,
8 would you have wanted to know that?

9 A. Yes.

10 Q. Looking at the interest rate for all of these
11 loans, these are all loans that are not documented by any
12 promissory note; is that right?

13 A. That's correct.

14 Q. Based upon your experience, is it at all unusual
15 to have loans for several hundreds of thousands of dollars
16 without any type of loan documentation?

17 A. Yes. We would usually typically see some sort
18 of documentation just to show, you know, what was owed to
19 these different entities and by who and how much and the
20 different terms that might be established by those loans.

21 Q. Does the three percent interest rate for a
22 personal loan strike you in any way?

23 A. It appears low, especially since NEI was raising
24 money for some purpose and they were loaning those
25 monies -- or borrowing those monies from individual

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1 investors and paying those individual investors a much
2 higher rate. Therefore, it would be hard to recoup that if
3 they are loaning this money out at three percent to
4 themselves.

5 Q. Turning to the end of the 2009, did the
6 broker-dealer have some issues with regard to its net
7 capital compliance?

8 A. Yes.

9 Q. What happened?

10 A. The firm -- the arbitrations basically happened,
11 and the firm was losing the arbitration and it was costing
12 them a significant amount of money, both to defend the
13 arbitrations and as a result of the awards due to the
14 arbitrations.

15 So the firm initially was paying those legal
16 fees with other entities as opposed to the broker-dealer.
17 And when we had noted that in December, we were able to put
18 those back on the books and records of the firm, and that
19 ended up being below net capital.

20 Q. When the firm goes below its net capital
21 compliance, what happens?

22 A. They have two choices essentially, one to add
23 funds to the broker-dealer or to withdraw from membership.

24 Q. What ultimately happened after we got into 2010?

25 A. In this case they -- I guess they transferred

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1 their accounts to a Dinosaur Securities, one of their reps,
2 Andy Guzzetti, had already transferred out, I believe, at
3 that point, and they were -- I don't know if they sold the
4 accounts or just transferred the accounts over to the other
5 broker-dealer, and then they wound down the business, you
6 know, that they were in.

7 Q. Did they continue to be a licensed broker-dealer
8 within FINRA?

9 A. Eventually they were expelled. By the end of
10 February --

11 MR. JONES: Objection. Irrelevant.

12 THE COURT: Overruled.

13 BY MR. BELLISS, CONTINUED:

14 Q. You can answer.

15 A. By the end of February, they were due to file an
16 annual audit. That annual audit never came in. As a
17 result of the annual audit not being in, FINRA took action
18 to expel the firm.

19 MR. BELLISS: I will take those exhibits
20 back from you. Thank you, Mr. Rattiner. No further
21 questions, Judge.

22 THE COURT: Defense cross.

23

24 CROSS-EXAMINATION BY MR. JONES:

25 Q. Good afternoon, Mr. Rattiner.

RONALD SIMONS - Recross by Mr. Dreyer

1 on: Should the U.S. Attorney's office determine that the
2 defendant after a plea agreement, etcetera, etcetera.

3 MR. DREYER: Thank you. That's all I have.

4 THE COURT: Mr. Jones, recross, if anything.

5 MR. JONES: Nothing, Your Honor.

6 THE COURT: All right. You may step down,
7 and give that exhibit to counsel.

8 (Whereupon, the Witness is excused.)

9 THE COURT: Next witness.

10 MS. COOMBE: The government calls
11 David Rees.

12

13 DAVID P. REES, having been called as a Witness,
14 being first duly sworn, was examined and testified as
15 follows under oath:

16

17 DIRECT EXAMINATION BY MS. COOMBE:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. Have you entered into a proffer agreement with
21 the United States?

22 A. Yes, I have.

23 Q. What is your understanding of the proffer
24 agreement?

25 A. That for my truthful testimony today, things

DAVID P. REES - Direct By Ms. Coombe

1 that I say today cannot be used against me as long I tell
2 the truth.

3 Q. Where did you grow up?

4 A. Syracuse, New York.

5 Q. Can you please tell us about your education?

6 A. I went to Clarkson College in Potsdam, New York.

7 I have a Bachelor's in accounting and M.B.A. which I
8 received in 1985 and 1986.

9 Q. Where do you work now?

10 A. I work at Foresite Marketing in East Greenbush,
11 New York.

12 Q. What is your position there?

13 A. I am the comptroller.

14 Q. How long have you been there?

15 A. Since August of 2011.

16 Q. Did you ever work for McGinn, Smith and Company,
17 Incorporated?

18 A. Yes, I did.

19 Q. How long did you work there?

20 A. I was there from August 2002 through April 2009.

21 Q. Did there come a point in time when you began to
22 look for a new job while you were at the broker-dealer?

23 A. Yes, sometime in the 2006, 2007 timeframe I
24 began exploring other opportunities as there were some
25 financial transactions that I witnessed, plus general

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1 pressures.

2 MR. JONES: Objection, Your Honor.

3 MR. DREYER: Objection, Your Honor.

4 THE COURT: Overruled.

5 A. Plus financial pressures on the broker-dealer
6 were causing a lot of stress in my personal life.

7 BY MS. COOMBE, CONTINUED:

8 Q. Did you challenge Mr. McGinn or Mr. Smith about
9 any of the issues that you just mentioned?

10 A. I did not.

11 Q. Why not?

12 A. I felt that as their names were on the door, my
13 raising objections about things was not going to change the
14 outcome of them. And certainly lead me -- lead them to
15 believe that I was not a team player.

16 Q. Were you concerned that that would have any
17 consequences?

18 A. Ultimately I was concerned that I could be fired
19 for not complying with their wishes.

20 Q. What was your title when you left the
21 broker-dealer?

22 A. I was the comptroller.

23 Q. Who did you report to?

24 A. David Smith.

25 Q. How often did you interact with Mr. Smith?

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1 A. Once a day if we had work to do, but he was in
2 the office and just down the hall from me.

3 Q. How often did you interact with Mr. McGinn?

4 A. Less so as he was at Integrated Alarm, and when
5 he returned back, not nearly as much. He spent a lot of
6 time in his office on the other side of the room.

7 Q. What were your duties and responsibilities as
8 comptroller?

9 A. As comptroller I was responsible for preparing
10 the financial statements, ensuring brokers were paid, doing
11 accounts payable, maintaining the firm's financial
12 statements, and handling the net capital calculation for
13 the firm.

14 Q. Did you hold any other titles?

15 A. Yes, I was a Series 27, which is the Financial
16 and Operations Principal title.

17 Q. Is there an acronym for that?

18 A. FinOP.

19 Q. What were your responsibilities and duties as
20 the FinOP?

21 A. Primarily for maintaining the firm's --
22 reporting on the firm's net capital as well ensuring the
23 custody of client assets.

24 Q. Did anyone report to you?

25 A. During my tenure I had several employees that

DAVID P. REES - Direct By Ms. Coombe

1 reported to me at various times.

2 Q. How many people reported to you, what was the
3 greatest number of people?

4 A. I believe I had two at the most.

5 Q. What types of positions were they in?

6 A. Primarily senior accountant and accountant roles
7 doing payroll and other reporting activities.

8 Q. Did you maintain any accounting records for the
9 broker-dealer?

10 A. Yes, I did. In the financial statement
11 preparation, we did accounting software and bank statements
12 to rely on.

13 Q. Can you tell us what types of accounting records
14 you maintained for the broker-dealer?

15 A. Well, we had -- the statements were prepared
16 through brokerage statements, bank statements. We would
17 receive a statement, various vendor payables that would be
18 used to calculate the payables and ultimately the
19 calculation of the firm's profit.

20 Q. What was the broker-dealer's financial condition
21 when you arrived?

22 A. It was fairly healthy. There was a lot of cash
23 in the bank, and we had a significant amount of brokerage
24 business so there was excess net capital and that was a
25 relatively easy job at the time.

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1 Q. Did that change over time?

2 A. As the firm started to lose money and the
3 brokerage business dried up, our firm's capital became
4 depleted and that became a little hard to manage.

5 Q. Mr. Rees, I am just going to raise the screen in
6 front of you. I am handing you previously admitted
7 Exhibit GE10. Could we please look at it?

8 This is an electronic mail message from
9 Mr. Smith to Mr. McGinn with a copy to Mr. Livingston
10 regarding Friday's payroll. Who is Mr. Livingston?

11 A. This is Tom Livingston. He was a minority
12 partner in the firm.

13 Q. It states: Per my earlier e-mail, I believe
14 that we have no choice but to instruct Dave Rees to delete
15 the following paychecks on Friday. And there are list of
16 just under ten names there; is that correct?

17 A. Correct.

18 Q. It goes on to state: I will further instruct
19 Dave to pay no bills including rent. The one exception
20 will be health coverage.

21 Did Mr. Smith ever instruct you not to pay
22 employees?

23 A. He did.

24 Q. How often did that happen?

25 A. Not a lot, but towards the end of my tenure

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1 there, it happened at least this one occasion.

2 Q. What is your understanding of why that happened?

3 A. By not paying them or recording the liability
4 for their payroll, we would lose less money in a month and
5 it would have a positive impact on our firm's capital.

6 Q. And can you explain whether there is some
7 minimum requirements for the firm's capital?

8 A. Yes, as a broker-dealer of the type that McGinn,
9 Smith was, we had to maintain a certain level of capital,
10 which was cash and receivables in the bank. And if we fell
11 below that, we had to report to FINRA our net capital
12 deficit.

13 Q. Okay. If we could look a little further down in
14 the next paragraph.

15 This will leave us approximately eighty-five
16 thousand dollars short as regards to cash flow in order to
17 meet the rest of the payroll. I suspect our net capital
18 will be wiped out as we were barely at the minimum at the
19 end of last month.

20 Now, this was in February of 2009?

21 A. Correct.

22 Q. It continues: With the health checks, we
23 probably need to come up with one hundred and twenty-five
24 thousand dollars to clear the capital hurdle and, of
25 course, provide the cash for the rest of payroll.

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1 Obviously the payables, although not being paid, need to be
2 accrued for capital purposes and if calculated would put us
3 in net capital violation.

4 What does that refer to, net capital violation?

5 A. Being below the minimum net capital to operate
6 as a broker-dealer.

7 Q. How would not paying employees and other bills
8 affect the broker-dealer's net capital?

9 A. Well, we would have more money in the bank,
10 which would be treated as a positive on our net capital.
11 And if you do not accrue your expenses, then it is not
12 reported as a liability for that month, and then that would
13 not have a negative impact on your net capital.

14 Q. It goes to say: We can probably manipulate for
15 this month, but if no solution is found in the next couple
16 of weeks, we will have to report the net capital violation
17 and, more likely than not, consider closing our doors.

18 Did Mr. Smith ever direct you to manipulate the
19 broker-dealer's net capital to avoid a violation?

20 A. Yes.

21 Q. How did he do that?

22 A. Well, by saying not to accrue payables for a
23 particular month.

24 Q. What does that mean?

25 A. Not to record a liability on the books on the

DAVID P. REES - Direct By Ms. Coombe

1 firm's financial statements so it would not show up as a
2 payable and then hence due somebody, which would have a
3 positive impact on the capital.

4 Q. Can you give us a specific example of what you
5 are talking about?

6 A. If a phone bill came in and you did not record
7 it, then it wouldn't -- the bill didn't exist. And if you
8 didn't put it on your books, the financial statement would
9 reflect that you -- would not reflect you didn't owe a
10 phone bill, and it just sat on your desk.

11 Q. It goes on to state: We have been living on the
12 edge for some time and Tim's deals have kept us alive by
13 fronting our profit.

14 What is your understanding about how
15 Mr. McGinn's deals kept the broker-dealer alive by fronting
16 their profit?

17 A. He was sending money from some of these trust
18 LLC entities that was created in the form of advanced
19 profits that were sent to McGinn, Smith, the broker-dealer,
20 and we were using that to get cash in the door.

21 Q. What do you mean by advanced profit?

22 A. If we would -- if there was a financial deal
23 that was being done and we had anticipated that if
24 everything worked out in a perfect world, we would have
25 X-dollars, we would take that money up front even though --

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1 assuming that everything went according to plan.

2 Q. What was your reaction to that process?

3 A. It was helpful from the perspective of being the
4 comptroller, being able to make payroll, but it was
5 certainly suspect down the road when deals didn't work out
6 when you -- when they had to be unwound. So it was a
7 two-sided issue. I mean, I knew we couldn't live like that
8 forever, but it got us through another payroll run.

9 Q. What made it suspect down the road?

10 A. That these deals, fees would just show up, and I
11 never saw any deep backup as to how they were actually
12 arrived at. It seemed that the money would just show up
13 that was calculated as an advisory fee, was equal to how
14 much we needed for payroll.

15 Q. Now, have you ever heard of the term vig, V-I-G?

16 A. Yes, I have.

17 Q. When did you hear that term?

18 A. It would be tossed around the office once in a
19 while.

20 Q. Who used it?

21 A. Mr. McGinn was the primary user of that term.

22 Q. What was your understanding of what it meant?

23 A. Sort of like profits in the deal that would be
24 left over for the house or for, in that case, the
25 broker-dealer after expenses and investors had been paid

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1 back.

2 Q. You use the term the house, what were you
3 referring to?

4 A. Like a casino-ish type.

5 Q. Going back. We are now nine lines down. Can
6 you find where I am starting with however?

7 A. Yes.

8 Q. However, the two hundred thousand dollars plus
9 that we are losing every month is just too difficult to
10 keep pace with. I have no solutions for the one hundred
11 and twenty-five thousand dollars.

12 And it goes on.

13 As for keeping the firm open, maybe we can
14 simply operate as an advisor paying another BD.

15 Do you understand that to refer to
16 broker-dealer?

17 A. Yes.

18 Q. To run our deals through and completely shutting
19 down the brokerage operation.

20 And it continues on.

21 I suspect that we would retain very few salesmen
22 willing to stay just with an advisory firm so our
23 distribution of propriety product would be greatly
24 diminished. With all of the other BD, and I am not going
25 to read the next word, but you can see it, gone, we may be

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1 able to make a living but it would not easy.

2 Lots of things to think about including how we
3 would treat ongoing arbitrations and the ability to remain
4 licensed as an advisor if we walk away from them. Sorry to
5 ruin your day, but we have not spent enough time
6 determining if there is a solution to this problem, I
7 suspect because there isn't. Other than ourselves, we will
8 also have to figure out how to eventually pay those
9 employees whose checks we held, but that is for another
10 day, Dave.

11 How long had these issues been occurring?

12 A. Probably for the last eight months prior to this
13 e-mail would be my recollection.

14 Q. Are you familiar with the Four Funds, FIIN,
15 FAIN, TAIN, and FEIN?

16 A. I am.

17 Q. What were they?

18 A. They were funds that were set up as an
19 investment product that would take money from investors and
20 then make investments, interest bearing investments, in
21 various companies, and then receive interest on them, and
22 then pay the investors their money on their invested funds.

23 Q. How did they perform?

24 A. Originally they started off performing okay, but
25 then as time went on and some of the loans stopped paying

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1 their interest, it became difficult for the Funds to make
2 their regular interest payments.

3 Q. Directing your attention to late 2007, are you
4 familiar with how the Four Funds were valued on the books
5 at that time?

6 A. We were carrying them at face value or book
7 value at the time.

8 Q. What does that mean?

9 A. That means if we lent somebody five hundred
10 thousand dollars, and we didn't think -- and it was suspect
11 that they would give us all the money back, we still
12 carried it at five hundred thousand dollars.

13 Q. In late 2007, were you involved in any
14 calculations to determine the actual value of the Four
15 Funds?

16 A. I put together a spreadsheet for Mr. Smith that
17 basically listed the assets that each of the Funds held and
18 that summarized them up for him.

19 Q. Can you tell us about that calculation?

20 A. Yes. And then he had assigned some possibility
21 or a haircut or a discount value, and those funds were
22 under water by, I believe, approximately forty million
23 dollars.

24 Q. What percentage was that of how much they owed
25 to investors?

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1 A. I think it was about fifty percent.

2 Q. Now, did Mr. Smith know about that discrepancy
3 between the book value and the actual estimated value
4 before late 2007?

5 MR. DREYER: Objection to the form of
6 question. No foundation.

7 THE COURT: Sustained as to form. Rephrase.

8 BY MS. COOMBE, CONTINUED:

9 Q. Are you aware of whether Mr. Smith knew about
10 the true value of the Four Funds before late 2007?

11 MR. DREYER: Same objection, Your Honor.

12 THE COURT: Sustained. Lay a foundation.

13 BY MS. COOMBE, CONTINUED:

14 Q. Did you ever talk to Mr. Smith about the value
15 of the Four Funds?

16 A. Not in concrete terms about managing each of the
17 Funds as he was the managing member. I assembled some of
18 the spreadsheets, and while I would hand him the
19 information, I would assume --

20 MR. DREYER: Objection.

21 THE COURT: Don't tell what you assume.

22 A. I gave him the piece of paper that showed that
23 certain investments we had made had not paid their interest
24 in a while.

25 BY MS. COOMBE, CONTINUED:

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1 Q. Who was keeping track of those investments?

2 A. I was.

3 Q. Did Mr. Smith have any role in that process?

4 A. He made the investments. I did most of the
5 accounting for them.

6 Q. Did you keep Mr. Smith informed about how the
7 investments for the Four Funds were performing?

8 A. I gave him spreadsheets of accrued interest. He
9 also had access to bank balances for each of the Funds and
10 could see on a daily basis whether or not interest income
11 checks that were due the Funds arrived.

12 Q. Who was the managing member of the Four Funds --

13 MS. COOMBE: Let me rephrase my question.

14 BY MS. COOMBE, CONTINUED:

15 Q. What was Mr. Smith's role regarding the actual
16 investments of the Four Funds?

17 A. He was the managing member of the funds.

18 Q. You provided him with this kind of information
19 that you just described before late 2007?

20 A. Yes.

21 Q. Was that part of your regular duties and
22 responsibilities?

23 A. It was one of them. We didn't meet on a regular
24 basis, but that information was provided to him.

25 Q. Based on this, is it your understanding that

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1 Mr. Smith was aware of the true condition of the Four Funds
2 before late 2007?

3 MR. DREYER: Objection, Your Honor.

4 THE COURT: Overruled. You may answer.

5 A. Yes.

6 BY MS. COOMBE, CONTINUED:

7 Q. Were there any entities related to the
8 broker-dealer?

9 A. There were many entities that Mr. Smith and
10 McGinn had set up over the years, as well as entities
11 related to the broker-dealer. So, yes, we had a lot of
12 entities.

13 Q. Can you give us an estimate of how many?

14 A. My guess would be twenty.

15 Q. Did that number grow while you were there?

16 A. That number is the high side towards the end of
17 my tenure.

18 Q. Were those just the entities that you were
19 responsible for?

20 A. I and another accountant were responsible for
21 probably sixteen, seventeen of those.

22 Q. And could you explain to us what you mean by
23 related entities to the broker-dealer?

24 A. There was an M&S Partners, which was a small
25 partnership they had. Capital Center Credit Corp. was a

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1 small company that they had. McGinn, Smith Capital
2 Holdings, Seton Hall Associates.

3 Q. Are you familiar with an entity called McGinn,
4 Smith Advisors?

5 A. Yes.

6 Q. McGinn, Smith Capital Holdings?

7 A. Yes.

8 Q. Did all of these entities have bank accounts?

9 A. They did.

10 Q. Were there also other entities that Mr. McGinn
11 and Mr. Smith formed, trusts and LLCs?

12 A. There were.

13 Q. If you added all those in, would it be a higher
14 number than twenty?

15 A. I think twenty is the high side with everything
16 so twenty, twenty-five.

17 Q. Did Mr. McGinn and Mr. Smith give you more
18 resources to handle as they created new trusts and new
19 LLCs, did the accounting department grow?

20 A. No, we were a relatively lean organization with
21 just the accountants that I had reporting to me during my
22 time there. One of them really did mostly just payroll.
23 So it was really two, myself and another accountant, doing
24 most of the work related to the trusts and those related
25 entities.

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1 Q. Did you have adequate resources to perform your
2 duties?

3 MR. DREYER: Objection, Your Honor.
4 Irrelevant.

5 THE COURT: Overruled. He may answer.

6 A. No.

7 BY MS. COOMBE, CONTINUED:

8 Q. What were Mr. McGinn and Mr. Smith's priorities
9 in the business?

10 MR. DREYER: Objection, Your Honor.

11 THE COURT: Overruled.

12 A. They spent their efforts on trying to maintain
13 the viability of the broker-dealer in the later days, and
14 Mr. McGinn spent time raising money and doing deals.

15 BY MS. COOMBE, CONTINUED:

16 Q. Where did accounting fall in their priorities?

17 A. It was low on the scale. We would typically
18 find out after a new deal had been started that we would
19 need a bank account and here is the PPM and get it set up
20 in the accounting system.

21 Q. Now, for example, are you familiar with
22 seventeen trusts that were formed between 2006 and 2009?

23 A. Yes.

24 Q. And did each of those trusts have normally
25 multiple bank accounts?

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1 A. They would typically have an escrow and an
2 operating account.

3 Q. Were there also LLCs with bank accounts?

4 A. Right.

5 Q. There were a large number of bank accounts?

6 A. Correct.

7 Q. And that was just for those entities?

8 A. Yes, most of the trusts would have their own
9 separate bank accounts.

10 Q. Did the accounting department keep Mr. McGinn
11 and Mr. Smith informed about how much money was available
12 in each account?

13 A. On a daily basis the accountant that reported to
14 me created this report that would have all the daily bank
15 balances on a piece of paper that was distributed to
16 Mr. Smith, Mr. McGinn, and myself.

17 Q. How did he distribute those?

18 A. I think he photocopied them and passed them
19 around.

20 Q. Did Mr. McGinn and Mr. Smith have the ability to
21 move money among accounts without involving the accounting
22 departments?

23 A. Mr. McGinn could wire money without any
24 involvement from the staff. Mr. Smith would authorize me
25 or my senior accountant to do so if need be.

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1 Q. Did Mr. McGinn ever move money without the
2 participation of the accounting staff?

3 A. Yes.

4 Q. How often did that occur?

5 A. Very frequently.

6 Q. When that happened, how did you find out about
7 the transactions?

8 A. Typically the wire confirmation statement would
9 be mailed from the bank that he used for his investing and
10 escrow accounts, and we would get a wire confirmation that
11 would show up.

12 Q. Did you ever decide on your own without any
13 direction from Mr. McGinn or Mr. Smith to transfer money
14 among accounts involving the trusts and the LLCs and
15 McGinn, Smith Transaction Funding, Corporation?

16 A. No.

17 Q. Did you have that authority?

18 A. No.

19 Q. While you were at the broker-dealer, did you
20 ever make any accounting entries that you understood to be
21 inappropriate?

22 A. Yes, I did.

23 Q. What entity was involved?

24 A. TDM Cable Funding I believe.

25 Q. Why did you make those entries?

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1 A. I was instructed to by Mr. Smith.

2 Q. What did you do?

3 A. There were some fees that the members of the TDM
4 Funding, LLC had taken as fees and subsequent to that, I
5 was instructed to reclassify those as loans.

6 Q. What is your understanding about who would
7 benefit as a result of this change?

8 A. Primarily the person that received the fee would
9 benefit as it would no longer be a taxable item to them.

10 Q. Who were the people that received those fees?

11 A. David Smith, Tim McGinn, and Matthew Rogers.

12 Q. I am handing you now previously admitted
13 Exhibit GI17. Could we look at the sixth page from the
14 end?

15 A. From the end?

16 Q. Yes. The transaction report. It is also up on
17 the screen, Mr. Rees.

18 A. Got it.

19 Q. What is this?

20 A. That is a transaction report from the accounting
21 system showing that the checking account of TDM Cable
22 Funding sent money to David Smith, Tim McGinn, and
23 Matthew Rogers.

24 Q. Directing your attention to the upper right-hand
25 corner, what is the date?

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1 A. July 6, 2007.

2 Q. Who prepared this?

3 A. I prepared this.

4 Q. Did you send this to Piaker and Lyons?

5 A. Yes, I did.

6 Q. I want to direct your attention to the entries
7 of October 2nd and October 3rd, what do they state?

8 A. The category is origination fees.

9 Q. How did you learn about these transactions?

10 A. The wire confirmations showed up in our in-box,
11 and when we were processing them, we became -- I became
12 aware of them.

13 Q. What was your reaction to these transactions?

14 A. I was a little shocked at the size of these
15 transactions given the size of TDM Cable Funding's deal.

16 Q. How big was the TDM Cable Funding deal?

17 A. I believe it was in the range of two to three
18 million dollars.

19 Q. What percentage would these fees be of that kind
20 of raise from investors?

21 A. That would be thirty-three percent if it was a
22 three million dollar deal.

23 Q. How did that compare to other fees that you had
24 seen?

25 A. It was excessively high and didn't seem to jive

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1 with my understanding of how origination fees relative to
2 deals would work in that they are typically a couple
3 percent of a deal.

4 Q. Was this the first time that you saw an LLC
5 paying money to Mr. Smith and Mr. McGinn directly related
6 to a raise of investor money?

7 A. I think it was.

8 Q. Who booked these transactions as origination
9 fees?

10 A. I did.

11 Q. Why did you do that?

12 A. Because it was money going to them. I assumed
13 that they had done some work in sourcing the deal for TDM
14 Funding, and I thought they would be due some sort of
15 compensation, and so I booked it as a fee, which would be
16 an expense on the TDM Funding, LLC's financial statements,
17 but an income item to them.

18 Q. Did you hold up your hands when you said work?
19 Was that inadvertent or was there --

20 A. I don't know.

21 Q. At the time that you booked these entries, was
22 there any evidence that these transactions were loans?

23 A. No.

24 Q. I would like to direct your attention to the
25 December transactions that are highlighted. Did you book

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1 those as well?

2 A. Yes, I did.

3 Q. Why did you book them as fees in origination
4 fees?

5 A. Because I knew that they were going to be a
6 similar recipient and should have treated similar to the
7 entries of October 2nd.

8 Q. At the time you booked these entries, was there
9 any evidence that they were loans?

10 A. No.

11 Q. I am handing you now previously admitted
12 Exhibit GD12. What is this, Mr. Rees?

13 A. This is a fax cover sheet from me to
14 Ronald Simons, the auditor at Piaker and Lyons.

15 Q. Whose handwriting is this?

16 A. That is my handwriting.

17 Q. What is the date?

18 A. October 3, 2007.

19 Q. I would like to direct your attention to the
20 second page. What is this?

21 A. That is a balance sheet for TDM Cable.

22 Q. Could you please look at the top right-hand
23 corner?

24 A. Yes. October 3, 2007.

25 Q. Did you prepare this?

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1 A. I did.

2 Q. When did you prepare it?

3 A. Sometime in the fall of 2007 when I printed
4 that.

5 Q. The October 3, 2007, what is the significance of
6 that date?

7 A. That is the day that coincides with the fax
8 cover sheet and is subsequent to the date in which the
9 original fees received by Mr. McGinn, Smith, and Rogers
10 have now been turned into a loan on their books.

11 Q. Let's look under other assets. Do you see there
12 is a loan DLS, loan Matt R., loan TMM for just over a
13 million dollars?

14 A. Correct.

15 Q. Now, those are the same transactions that were
16 booked as origination fees in the documents we just looked
17 at; is that correct?

18 A. Yes.

19 Q. How are they booked now?

20 A. They are now a loan to the members of the TDM
21 Cable, David Smith, Matthew Rogers, Tim McGinn.

22 Q. Who changed the accounting for these
23 transactions?

24 A. I did that.

25 Q. Why did you do that?

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1 A. I was instructed to by Mr. Smith.

2 Q. What did Mr. Smith say to you?

3 A. He asked that I -- that those should be treated
4 as loans.

5 Q. Did he say anything else?

6 A. No.

7 Q. Was this the first time anyone had ever
8 suggested to you that the October transactions just over a
9 million dollars from TDM Cable Funding, LLC were loans?

10 A. This would be the first time, yes.

11 Q. Other than Mr. Smith's direction, was there any
12 support indicating that those transactions had been loans?

13 A. No.

14 Q. Did Mr. Smith tell you what the interest rate
15 would be?

16 A. No.

17 Q. Did he give you a repayment schedule?

18 A. No.

19 Q. Did he tell you how many years the loans would
20 be for?

21 A. No.

22 Q. Did he provide any collateral?

23 A. No.

24 Q. Did he provide the LLC with any personal
25 guarantee?

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1 A. No.

2 Q. What was your reaction to his instruction to
3 change these from fees to loans?

4 A. I didn't feel really good about it. It wasn't
5 the intent of the transaction, and it was disheartening
6 that we -- that's how things were done.

7 Q. You said it wasn't the intent of the
8 transaction. What do you mean by that?

9 A. When somebody receives income for doing
10 services, it should be reported as income.

11 Q. What was your understanding about why Mr. Smith
12 asked you to change the fees from fees to loans?

13 A. For tax reasons. We were in conversations with
14 Ronald Simons, the accountant, at the time. Ron did the
15 trust tax returns as well as personal returns.

16 Q. Did you question Mr. Smith about this at the
17 time?

18 A. I did not.

19 Q. Why not?

20 A. I felt it wasn't going to do any good to do so,
21 brand me as uncooperative and wouldn't be beneficial to my
22 career.

23 Q. Did you ever talk to Mr. Smith about this again?

24 A. Later on after I had seen things like this go
25 on.

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1 Q. Approximately when did you talk to him?

2 A. Probably in 2008.

3 Q. What did you say?

4 A. I had enough. I asked how these would
5 ultimately get repaid since they were due to these
6 entities. How would they be repaid was my question.

7 Q. Did he answer you?

8 A. He did.

9 Q. What did he say?

10 A. He said that would be for my estate to figure
11 out.

12 Q. What did you understand him to mean?

13 A. That there was no real intent to repay it.

14 MR. DREYER: Objection, Your Honor.

15 THE COURT: Overruled.

16 BY MS. COOMBE, CONTINUED:

17 Q. You can answer.

18 A. That there was no intent to repay those loans.

19 Q. Could we look please now back at GD12 to the
20 third page. I believe those are the workpapers. Oh, no.
21 This exhibit, I apologize.

22 MS. COOMBE: Could we look at the third page
23 of this. Thank you.

24 BY MS. COOMBE, CONTINUED:

25 Q. Do you see under expenses there are still fees

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1 of \$200,295.50?

2 A. Yes.

3 Q. Does that match the December transactions that
4 we looked at a few moments ago?

5 A. Yes, it does.

6 Q. Why didn't you rebook the December transactions
7 as well as the October transactions?

8 A. I wasn't asked to.

9 Q. I am handing you now previously admitted
10 Exhibit GE2. That is an electronic mail message that you
11 sent to Mr. Simons. There is a subject there. Could you
12 read that for us, please?

13 A. Miscellaneous questions.

14 Q. I would like -- and I would like to direct your
15 attention to the last sentence. Could you read that,
16 please?

17 A. The fees paid to Tim, Dave, Matt should all be
18 loans, a seven percent interest rate should be applied.

19 Q. Why did you put the term loans in quotation
20 marks?

21 A. At this time there was no documentation to
22 support them being loans as far as collateral, repayment
23 schedules, other typical documents that would go into a
24 loan.

25 Q. At the time, did you believe that they were

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1 loans?

2 A. No.

3 Q. Where did the seven percent interest rate come
4 from?

5 A. David Smith asked that they be applied, that be
6 applied to the loans.

7 Q. I am handing you now previously admitted
8 Exhibit GI9. What is this, Mr. Rees?

9 A. A fax cover sheet from me to Ronald Simons.

10 Q. And I am going to direct your attention to the
11 part that's highlighted in the text. Could you read that
12 to us, please?

13 A. The TDM fees should be treated as loans at seven
14 percent.

15 Q. Did you send this on the same day as the e-mail
16 message that we just looked at?

17 A. Yes, I did.

18 Q. How can you tell that?

19 A. The time on the fax stamp is -- says it was the
20 same day as the e-mail time stamp several hours later.

21 THE COURT: How much longer will you be on
22 your direct or should we take a break now?

23 MS. COOMBE: Probably a break would be good,
24 Your Honor.

25 THE COURT: We will take our afternoon

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1 break, members of the jury, come back and complete this
2 witness before the end of the day. And don't discuss the
3 case among yourselves or anyone else.

4 (Whereupon, the proceedings were held in
5 open court out of the presence of the Jury.)

6 THE COURT: Mr. Rees, don't discuss your
7 testimony with anybody over the break. Do you understand?

8 THE WITNESS: Yes.

9 THE COURT: Mr. Minor.

10 COURT CLERK: Court stands for the afternoon
11 recess.

12 (Whereupon, a brief recess was taken.)

13 (Whereupon, the proceedings were held in
14 open court in the presence of the Jury.)

15 THE COURT: Continue.

16 BY MS. COOMBE, CONTINUED:

17 Q. I am handing you now previously admitted
18 Exhibit GI-1818. Could we please look at page
19 twenty-seven? Mr. Rees, I put a post-it on the page of the
20 original for you. What is this?

21 A. This is a transaction history that is showing
22 the loan account for David Smith for TDM Cable.

23 Q. And this is for the year 2007?

24 A. Correct.

25 Q. And there is a date in the upper left-hand

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1 corner?

2 A. 10/6/08 would have been the date it was
3 prepared.

4 Q. Who prepared this?

5 A. I did.

6 Q. And do you see under name it says, fees for the
7 first three transactions?

8 A. Yes.

9 Q. Did you book these entries?

10 A. Yes, I did.

11 Q. Why is the name fees in a loan account?

12 A. When Quicken will enter fees or entries into
13 Quicken, it will memorize the prior transaction entries so
14 as to facilitate entering transactions. And so when this
15 was reclassified from a fee to a loan, the fee name stuck with
16 the recharacterization of the loan.

17 Q. Did you change these from fees to loans, those
18 first three?

19 A. Yes, I did.

20 Q. Why did you do that?

21 A. I was instructed to.

22 Q. By whom?

23 A. By Mr. Smith.

24 Q. When did he instruct you to do that?

25 A. It would have been during the -- I don't

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1 remember the specific timeframe.

2 Q. Did Mr. McGinn -- let's look at the next page,
3 please. What is this?

4 A. That is a similar transaction record or register
5 to the one we just viewed. This one, however, is for
6 Matthew Rogers.

7 Q. Again, under name, it says fees, and then it
8 says loan Matthew R. up in the upper left corner?

9 A. Correct.

10 MS. COOMBE: Could we please look at the
11 next page.

12 BY MS. COOMBE, CONTINUED:

13 Q. Could you tell us what this is, please?

14 A. That is a transaction register for the loans
15 attributable to Tim McGinn.

16 Q. And the first three entries have fees under
17 name, why is that?

18 A. They were recharacterized from fees to loans.

19 Q. Why did you recharacterize them?

20 A. I was instructed to by Mr. Smith.

21 Q. Did Mr. McGinn, Mr. Smith, and Mr. Rogers take
22 money in a similar way in connection with other deals from
23 other LLCs?

24 A. Yes, they did.

25 Q. How did you book those other transactions?

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1 A. They were set up as loans.

2 Q. Why did you do that?

3 A. After having them be reclassified as fees -- as
4 loans from fees, it was my understanding that they meant
5 for them to be loans.

6 Q. Did you ever talk to Mr. Shea about the money
7 that Mr. McGinn, Mr. Smith, and Mr. Rogers took from
8 various LLCs?

9 A. Only that it was a lot.

10 Q. Did you say anything else to him?

11 A. I don't recall specific conversations around
12 money going out the door to partners of the firm.

13 Q. I am going to hand you Exhibits GD2, GD3, GD5,
14 GD6, GD7, and GD8. They are all previously admitted.

15 MS. COOMBE: Could we first look at GD2,
16 please.

17 BY MS. COOMBE, CONTINUED:

18 Q. What is this, Mr. Rees?

19 A. This is a check from David Smith to McGinn,
20 Smith Funding, LLC.

21 Q. And it is in the amount of fifty-seven thousand
22 dollars?

23 A. Correct.

24 Q. And that's to McGinn, Smith Funding, LLC?

25 A. Yes.

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1 MS. COOMBE: Could we look at GD3, please.

2 BY MS. COOMBE, CONTINUED:

3 Q. What is this?

4 A. This is a debit from Tim McGinn's account for
5 fifty-seven thousand dollars with a credit to account
6 number ending in 01635.

7 MS. COOMBE: Could we look at the next
8 exhibit, please, GD5.

9 BY MS. COOMBE, CONTINUED:

10 Q. What is this?

11 A. This is a register report of MS Funding, LLC's
12 payments that were attributable to a loan to David Smith.

13 Q. Is this a different entity than TDM Cable
14 Funding, LLC?

15 A. Yes, it is.

16 Q. I would like to direct your attention to the
17 upper left-hand corner. Is there a date?

18 A. October 26, 2009.

19 Q. And could you please look at the May 18, 2007,
20 entry?

21 A. Yes.

22 Q. What does that indicate?

23 A. A repayment that -- of an item that says return
24 of fees in it.

25 Q. Who made this accounting entry?

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1 A. I believe I did.

2 Q. Why did you indicate in the memo return of fees?

3 A. Under my bold scenario of recording
4 distributions to the partners as fee income, when this came
5 back I would have used a return of fees as a memo item.

6 MS. COOMBE: Could we look at GD6 now,
7 please.

8 BY MS. COOMBE, CONTINUED:

9 Q. What is this, Mr. Rees?

10 A. Similar to the prior exhibit, it is a listing of
11 the payments characterized as loans to Tim McGinn and
12 showing again a return of fifty-seven thousand dollars with
13 a similar memo item of return of fees.

14 Q. In the upper left-hand corner, is there a date?

15 A. October 26th of 2009.

16 Q. Who made that May 17, 2007, accounting entry?

17 A. I would have done that at the time.

18 Q. Why did you indicate return of fees?

19 A. My understanding that the payments received for
20 a fee income to them and, hence, the return of them should
21 be credited against the original income item or an expense
22 item on the trust, as a reduction of the expense item on
23 the trust.

24 MS. COOMBE: Could we look at GD7 now.

25 BY MS. COOMBE, CONTINUED:

DAVID P. REES - Direct By Ms. Coombe

1 Q. Could you tell us what this is, please?

2 A. This is a McGinn, Smith Funding register of the
3 receivable for David Smith printed on 2/2/10.

4 Q. And it continues to indicate a return of fees?

5 A. Correct.

6 MS. COOMBE: Could we look please at GD8.

7 BY MS. COOMBE, CONTINUED:

8 Q. Could you tell us what this is, please?

9 A. This is a similar schedule to GD7, only it
10 references the return of fees to -- from Tim McGinn with
11 the memo of return of fees.

12 Q. I want to direct your attention to McGinn, Smith
13 Transaction Funding Corporation. Are you familiar with
14 that entity?

15 A. Yes, I am.

16 Q. Did you have any role in maintaining accounting
17 records for MSTF?

18 A. I put together the income statement, balance
19 sheet, and other schedules.

20 Q. Did you notice any unusual transactions?

21 A. There were payments that went to members from
22 the escrow account.

23 Q. Were there any other unusual payments?

24 A. Yes, it was also used to make payments to
25 investors in other trusts that were being made whole

DAVID P. REES - Direct By Ms. Coombe

1 through payments to them from that transaction funding
2 entity.

3 Q. You mentioned something about a member receiving
4 money from an escrow account. What did you mean by that?

5 A. There were a series of transactions in which
6 Tim McGinn received money from the escrow account.

7 Q. What is an escrow account?

8 A. That's the account you use when you are
9 originally opening up an investment until you hit a certain
10 threshold. You put the money in escrow so that until you
11 hit the threshold, you can't actually break the escrow and
12 make the investment.

13 It provides some fiduciary responsibility that
14 that money will sit there until you actually raise enough
15 money that you state you will in your memorandum to use
16 that money towards the investment purposes.

17 Q. I am showing you now previously admitted
18 Exhibit GB1A.

19 MS. COOMBE: Could we please look at the
20 last slide.

21 BY MS. COOMBE, CONTINUED:

22 Q. Mr. Rees, this is a chart with the title McGinn,
23 Smith Transaction Funding Corporation. You will see that
24 there is a flow of money, and there is a red arrow from
25 MSTF Corporation, MSTF Mercantile account ending in the

DAVID P. REES - Direct By Ms. Coombe

1 numbers 3083. What kind of account was that?

2 A. It is a bank account.

3 Q. Was it an escrow account?

4 A. I believe it is an escrow account.

5 Q. You will see to the right of arrow, just read
6 those transactions for us, please?

7 A. To right of the arrow?

8 Q. Yes.

9 A. 8/22/08, 9/8/08, 10/22/08, 10/27/08, 11/7/08,
10 7/8/09. Funds going to Tim McGinn in the amount of fifty
11 thousand, fifty thousand, twenty thousand, fifty thousand,
12 thirty thousand, and thirty thousand respectively.

13 Q. Who decided that Mr. McGinn would take that
14 money from the MSTF account at Mercantile Bank?

15 A. Tim McGinn.

16 Q. Are you familiar with how these transactions
17 were characterized on the books and records of MSTF?

18 A. I believe they were probably set up as loans,
19 but I don't remember off the top of my head.

20 Q. Is there anything that would refresh your
21 recollection?

22 A. A transaction history report.

23 MS. COOMBE: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

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1 Let's move on.

2 MS. COOMBE: I will, Your Honor.

3 BY MS. COOMBE, CONTINUED:

4 Q. Mr. Rees, let's talk about the other unusual
5 activity that you noticed in MSTF. What was the other
6 unusual activity that you noticed?

7 A. There were transfers that were payments to
8 investors that were not investors in MSTF.

9 Q. How did you know learn about these payments?

10 A. Either, again, wire confirmations would show up
11 indicating that there was money sent to a person or a
12 blotter detail would be provided, which was a listing of
13 accounts for investors that held their investments at our
14 clearing firm.

15 Q. Who directed these payments?

16 A. Tim McGinn.

17 Q. What was your reaction to these payments?

18 A. I knew they were not legal, nor authorized by
19 the Transaction Funding Corporation's purpose.

20 Q. Did you talk to Mr. McGinn about these payments?

21 A. I did not.

22 Q. Why not?

23 A. I felt it wouldn't change the situation.

24 Q. Did you talk to Mr. Smith about these payments?

25 A. No.

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1 Q. Why not?

2 A. Again, I didn't think it would change the
3 situation or stop the practice.

4 Q. I am handing you now previously admitted
5 Exhibit GB1B.

6 MS. COOMBE: Could we just look at the full
7 slide of this.

8 BY MS. COOMBE, CONTINUED:

9 Q. Mr. Rees, does this show what you found --

10 MS. COOMBE: I am sorry. Could we go back
11 to must be the third slide, Ron? There.

12 BY MS. COOMBE, CONTINUED:

13 Q. Mr. Rees, does this show what you found to be
14 occurring with the MSTF?

15 A. Yes.

16 Q. Could you explain to us what was happening?

17 A. The Four Funds were restructured at some point,
18 and their interest rate, they stopped paying interest.
19 There was a preferred bunch of investors that were invested
20 in the Four Funds that were receiving payments from MSTF as
21 a continuance of the investment income that they had been
22 receiving from the Four Funds.

23 Q. I am handing you now previously admitted
24 Exhibit GB9. Could you tell us what that is, please?

25 A. This is the balance sheet for McGinn, Smith

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1 Transaction Funding as of December 31, 2008.

2 Q. Could I direct your attention to the page six,
3 please, the transaction report. Could you tell us what
4 this is, please?

5 A. This is a transaction report showing monies sent
6 out and how they were classified on the balance sheet of
7 McGinn, Smith Transaction Funding.

8 Q. Who prepared this report?

9 A. I would have prepared this report.

10 Q. I am going to direct your attention to the upper
11 right-hand corner. What is the date?

12 A. March 3, 2009.

13 Q. I am going to direct your attention now to
14 bottom of the page where it says escrow. Do you see there
15 are some highlighted transactions with memos that say
16 verify this, INT coverage for others.

17 MS. COOMBE: Could we look at the next page,
18 please.

19 A. Yes.

20 BY MS. COOMBE, CONTINUED:

21 Q. There is one fees.

22 MS. COOMBE: Could we look a little farther
23 down?

24 BY MS. COOMBE, CONTINUED:

25 Q. Supplies, unknown, interest coverage for others.

DAVID P. REES - Direct By Ms. Coombe

1 Who made all of these entries?

2 A. I made these entries.

3 Q. Why did you make these entries like this?

4 A. I received the wire confirmations and needed to
5 put it into some sort of account from an accounting
6 perspective, and I used the miscellaneous category for
7 interest coverage that was interest replacing lost interest
8 on some of the other investment funds.

9 Q. Could we look at the entry for July 15th. Do
10 you see a reference to a J. Cornacchia?

11 A. Yes.

12 Q. Who is Mr. Cornacchia?

13 A. He was investor friend of Mr. McGinn's.

14 Q. Did you have any understanding of why he was
15 receiving five thousand dollars from the MSTF account?

16 A. Other than trying to be made whole on his
17 investment, his prior investments, in either McGinn, Smith
18 Transaction Funding or SAI.

19 Q. I am handing you now previously admitted
20 Exhibit GB1C. This is a chart showing payments from the
21 Four Funds that were used for payroll. Are you familiar
22 with these transactions?

23 A. Yes, I am.

24 Q. And were you involved in any of these
25 transactions where money was moved from the Four Funds

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1 through MSTF to the broker-dealer and then used for
2 payroll?

3 A. I probably initiated the wires request from
4 Mr. Smith from the Four Funds to McGinn, Smith Transaction
5 Funding.

6 Q. Who initiated the wires from MSTF to the
7 broker-dealer?

8 A. If it is an M&T account, I would have done that
9 under instructions from either Mr. McGinn or Mr. Smith.

10 Q. And on this page, it indicates transactions that
11 occurred in mid-November of 2008.

12 MS. COOMBE: Could we look at the next page,
13 please.

14 BY MS. COOMBE, CONTINUED:

15 Q. And these are transactions at the end of
16 November of 2008. Is that what happened, Mr. Rees, the
17 money went from the Four Funds through MSTF to the
18 broker-dealer where it was used to pay employees?

19 A. Correct.

20 Q. Are you familiar with the Firstline Trust,
21 Firstline Trust 07, Firstline Senior Trust 07, Firstline
22 Trust 07 Series B, and Firstline Senior Trust 07 Series B?

23 A. I am.

24 Q. Are you aware of what the underlying investment
25 was for those trusts?

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1 A. I believe it was an alarm company or dealer in
2 Utah was the underlying investment.

3 Q. Did the alarm company ever experience any
4 difficulties?

5 A. They went into a bankruptcy at some point, some
6 time.

7 Q. Did Mr. McGinn know about the bankruptcy?

8 A. Yes.

9 Q. Did Mr. Smith know about the bankruptcy?

10 A. Yes.

11 Q. How were investors paid after the Firstline
12 bankruptcy?

13 A. There was money sent from various other
14 non-Firstline entities to the Firstline entity account to
15 continue paying the interest for some period of time.

16 Q. Who authorized those transactions?

17 A. Either Mr. McGinn or Mr. Smith.

18 Q. How did the Firstline bankruptcy affect the
19 broker-dealer and the Firstline Trusts?

20 A. Say that again.

21 Q. How did the Firstline bankruptcy affect the
22 broker-dealer and the Firstline Trusts.

23 A. Well, the bankruptcy would have caused the Trust
24 to not have -- they would not been receiving any money to
25 pay their investors. So we would have had to either

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1 declare it to the investors that Firstline went bankrupt or
2 continue making payments out of other accounts to fund that
3 interest stream due the investors.

4 Q. Were you involved in that decision?

5 A. I wasn't.

6 Q. And did this have any effect on the larger
7 business of McGinn, Smith & Company, Incorporated, the
8 Firstline bankruptcy?

9 A. Well, it certainly would have if investors had
10 known that they were bankrupt and they were not getting
11 their money back, it would have affected their ability to
12 do future deals.

13 MS. COOMBE: Your Honor, I have no further
14 questions.

15 THE COURT: The defense may examine,
16 Mr. Jones.

17 MR. JONES: Thank you, Judge.

18

19 CROSS-EXAMINATION BY MR. JONES:

20 Q. Mr. Rees, are you familiar with the PPM for a
21 TDM Cable Funding and TDM Cable Trust 06 relationships?

22 A. Am I familiar with the PPM?

23 Q. Yes. Have you read it?

24 A. I have not read the PPM.

25 Q. At any time point in time during your

Opening Statement by Mr. Dreyer

1 You may go ahead, Mr. Belliss.

2 MR. BELLISS: The following exhibits would
3 be covered. GA1A through GA1G; GA2 through GA21; GB1A
4 through GB1D; GB2 through GB17; GB19, GB22, GB23, GB28;
5 GB30 through GB37; GB39 through GB52A; GC1 through GC4;
6 GD1A through GD1C; GD2 through GD24; GE1C and GE1D; GE2
7 through GE11; GE13 through GE19; GF1A through GF1C; GF2
8 through GF67; GG2 through GG33; GH1A; GH2 through GH16; GI1
9 through GI18; GJ1D; GJ2 through GJ20; GJ23 through GJ29;
10 GK1B; GK2 through GK13; GL2; GL5 through GL14; GM1 through
11 GM44.

12 THE COURT: Is that it?

13 MR. BELLISS: I believe so.

14 THE COURT: And these exhibits as stipulated
15 by counsel are received in evidence.

16 (Stipulated Exhibits, received.)

17 THE COURT: Anything further before you call
18 your first witness?

19 MR. BELLISS: No, Your Honor.

20 THE COURT: You may call your first witness.

21 MR. BELLISS: The government calls
22 Steve Rowen to the stand.

23

24 STEVEN ROWEN, having been called as a Witness, being
25 first duly sworn, was examined and testified as follows

Opening Statement by Mr. Dreyer

1 under oath:

2

3 DIRECT EXAMINATION BY MR. BELLISS:

4 Q. Good morning, Mr. Rowen. How are you today?

5 A. Good. Thank you.

6 Q. Mr. Rowen, we now know your name. Could you
7 tell the jury where you live?

8 A. I live in Monmouth Junction, New Jersey.

9 Q. Could you give the jury a little bit of
10 background on your education?

11 A. Sure. I have a Bachelor's of Business
12 Administration from the University of Notre Dame, 2004.

13 Q. Are you currently employed?

14 A. Yes, I am.

15 Q. By whom?

16 A. The -- it is called FINRA, the Financial
17 Industry Regulatory Authority.

18 Q. How long have you been with FINRA?

19 A. I have been since the beginning of 2006 so
20 nearly seven years.

21 Q. Where is your office located in?

22 A. In Woodbridge, New Jersey.

23 Q. Do you have a specific job title?

24 A. Yes, I am principal examiner.

25 Q. How long have you been a principal examiner with

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1 FINRA?

2 A. I have held the title of principal examiner
3 since August of 2011. I have been an examiner role since
4 my start with FINRA in early 2006.

5 Q. Give the jury some background information on
6 when and how FINRA was created?

7 A. Sure. FINRA was -- began in 2007 as a
8 consolidation of the former National Association of
9 Securities Dealers, or NASD, along with the enforcement and
10 member regulatory arms of the New York Stock Exchange.

11 Q. What is FINRA's relationship with the Securities
12 and Exchange Commission?

13 A. We are oversighted by the Securities and
14 Exchange Commission. We are a self-regulatory organization
15 ourselves, but they oversee us.

16 Q. Is FINRA a governmental agency?

17 A. No, we are not.

18 Q. What is FINRA's mission?

19 A. Our mission is investor protection and market
20 integrity.

21 Q. What is a brokerage firm?

22 A. A brokerage firm is an entity that will
23 facilitate securities transactions, whether it be stocks,
24 bonds, mutual funds. They will sell securities or
25 facilitate the trades of securities for investors.

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1 Q. Are brokerage firms sometimes called
2 broker-dealers?

3 A. Yes.

4 Q. Do broker-dealers that are subject to FINRA
5 regulation come in different sizes?

6 A. Yes.

7 Q. Could give some examples?

8 A. From as small as a one-man organization to
9 entities with thousands of branches throughout the country.

10 Q. Can you explain in plain English what it means
11 to provide financial regulation over a broker-dealer?

12 A. Well, there are many roles that a regulator will
13 take. This includes regulation of market review of market
14 activity and regulation and review of that activity. And
15 also regulation of the firms in itself and how they are
16 enforcing their procedures and abiding by the regulatory
17 rules.

18 Q. What happens when your office finds a
19 broker-dealer to have violated a regulation?

20 A. If an examination finds a violation, there are
21 multiple levels. There are informal violations that will
22 be dealt with either through a letter of cautionary action
23 or perhaps a compliance -- a conference with the firm
24 senior management and compliance personnel or it may raise
25 to the level of a formal matter that could result in fines,

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1 suspensions or ultimately a bar from the securities
2 industry.

3 Q. What types of reviews or examinations are
4 broker-dealers typically subjected to?

5 A. Well, within member regulation, there are caused
6 base examinations that will result from information that
7 comes into the regulatory, whether it be, whether it be
8 tips, whether it market data, whether it be information
9 that was disclosed in various filings. And then there are
10 also cyclical examinations that are done every so many
11 years depending on the type of business that the brokerage
12 conducts and its regulatory history.

13 Q. Concerning broker-dealers, briefly what are some
14 of the items that would typically be reviewed in a cyclical
15 examination?

16 A. Well, it is all going to depend on the type and
17 size of the broker-dealer. We certainly review internal
18 procedures for how supervision is conducted. We also may
19 review the activity that the brokerage does including
20 looking at order tickets and confirmations and what we call
21 blotters of trade data.

22 There may also be applications, other forms that
23 an investor might complete, whether it be information about
24 how suitable they are for various investments or just
25 general background information on an investor or customer.

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1 There is also then financial documentation that
2 will be reviewed regarding the broker-dealer to make sure
3 that they are keeping up-to date books and records, but
4 also that they have a sufficient financial position to be
5 able to conduct the business that they are conducting.

6 Q. With the cause based examination that you
7 referenced earlier, what types of documents or records
8 would you typically be reviewing there?

9 A. Many of the records would be similar in that
10 there would be a review of procedures. There would be
11 review of oftentimes trade documentation that could come
12 in, suitability documentation related to the investors,
13 themselves.

14 There is also going to be -- sometimes it could
15 result in financial documentation, but ultimately a lot of
16 blotters of sales and specific sales materials that might
17 be used in providing information to investors regarding
18 certain products.

19 Q. In your capacity as a FINRA examiner, have you
20 performed any cyclical examinations of broker-dealers?

21 A. Yes, that's -- my primary role is conducting
22 cycle examinations.

23 Q. Approximately how many would you estimate in
24 your career?

25 A. In my career probably somewhere between sixty

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1 and eighty I would say.

2 Q. Have you engaged in any target or cause based
3 examinations?

4 A. Yes, I have also participated in those.

5 Q. Could you ballpark the number?

6 A. It is maybe somewhere around ten. Sometimes one
7 matter will be multiple investigations, but are ultimately
8 the same.

9 Q. Have you ever heard of a broker-dealer called
10 McGinn, Smith, Smith and Company, Inc.?

11 A. Yes.

12 Q. Is it all right if I refer to them simply as
13 McGinn, Smith?

14 A. Yes.

15 Q. Is it accurate to say that McGinn, Smith, the
16 broker-dealer has been subject to regulation by FINRA for
17 the past several years?

18 A. Yes.

19 Q. Over the past five years, have you participated
20 in any cyclical examinations of McGinn, Smith, Smith?

21 A. Yes, I have participated in a cyclical
22 examination that started in 2008 and also one that started
23 in 2009.

24 Q. I would like to direct your attention to 2008.
25 At some point in 2008, about when did that cyclical

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1 examining begin in 2008?

2 A. I believe it was the beginning of October in
3 2008.

4 Q. Were you the lead examiner?

5 A. I was.

6 Q. Where was McGinn, Smith located or headquartered
7 in 2008?

8 A. At 99 Pine Street in Albany, New York.

9 Q. Did you travel to Albany to perform your
10 examination?

11 A. I did.

12 Q. Did it take more than one day to perform the
13 2008 cyclical examination?

14 A. Yes, it did.

15 Q. Approximately how long did it take you to
16 perform that cyclical examination?

17 A. We were on site for parts of, I believe, five
18 weeks. I believe we spent the equivalent of about three
19 weeks on site, but then there were also reviews conducted
20 from our office with records that we brought back to New
21 Jersey.

22 Q. For a broker-dealer the size of McGinn, Smith,
23 what types of items were you looking to review in that 2008
24 cyclical examination?

25 A. There were varying reviews that were done during

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1 that exam including reviews of a net capital position,
2 their protection of customer funds that had come through
3 the firm.

4 Also, there were reviews done of bond activity.
5 There was also review of private placements of securities
6 that were done through the firm. In addition, there were
7 reviews for the firm's anti-money laundering practices and
8 its supervisory systems.

9 Q. With do you mean by net capital positions?

10 A. A net capital position is a requirement that a
11 broker-dealer maintain a certain level of capitalization in
12 order to conduct a business in certain types of products or
13 just -- their really -- their minimal position that they
14 have to keep in order to conduct their business.

15 Q. Would a cyclical review of a broker-dealer such
16 as McGinn, Smith typically involve a review of any
17 accounting records?

18 A. Yes, in reviewing for their net capital
19 position, you are typical looking at a number of accounting
20 records, including general ledgers, income statements,
21 balance sheets, and internal computations.

22 Q. As part of a cyclical examination, I understand
23 documents and records are reviewed. Do you also interview
24 any of the firm's employees?

25 A. Yes.

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1 Q. Which ones would you typically interview?

2 A. Well, related to a financial review such as a
3 net capital review, we will typically have to conduct
4 interviews with the firm's financial and operational
5 principal. And we will also deal with the firm's chief
6 compliance officer, other members of senior management, and
7 perhaps supervisory staff as part of a cycle examination.

8 Q. Are you familiar with the term Regulation D?

9 A. Yes, I am.

10 Q. How are you familiar with that term?

11 A. Well, Regulation D relates to the offering of
12 securities in a primary offering or an initial offering
13 that is done privately. Essentially Regulation D lines out
14 exceptions that can be met to -- for a company to be able
15 to raise funds through an offering that doesn't have to go
16 through the initial public offering process that can be
17 very, very costly and take a good amount of time. It is
18 generally meant for a smaller business that might not be
19 able to handle that level of an offering.

20 Q. For the sale of securities under Regulation D,
21 are there any rules at all?

22 A. Yes, there are certain -- exceptions have to be
23 met in order to qualify for -- to be exempt from an initial
24 offering. There are certain qualifiers that have to be met
25 in order to be exempt.

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1 Q. At the time you conducted the 2008 cyclical
2 examination of McGinn, Smith, do you know if McGinn, Smith
3 was in the business of selling securities pursuant to this
4 Regulation D?

5 A. They were.

6 Q. Are these types of securities sometimes called
7 unregistered securities?

8 A. Yes, they are because they are exempt from the
9 registration process that goes through in a public
10 offering.

11 Q. In connection with your cyclical examination,
12 would you have then been interested in reviewing documents
13 and records related to those sales of those unregistered
14 securities?

15 A. Yes, we were.

16 Q. Concerning unregistered securities, what types
17 of documents and records would be of particular relevance
18 to an examination?

19 A. Sure. You would review a listing of the
20 offerings that were conducted by the firm during the review
21 period. You would also then review memorandums called
22 private placements memorandums that would really detail the
23 terms and conditions of the offering.

24 We would look at blotters of the sales of the
25 offerings that were conducted. And we would also look at

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1 offering documentation, due diligence files that the firm
2 would have done into the issuer, into the offering, itself,
3 and also suitability information related to the customers
4 who invested in the offering.

5 Q. Would your review also include an examination of
6 escrow account records?

7 A. Yes.

8 Q. Based upon your experience, could you explain to
9 the jury what an escrow account is?

10 A. An escrow account is used because -- in these
11 offerings because commonly these offerings have to meet
12 certain conditions within the memorandum that says a
13 certain amount needs to be raised in order for the
14 offering -- in order for the sales to truly go through.

15 And that is done to protect the investors to
16 know that their funds are only going to be at risk, that
17 they are only going to be investing if indeed this offering
18 is able to raise a certain level of new funds. So an
19 escrow account would be used to actually hold the funds
20 until that certain amount is raised in order for the funds
21 to be released to the issuer of the securities.

22 Q. Based upon your experience, what should investor
23 funds in an escrow account be used for?

24 A. They should be held in that account until
25 ultimately they are either released to the issuer upon the

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1 completion of the sale and the minimum being raised or they
2 should be returned to the investors who are attempting to
3 invest in the offering.

4 Q. Where do you typically find the minimum amount
5 that needs to be raised for the investment?

6 A. That is going to be detailed in the private
7 placement memorandum as a term and condition of the
8 offering.

9 Q. What is the significance of the private
10 placement memorandum to a prospective investor?

11 A. Well, it is going to provide all the details
12 about the actual entity that you are investing in. It is
13 going to detail what I mentioned before, the terms and
14 conditions of the offering, the circumstances of which
15 funds are being raised and are allowed to be raised.

16 And then also it is going to detail the risks of
17 the investment and the risk of the issuer, itself. They
18 will also include financial documentation of the entity
19 that's raising the funds. And like I said, it will detail
20 how the funds are going to be raised, the type of fees that
21 will be paid through the -- they raise the fees that are
22 paid to any and all parties that are involved.

23 MR. BELLISS: Your Honor, do I have
24 permission to hand the witness an exhibit?

25 THE COURT: You do.

STEVEN ROWEN - Direct By Mr. Belliss

1 BY MS. COOMBE, CONTINUED:

2 Q. Handing the witness Government's Exhibit GA2.

3 Take a moment to review that document.

4 MR. BELLISS: Judge, may I publish to the
5 jury the exhibits. These are all of the exhibits that were
6 admitted pursuant to our stipulation.

7 THE COURT: You may.

8 MR. BELLISS: Why don't we bring up the
9 first page of two.

10 BY MR. BELLISS, CONTINUED:

11 Q. How is that focused on your screen?

12 A. It is a little blurry.

13 Q. Well, we will do our best. Government's
14 Exhibit GA2, what is this document?

15 A. This is a private placement memorandum for an
16 entity entitled TDM Cable Trust 06.

17 Q. Do you know generally what this investment was
18 about?

19 A. This was an investment to raise funds into a
20 trust that would then, I believe, loan money to an entity
21 called TDM Cable Funding, which would then be purchasing
22 cable TV and contracts for the servicing of cable
23 television. I am not sure if there was more than cable
24 television involved, but ultimately it was a cable system
25 servicing contract.

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1 Q. If you could look near the top of the first
2 page, it says maximum offering 3.55 million dollars in
3 contract certificates, and then there is a minimum offering
4 for five hundred thousand. What is that telling a
5 prospective investor?

6 A. Well, the maximum amount it is telling them the
7 most that they can raise as part of this offering and part
8 of this sale. The minimum amount is telling them what that
9 minimum amount is, but ultimately if that minimum amount is
10 (sic) raised, then this sale will not be completed and
11 investor funds will be returned.

12 Q. Moving down to the slightly smaller font that
13 says twenty-four months, 7.75 percent and forty-eight
14 months at 9.25 percent, what is that information telling a
15 prospective investor?

16 A. Well, these offerings appear to be of a debt
17 offering. So essentially it is money is being raised
18 through an issuance of a debt security, and those are the
19 terms of the rates.

20 So there would be two different options, two
21 different types of -- the debt being raised here is a
22 twenty-four month security that will pay 7.75 percent
23 interest, and one with a length of forty-eight months that
24 will pay 9.25 percent interest.

25 Q. If we keep moving down to the first paragraph

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1 there in the, it looks like, twelve point font, it talks
2 about in the second sentence, interest on the certificates
3 is payable in monthly installments commencing December 1,
4 2006. What does that mean to a prospective investor?

5 A. That's going to be the details of when the
6 interest that's called for above is going to be paid and
7 how often it is going to be paid.

8 Q. And how about the return of the principal, when
9 would the prospective investor expect to get his or her
10 principal returned?

11 A. That would be at the end of the twenty-four
12 month or forty-eight month period of the investment.

13 Q. If we could move down to the bottom half of the
14 first page of the document. There is a little bit of a
15 grid if you will. And one of the columns is entitled
16 underwriting discount. Do you see that column?

17 A. Yes.

18 Q. And it indicates 3.0 percent. What is that
19 telling the prospective investor?

20 A. The three percent is going to be the
21 underwriting fee. Essentially it is the percentage of the
22 total amount raised that will be paid out as the
23 underwriting fee, which is going to go to the underwriter
24 of the securities, which is going to be a broker-dealer or
25 in some cases a number of broker-dealers that are actually

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1 selling the securities.

2 Q. And then below that 3.0 percent there is a
3 figure, fifteen thousand, another figure of \$106,500.00.
4 What do those numbers represent?

5 A. That's going to be range of what this
6 underwriting fee or the amount that is being essentially
7 going to be discounted off from your total investment that
8 will be paid out as the underwriting fees. So if the
9 minimum was raised, five hundred thousand dollars, that
10 underwriting fee is going to be fifteen thousand dollars.

11 If the maximum, 3.55 million, is raised, the
12 underwriting discount is going to be \$106,500.00. If an
13 amount in the middle is going to be raised, then it is
14 going to be based on the three percent. That is the
15 minimum and maximum.

16 Q. Finally the last column, proceeds to the trust
17 fund. What does that column apprise the prospective
18 investor of?

19 A. That is then telling what the remainder that is
20 going to actually go to the trust fund, which is the entity
21 you are investing in. So that is detailing out the exact
22 amount that will actually go to the issuer of securities
23 with the minimum, if the minimum that was offered being
24 four hundred and eighty-five thousand. If the maximum
25 amount is offered, then it would \$3,443,500.00 that's

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1 detailed.

2 Q. Would the information that we have been talking
3 about on page one of Government's Exhibit GA2 be relevant
4 to you in conducting an examination?

5 A. Yes, because we would look to see that the fees
6 that are paid to the broker-dealer or the brokerage firm
7 are not different than what is being disclosed to the
8 customer. It is important that there is a fair dealing
9 with the customer and the customer understands exactly how
10 much the person selling him the security is going to
11 receive for selling you that security.

12 Q. You testified a moment ago about general flow of
13 money with the structure of the investment for some of the
14 trusts that you were reviewing. Could you again give that
15 to the jury, the relationship between the trust and an
16 operating company or LLC?

17 A. Well, in the case of this offering, the
18 investment is made into what -- an entity set up as a
19 trust. And this trust is then going to use the funds that
20 it raises and loan those funds to another operating entity,
21 which in this case was titled TDM Cable Funding, which TDM
22 Cable Funding was then going to use those -- was to use
23 those monies to purchase cable TV servicing contracts.

24 Q. I am going to hand you GA1A. Generally what is
25 Exhibit GA1A?

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1 A. This is a general illustration of how -- of
2 either the documents or money flow for a raise like was
3 done here, with this TDM Cable Trust where the
4 broker-dealer is going to provide a private placement
5 memorandum, the PPM, to potential investors. Those who
6 invested, invested their money in the trust, which then
7 loaned money or essentially, yes, loaned money to a limited
8 liability company or an operating entity, which then made
9 an investment with those funds, which was the purchase of
10 the cable TV contracts.

11 Q. And then following the blue arrow on the bottom
12 of the chart, that is essentially how money flows back to
13 the investors so they get their promised rate of return; is
14 that correct?

15 A. Yes, investors would get their return based on
16 the amount of the revenues of the LLC enabling them to pay
17 back the trust, which would then repay the investors their
18 investment and their interest.

19 Q. Based upon your experience in reviewing private
20 placement investments, do you expect the accounting records
21 to reflect the use of investor funds as described in the
22 private placement memorandum?

23 A. I would expect that accounting records would
24 reflect the flow of funds exactly how it is detailed in the
25 PPM, yes.

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1 Q. Was the 2008 cyclical exam of McGinn, Smith
2 completed?

3 A. It was.

4 Q. At the conclusion of the examination, did you
5 have a meeting with the firm?

6 A. Yes.

7 Q. Members of the firm, I should say?

8 A. Yes, there would be a meeting to essentially
9 complete the on site, to draw a close to the on-site
10 reviews of an examination, of a cycle examination that we
11 would call an exit conference where we would present the
12 exceptions that were noted by the examining staff to the
13 securities rules that are being reviewed for, that were
14 found during that on-site review.

15 Q. Did you partake in an exit conference following
16 your completion of the 2008 cyclical examination of McGinn,
17 Smith?

18 A. I did.

19 Q. Do you remember who was there for that exit
20 conference?

21 A. In person representing FINRA was an examiner
22 named Tom Grygiel (phonetically). Participating
23 telephonically was myself; an examiner, Scott Karas;
24 examination manager, Michael Paulson; and also senior
25 management of the firm was in person with Mr. Grygiel at

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1 the firm's offices.

2 Q. And at that time who was senior management of
3 McGinn, Smith?

4 A. David Smith was -- I believe his title was
5 president of the broker-dealer. The chief compliance
6 officer's name was Steven Smith. At the time the financial
7 operation principal was, I believe his name is David Rees.

8 Q. What about a gentleman named Timothy McGinn?

9 MR. JONES: Objection. Leading.

10 A. I don't know whether or not he was on site at
11 this time.

12 BY MR. BELLISS, CONTINUED:

13 Q. Do you see David Smith sitting in the courtroom
14 today?

15 A. I do.

16 MR. DREYER: We will stipulate that
17 Mr. Smith is the person he is referring to.

18 THE COURT: So noted.

19 BY MR. BELLISS, CONTINUED:

20 Q. Same question for Mr. McGinn?

21 A. Yes.

22 Q. Where is he sitting?

23 A. Sitting there on the right side of the table.

24 MR. JONES: Same stipulation, Your Honor.

25 THE COURT: So noted.

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1 MR. BELLISS: Thank you, Judge.

2 BY MR. BELLISS, CONTINUED:

3 Q. Following the completion of the cyclical exam in
4 the fall of 2008 when was McGinn, Smith scheduled for its
5 next cyclical examination?

6 A. There was another cyclical examination conducted
7 in 2009 that began in September.

8 Q. Generally what is the basis for the 2009
9 examination?

10 A. Well, the 2009 cyclical examination, itself, was
11 to review for options activity at the firm or the activity
12 in option securities. Also it was to review financial and
13 operational review, such as a net capital review that I
14 mentioned earlier.

15 And there as also, I believe, a review done of
16 perhaps one offering that had been sold by the firm during
17 that cyclical examination. There was an ongoing
18 examination of a cause basis that while we were on site we
19 also continued a review of.

20 Q. Could you just generally give the jury an idea
21 of what the basis for the cause based examination was?

22 A. Sure. Based on areas that were noted during the
23 2008 cycle examination, we conducted an on-the-record
24 interview in early 2009 of Mr. Smith and Mr. McGinn
25 separately. And based on information that came out of that

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1 on-the-record interview, along with arbitration filings
2 that had been filed with FINRA related to some investments
3 made through McGinn, Smith, we had opened up a cause
4 examination to really combine the two areas as an ongoing
5 review for which we were on site at the firm's headquarters
6 during June of 2009, and then continued while we were on
7 site for the 2009 cycle examination in September.

8 Q. Would you just briefly tell the jury what is an
9 on-the-record interview and how does it compare to an
10 off-the record interview?

11 A. Sure. An on-the-record interview is where we as
12 a regulator will require someone registered or affiliated
13 with a broker-dealer to typically come into our office, but
14 perhaps be an off site location where we will ask questions
15 of the representative with the court reporter present
16 recording the entire interview as part of our examination.

17 Q. An off-the-record interview would be done
18 without a court reporter and in a less formal setting?

19 A. Yes, an off-the-record interview would be
20 commonly done throughout examinations where we would simply
21 be asking questions of firm personnel throughout an
22 examination.

23 Q. Concerning the examinations of McGinn, Smith
24 that were going on in 2009 now, were there any particular
25 investments that you and your fellow examiners were

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1 reviewing?

2 A. Yes, primarily as we got into 2009, we became
3 primarily concerned with four different entities that were
4 called First Independent Income Notes, First Excelsior
5 Income Notes, Third Albany Income Notes, and First Advisory
6 Income Notes. I believe those were the names of the four
7 entities. And we had become concerned with how these
8 funds, how those entities were utilizing the invested funds
9 in relation to other offerings at the firm.

10 Q. And the four entities that you just described,
11 do they have acronyms that they were typically referred to
12 by the broker-dealer employees?

13 A. During on-the-record interviews in 2010, I
14 believe they were referred to as the LLCs.

15 Q. Did anyone refer to them as FIIN, FEIN, FAIN or
16 TAIN?

17 A. Well, we typically refer to them as that, yes.

18 Q. Was an entity called TDM Cable Funding, LLC ever
19 a subject of your 2009 examinations?

20 A. It was. That was one of the entities in our
21 review of records of those four acronyms that you just
22 detailed. It was one of the entities we saw their funds
23 going into through accounting records. And so we were
24 following up to see the accounting records of TDM Cable
25 Funding.

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1 MR. BELLISS: If we could bring GA2 back,
2 Ron, briefly.

3 BY MR. BELLISS, CONTINUED:

4 Q. GA2 again, is a private placement memorandum for
5 TDM Cable Trust 06; is that correct?

6 A. Yes.

7 Q. And was there a connection between this trust
8 and TDM Cable Funding, LLC?

9 A. Yes, I believe this trust when it raised its
10 funds used them to loan money to TDM Cable Funding.

11 Q. Were your examinations in 2009, did that include
12 a review of various records such as accounting records or
13 bank records for TDM Cable Funding, LLC?

14 A. Yes.

15 Q. Based upon your reviewing of those records, was
16 there anything that was of interest to your examination?

17 A. Yes, there was. We had noted that TDM Cable
18 Funding, very shortly after receiving funds, had loaned the
19 money to the three principals of its organization who were
20 also affiliated with the broker-dealer, and those were
21 David Smith, Tim McGinn, and Matthew Rogers.

22 Q. Based upon your experience, do you know who
23 Matthew Rogers was?

24 A. Matthew Rogers was registered with the
25 broker-dealer. And my understanding of his role was he was

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1 involved with these, with entities like TDM Cable Funding
2 in getting, I guess acquiring these cable alarm contracts
3 or identifying them. He had a role primarily with those,
4 with entities like TDM Cable Funding.

5 Q. Do you remember the approximate amounts of
6 payments to Mr. Smith, Mr. McGinn, and Mr. Rogers that were
7 of interest to you?

8 A. I think most notably I remember the payments to
9 Mr. McGinn and Mr. Smith being somewhere around three
10 hundred and fifty thousand dollars.

11 I don't remember if Mr. Rogers was around the
12 same or not with that specific payment, but there was a
13 payment to Mr. Rogers as well.

14 Q. Based upon your experience in reviewing
15 unregistered investments sold pursuant to Regulation D, was
16 it at all unusual to see monies flowing to individuals as
17 opposed to the broker-dealer, itself?

18 A. Yes, because if there were fees related to the
19 offering that were going to representatives of the
20 broker-dealer that was conducting the raise, those funds
21 would -- you would typically see them paid to the
22 broker-dealer, itself. And then the broker-dealer would
23 pay reps based on whatever that -- whatever that firm's
24 payout structure is of its commissions.

25 Q. During your 2009 examination of McGinn, Smith,

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1 did you and your colleagues ever question Mr. Smith or
2 Mr. McGinn about the nature of those payments that we have
3 been discussing?

4 A. Yes, there was a meeting where one of my
5 colleagues inquired as to what is the purpose of these
6 movements of money.

7 Q. When and in what setting was that meeting?

8 A. That was during the first day or two of that
9 September 2009 on-site review that was both part of the new
10 cycle examination, but also continuing reviews of the cause
11 examination that we had spun off earlier in the year.

12 Q. Do you remember where this meeting was located?

13 A. It was within a conference room at McGinn,
14 Smith's offices at 99 Pine Street in Albany, New York.

15 Q. Who from your office was present for that
16 meeting at Pine Street?

17 A. I was present for that meeting. Fellow examiner
18 Chris Rattiner was present for that meeting. Examination
19 manager Bob McCarthy I know was present for that meeting.
20 I believe another examination manager Michael Paulson was
21 also present.

22 Q. As far as McGinn, Smith personnel, who was
23 present to your recollection?

24 A. To my recollection, I know David Smith was
25 present. Tim McGinn was present. Brian Shea was present

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1 as he at the time was the chief financial officer. There
2 might have been a couple other firm personnel in the room.

3 Q. You mention Brian Shea was the chief financial
4 officer. What does that mean, what does that title mean?

5 A. I mean every firm will kind of use it
6 differently, but ultimately we see that role as being the
7 ultimate authority related to the financial practices and
8 the accounting practices, really the financial position of
9 the company. He at that time was also functioning as the
10 firm's financial principal in that he was registered with
11 us as the firm's principal with supervisory responsibility
12 over the firm's books and records related to its financial
13 and other operational records.

14 Q. In connection with your examination in 2009, did
15 you have any interactions with Mr. Shea?

16 A. Yes, we did, throughout our time on site there
17 in September.

18 Q. How would you characterize his demeanor during
19 your examinations?

20 A. I would say he was very -- he seemed a bit
21 fidgety. He would often not look you in the eye. His head
22 would often be down as you were having conversations with
23 him. He was hesitant to answer questions. In fact,
24 commonly when we would ask a question, he would keep his
25 head down with a really long pause, almost as though -- it

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1 felt as though he was trying to --

2 MR. DREYER: Objection.

3 THE COURT: Overruled.

4 BY MR. BELLISS, CONTINUED:

5 Q. Just your opinion.

6 A. Yes. It felt as though he was almost trying to
7 get us to not make him answer the question.

8 Q. Getting back to the meeting that was in the
9 conference room in September of 2009 at McGinn, Smith
10 headquarters?

11 A. Yes.

12 Q. Did you show Mr. McGinn and Mr. Smith any
13 records, bank records, accounting records in connection
14 with these payments that you had identified from TDM Cable
15 Funding to them personally?

16 A. Bank statements for TDM Cable Funding were
17 specifically referenced as we were inquiring as to what the
18 purpose of these money movements were.

19 Q. During this meeting, were Mr. Smith and
20 Mr. McGinn asked what the payments were for?

21 A. Yes.

22 Q. What do you recall their responses being?

23 A. Initially my recollection is that Mr. Smith
24 responded that these were fees, and then immediately
25 Mr. McGinn jumped in and noted that these were loans.

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1 Q. What was your reaction when Mr. Smith first said
2 that they are fees and then Mr. McGinn then said that they
3 were loans?

4 A. Well, first of all, it kind of drew a red flag
5 as to why there is some kind of question as to the
6 agreement as to what type of -- what was the purpose of
7 these payments. But then also we were concerned that these
8 were fees being paid to principals and owners of the
9 broker-dealer, itself. And we had concerns about whether
10 that was disclosed to the investors.

11 Q. Getting back to GA2 that was up on the screen,
12 that is the private placement memorandum for TDM Cable
13 Trust 06. If, in fact, fees were being taken out in excess
14 of what was disclosed as the underwriting fee?

15 MR. BELLISS: If we could bring that up,
16 Ron, at the bottom of the page.

17 BY MR. BELLISS, CONTINUED:

18 Q. You discussed earlier that the underwriting fee
19 in this case was 3.0 percent. If fees in excess of that
20 3.0 percent were going to be taken out, would you have
21 expected that to have been disclosed in the private
22 placement memorandum?

23 A. Yes, if anything other than these fees that were
24 being paid to principals of the broker-dealer that sold
25 these securities, then we would expect that to be disclosed

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1 to potential investors.

2 Q. If, in fact, the payments that went from TDM
3 Cable Funding to Mr. McGinn and Mr. Smith were indeed
4 legitimate loans, are there any documents or records that
5 you as a FINRA examiner would be interested in reviewing?

6 A. Yes. In fact, during that meeting we asked if
7 these loans were documented, and we were told that they
8 were. So as a result, we requested loan documentation for
9 these and other loans to the those principals.

10 Q. In connection with FINRA's 2009 examination of
11 McGinn, Smith, were there any other instances aside from
12 TDM Cable Funding, LLC where Mr. Smith and Mr. McGinn had
13 received payments that were characterized as loans?

14 A. Yes, there were other payments made as well that
15 were -- we have reflected as loans within the firm
16 accounting software.

17 Q. I am going to hand you Exhibit GH2.

18 MR. BELLISS: If we could bring that up,
19 please. Judge, I have another forty-five minutes to go
20 with my direct examination. It is going to involve some
21 documents. Should I continue on?

22 THE COURT: Continue on a little bit longer
23 before lunch.

24 MR. BELLISS: All right.

25 BY MS. COOMBE, CONTINUED:

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1 Q. Exhibit GH2, do you recognize this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. This was a record request that was sent from --
5 signed by Randy Pearlman. He was part of the examining
6 team requesting records that were put together after that
7 on-site meeting and after our time on site in September of
8 2009.

9 Q. After that meeting that you had where Mr. Smith
10 and Mr. McGinn were asked about the nature of payments?

11 A. Yes.

12 Q. This is your letterhead up in the left-hand
13 corner, FINRA?

14 A. Yes, that is FINRA letterhead.

15 Q. It is addressed to a Mr. David Franceski?

16 A. Yes.

17 Q. Do you know who Mr. Franceski is?

18 A. Yes. He was an attorney that was representing
19 the firm at the time. So our written request like this
20 would be directed to him.

21 MR. BELLISS: If we could bring it up on the
22 first paragraph there.

23 BY MR. BELLISS, CONTINUED:

24 Q. Mr. Rowen, it says: In connection with the
25 above examination, we request that McGinn, Smith & Company

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1 please provide the following documents and/or information,
2 and it lists a whole variety of entities. It is asking for
3 Quicken data files. What are Quicken data files?

4 A. Quicken is an accounting software. And so
5 during our on-site visit in September, we found that the
6 firm was utilizing Quicken to document its financials for
7 these numerous entries. And so that is why we requested it
8 in that form.

9 Q. Just focus in on a couple of the entities.
10 Right in the center of that first paragraph is an entity
11 called MSTF. And then right below that is TDM Cable
12 Funding, LLC. Those obviously were a couple of the
13 entities that you were interested in at the time?

14 A. Yes.

15 Q. If we could go down to item number four, please.
16 It says: If the aforementioned files are not up to date,
17 please indicate the following. And it lists some items, A,
18 B, C, D, and E. Essentially what is your office asking for
19 in item number four?

20 A. Well, we are essentially looking to see if any
21 of the Quicken files are not up to date that they provide
22 an explanation for that and describe what is the reasoning
23 that there might be something omitted, and any other
24 documentation that they have of what would be accurate
25 data.

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1 Q. And if there is an item that had been discovered
2 to be omitted, you would want to know about any changes
3 that had been made; is that a fair statement?

4 A. Yes, we would want to know why it is that
5 something is not part of the -- is not part of those
6 accounting files and responsibility of it.

7 Q. If we could go to page two, item number five at
8 the top. It says: In connection with the entities listed
9 in item number one, please provide all documentation
10 related to loans made payable to the following individuals,
11 and it lists Mr. Smith and Mr. McGinn and some other
12 individuals. What types of information were you attempting
13 to obtain through this request?

14 A. We were looking to get whatever loan documents
15 supported those payments that we had discussed in that
16 meeting in September of 2009, which we were told they were
17 fees and then we were told that they were loans.

18 We had inquired as to whether -- if these were
19 loans, whether these loans were documented. We were told
20 that they were. So we were requesting whatever loan
21 agreements existed related to any loans made to any of
22 these individuals from this long list of entities.

23 Q. If we look at the last sentence for that item,
24 it actually asks for whether there were any other loans
25 made payable to the individuals above that hadn't been

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1 previously identified. So it was a very broad request; is
2 that fair to say?

3 A. Yes.

4 Q. Finally, item number six, what is that asking
5 for?

6 A. We were requesting for the offering
7 documentation for each of the entities listed in number
8 one. So that was going to primarily be private placement
9 memorandums and any other documents that could have been
10 provided to investors, potential investors during the
11 raise.

12 Q. If we go to the bottom of the document, signed
13 by a colleague of yours named Randy Pearlman?

14 A. Yes.

15 Q. Is Mr. Pearlman also one of the examiners
16 involved in the 2009 examinations?

17 A. Yes, he was primarily involved in the 2009 cause
18 examination.

19 Q. You should be able to see sort of in the middle
20 of the document there. It says your response must be
21 received by this office no later than October 8, 2009. Did
22 you, in fact, get a response from this request?

23 A. We did.

24 Q. I am going to hand you Exhibit GH3. What is
25 Exhibit GH3?

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1 A. GH3 is a cover letter and FedEx tracking
2 information for a response to the letter we were just
3 looking at.

4 Q. It is from McGinn, Smith; is that correct?

5 A. Yes, it is.

6 Q. That is their letterhead?

7 A. Yes, it is.

8 Q. And then what was item six that had been
9 requested? You can probably compare to Exhibit GH2.

10 A. Item six was the offering documentation for all
11 of those entities. So it included -- it describes, it
12 encloses the disk that included all of the offering
13 documentation.

14 Q. With this response, you didn't get any
15 accounting records; is that a fair statement?

16 A. From looking at this document, I would say that
17 is accurate.

18 Q. I will hand you Exhibit GH6. What is that
19 letter?

20 A. This is an additional response to that same
21 September 30th request.

22 Q. And this is coming from a firm called Gersten
23 and Savage, LLP. Do you know who Gersten and Savage, LLP
24 was?

25 A. I believe they were another law firm that was

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1 involved in representing the firm at the time.

2 Q. If you scroll down to the body of the letter,
3 what information is being provided to your office with this
4 letter?

5 A. There were two disks provided with this letter,
6 and they included accounting software, accounting records
7 within software programs.

8 Q. If you flip to page two, please. It is a table
9 and a list of various entities and columns indicating
10 Quicken files, Solomon files, and files controlled by other
11 companies. What is this table showing you?

12 A. This table would show us which entities should
13 have their accounting software located within the Quicken
14 program, within those files, which ones used a different
15 program named Solomon, and then what entities are not
16 controlled by personnel at McGinn, Smith to where they
17 would have access to those accounting records.

18 Q. Is Solomon just another accounting program?

19 A. I believe so.

20 Q. So the list of twenty-eight entities on this
21 page here are the accounting records that were provided to
22 your office pursuant to your request; is that a fair
23 statement?

24 A. With the exception of five that were controlled
25 by another entity.

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1 Q. And item number eight are the accounting records
2 for an entity called MSTF, and item number twelve is the
3 accounting records for TDM Cable Funding, LLC; is that
4 right?

5 A. Yes.

6 Q. Based upon your experience if the accounting
7 records that were provided to you as part of this letter
8 had been changed prior to the submission to your office,
9 would you expect it to have been so advised?

10 A. Yes, if something had been altered before
11 providing it to us, then, yes, based on our request letter,
12 we would expect to be notified, yes.

13 Q. Why would you want to know about such changes?

14 A. Well, we requested the documentation. We
15 expected it in the form it was when we requested it, if
16 something had been altered before providing it to us, we
17 would want details of what was altered.

18 Q. I show you Exhibit GH8. What is this document?

19 A. This is a further response to that -- this is a
20 letter from Gersten and Savage, which was the accounting
21 firm referenced in the last exhibit. It is another cover
22 letter for records being provided.

23 Q. It is more accounting records in that Solomon
24 program; is that right?

25 A. Yes. I don't know if these were additional

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1 records or if these were just another copy of what had been
2 sent that we were having issues of opening on our computer
3 system.

4 Q. If we could go back to Exhibit GH2?

5 MR. BELLISS: Bring that up, Ron, second
6 page, item five.

7 BY MR. BELLISS, CONTINUED:

8 Q. Your office in item five is asking for copies of
9 loan documentation; is that right?

10 A. Yes.

11 Q. To date of the exhibits that I have shown you,
12 had you received any evidence of loan documents?

13 A. We did receive loan documents, yes.

14 Q. I haven't showed you those yet though, have I?

15 A. Shown the loan documents?

16 Q. Yes.

17 A. You have not given me the loans documents.

18 Q. I am going to show you Exhibit GH10. What is
19 Exhibit 10 cover page?

20 A. The cover page is in response to that same
21 request of September 30, 2009, and it is followed up by
22 loan documents that were requested.

23 Q. The exhibit that you are holding in your hand,
24 does it appear to you to be an original or a copy?

25 A. This appears to be an original document.

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1 Q. If you look underneath at some of the promissory
2 notes that are attached to the cover letter, do the
3 signatures on those promissory notes appear to be original
4 signatures or photocopies?

5 A. We believed when we received these that they
6 appeared to be original signatures and not just copies of
7 the promissory notes, that these were actually the
8 originals.

9 MR. BELLISS: If we could go to the second
10 page of the document, Ron.

11 BY MR. BELLISS, CONTINUED:

12 Q. Which is the first promissory note, Mr. Rowen?

13 MR. BELLISS: Bring up the top paragraph
14 please. Thank you.

15 BY MR. BELLISS, CONTINUED:

16 Q. Mr. Rowen, generally what is a promissory note?

17 A. A promissory note is going to document a loan
18 giving from one party to another. It is going to document
19 the terms and conditions of that loan. The amount, the
20 date, when it is to be repaid, what the interest on it is,
21 other disclosures.

22 Q. And the cover letter that came with the exhibit
23 is dated what?

24 A. The cover letter is dated November 16, 2009.

25 Q. Now, the date of this promissory note is what?

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1 A. October 2nd, 2006, is what is dated on the
2 document.

3 Q. Who is the lender and who is the borrower?

4 A. The lender appears to be TDM Cable Funding and
5 the borrower appears to be Tim McGinn.

6 Q. And the dollar amount is for three hundred and
7 fifty-two thousand and change?

8 A. Yes.

9 Q. Does this purport to be the loan document for
10 the payment that you had asked Mr. McGinn and Mr. Smith
11 about at that September 2009 meeting?

12 A. Yes, one of those payments, yes.

13 Q. What is the interest rate that the borrower is
14 to pay on this three hundred and fifty-two thousand dollar
15 loan?

16 A. It is three percent interest.

17 Q. And when is the principal and interest due to be
18 paid on this loan that's dated October 2, 2006?

19 A. October 1, 2012.

20 Q. If we could go to the last page of the
21 promissory note. Is the note signed by the borrower?

22 A. It is.

23 Q. And the borrower in this case is Mr. McGinn?

24 A. Yes.

25 Q. Do you see any date blocks near the signature

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1 block on this promissory note?

2 A. No, the only date in the agreement is at the top
3 of the first page of the note.

4 MR. BELLISS: If you could go to the next
5 note page, Ron.

6 BY MR. BELLISS, CONTINUED:

7 Q. Mr. Rowen, who is the lender and the borrower in
8 this promissory note?

9 A. The lender is TDM Cable Funding, LLC, and the
10 borrower is David Smith.

11 Q. The amount borrowed is three hundred and fifty
12 thousand dollars?

13 A. Yes.

14 Q. Is this also connected to the payment that you
15 had asked Mr. Smith and Mr. McGinn about in September of
16 2009?

17 A. Yes, it is.

18 Q. What is the interest rate on this promissory
19 note?

20 A. The interest rate is three percent.

21 Q. When is principal and interest due to be paid?

22 A. October 1, 2012.

23 Q. And the promissory note is dated October 2,
24 2006, in the upper right-hand corner; is that right?

25 A. Yes, it is.

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1 Q. If you could go to last page of the promissory
2 note. Is It signed?

3 A. Yes, it is signed by David Smith.

4 Q. Any date block next to Mr. Smith's signature
5 block?

6 A. No, the only date documenting the agreement is
7 at the top of the first page of the note.

8 Q. Are there more than the two notes that we have
9 been looking at in that exhibit that you are holding?

10 A. Yes, there are.

11 Q. How many would you estimate?

12 A. Between twenty and twenty-five.

13 Q. Do the notes appear to be drafted from the
14 sample template?

15 A. Yes, they all appear to have the same
16 information in them, just with different dates, names, and
17 amounts.

18 THE COURT: With that we will take our lunch
19 break, members of the jury. We will be back at two
20 o'clock. Don't discuss the case among yourselves or anyone
21 else, and we will resume with the examination of Mr. Rowen
22 at that time.

23 (Whereupon, the luncheon recess was taken.)

24 (Whereupon, the proceedings were held in
25 open court in the presence of the Jury.)

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1 THE COURT: Mr. Belliss, you may continue
2 with your direct examination of Mr. Rowen.

3 MR. BELLISS: Thank you, Judge.

4 BY MR. BELLISS, CONTINUED:

5 Q. Mr. Rowen, I am going to hand you Exhibits GH2
6 and GH10.

7 MR. DREYER: Would you repeat those numbers?

8 MR. BELLISS: GH2 and GH10.

9 BY MR. BELLISS, CONTINUED:

10 Q. Mr. Rowen, if you could pick up where we left
11 off. I want to refer briefly to Exhibit GH2, second page,
12 item number five. Your office had requested copies of loan
13 documents for various loans between McGinn, Smith entities
14 and Mr. McGinn and Mr. Smith; is that a fair statement?

15 A. Yes.

16 Q. If we could flip to Government's Exhibit GH10,
17 what again is GH10?

18 A. GH10 is a cover letter along with the promissory
19 notes provided in response to that item.

20 Q. If you flip to the first promissory note that's
21 attached, a loan from TDM Cable Funding to Mr. McGinn in
22 the amount of three hundred and fifty-two thousand and
23 change; is that right?

24 A. Yes.

25 Q. Looking at the signature on that promissory

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1 note, was it your testimony earlier that it appeared to be
2 an original signature?

3 A. Yes, that's what we believed.

4 Q. Talking about the promissory notes in general
5 that are attached to that exhibit, was there anything that
6 was out of the ordinary or unusual in connection with those
7 notes?

8 A. Yes, I mean, first of all, that they appeared to
9 be originals. We were not being provided original
10 documents sent to us at our office in New Jersey. Original
11 documents would be maintained at the firm at the place of
12 origination. We would be sent copies when mailed records.
13 So that threw us a little bit to be sent original
14 documents.

15 Additionally, each of the promissory notes
16 appears to be of the same type. The only differences
17 between them seemed to be the dates, the amounts, and the
18 names involved.

19 Also, the only thing dated on any of the pages
20 is the cover page of the note. There was no date next to
21 the signature. And we became suspicious based on that that
22 these notes did not, in fact, exist prior to our request,
23 and that these were all prepared as a result of our request
24 to be provided to us.

25 Q. At some point in the future after you had

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1 received that letter on or about November 16, 2009, did you
2 come across any information as far as when those promissory
3 notes actually had been signed by Mr. McGinn, Mr. Smith,
4 and other borrowers?

5 A. Yes, we raised this issue during on-the-record
6 testimony done in 2010. So there were additional
7 on-the-record interviews done in February of 2010 where we
8 raised this issue, and through that interview and follow-up
9 requests letter, we were informed that these were, in fact,
10 prepared after our date of request and were not signed
11 prior to.

12 Q. I am going to give you Exhibit GH12, what is
13 this document?

14 A. This was a record request that we hand delivered
15 in which we requested a few items including the actual
16 dates that these documents were signed and an explanation
17 why the document was not signed on the date represented on
18 the document.

19 Q. Flipping back to Exhibit GH10, the cover letter
20 from Mr. Shea, is there any mention in that letter that the
21 attached promissory notes had been executed after the date
22 on the promissory note, itself?

23 A. No, we were not given anything to indicate
24 that -- to be told that these were not in existence prior
25 to our request.

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1 Q. Is that something your office would have liked
2 to have known?

3 A. Yes.

4 Q. Why is that?

5 A. Well, because we had been suspicious of these
6 payments as what the intent was and whether or not these
7 were properly being disclosed as what they were. And when
8 we initially asked the question, we were told that these
9 were loans and that they were documented. And yet, when we
10 were provided loan documents, we found out that these were
11 all -- had to be produced later.

12 Q. If we could go back to Government's Exhibit 12,
13 GH12. And then items one and two. You testified you were
14 asking for what type of information?

15 A. Number two, we were asking for the actual date
16 that the documents were signed, who signed the document,
17 and a detailed explanation why it was not signed on the
18 date that was represented.

19 Q. Showing you Exhibit GH13. What is Exhibit GH13.

20 A. This exhibit is the response letter that was
21 provided to that last request.

22 Q. If you can go down a little farther, what
23 information was provided to you as far as the signing of
24 those promissory notes that we have been talking about?

25 A. In Item A, it says that the actual signing of

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1 the each document was not known specifically, but believed
2 to be subsequent to our request of September 30, 2009.

3 Q. In connection with your examinations that were
4 going on in late 2009, early 2010, had you also sought
5 information about what are referred to as the Four Funds?

6 A. Yes.

7 Q. If we could look at Exhibit GH12, if you can
8 flip back to item three. What is item three asking for?

9 A. Item three was asking for database that was
10 referenced during our on-the-record interview of Mr. Smith
11 that was asking -- we were asking for whatever this
12 database is that documented, I believe, the fees and other
13 investments by the Four Funds.

14 Q. Was information provided to you?

15 A. We received spreadsheets related to that.

16 Q. I show you Exhibit GH11. It is an e-mail from
17 whom to whom?

18 A. This is an e-mail from Brian Shea at McGinn,
19 Smith to Christopher Rattiner who is a colleague examiner
20 working on the examination.

21 Q. Who is Mr. Shea?

22 A. I believe his title was chief financial officer
23 of McGinn, Smith.

24 Q. If we could flip to the attachment of the
25 e-mail. I won't spent a lot of time, but what does this

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1 spreadsheet purport to show?

2 A. This is a spreadsheet that represents fees paid,
3 the different categories of fees paid by those Four Funds,
4 the years they were paid, the amount that they accrued for
5 accounting purposes, and the amount that was paid. I don't
6 know if this was prior to or after our on-the-record
7 testimony, but this specific document was provided, but
8 that's what this document is representing.

9 Q. What, if anything, was of interest concerning
10 fees involving the Four Funds?

11 A. Well, we had believed based on the money
12 movements that we saw within the accounting software that
13 more fees had been paid than were called for and allowed
14 under the private placement memorandums for one or all four
15 of the funds. So this was our attempt to reconcile what
16 the firm had detailed.

17 Q. If we could go back to Exhibit GH13, which is
18 McGinn, Smith's response concerning some loans; is that
19 correct?

20 A. Yes.

21 Q. What do pages two and three of that exhibit tell
22 you?

23 A. This detailed loans -- I am sorry this
24 detailed -- I believe these were loans that had not been
25 documented or had not been provided to us previously.

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1 Loans that were not evidenced by the promissory notes that
2 had already been provided to us.

3 Q. And on the third page which opens up on the
4 monitor in front of you, is that another spreadsheet
5 listing loans?

6 A. I guess these would be all the loans from these
7 entities, not necessarily that were undocumented, but these
8 would be all the loans from these entities.

9 Q. Looking at the first loan to Mr. McGinn
10 October 2, 2006, for \$352,341.00, is that one of the loans
11 we have been talking about here this afternoon?

12 A. Yes, that is the same date and amounts we have
13 been talking about.

14 Q. Same thing for the first one to Mr. Smith
15 October 2, 2006, for three hundred and fifty thousand
16 dollars?

17 A. Yes.

18 Q. I want to move forward to Government's
19 Exhibit GH14. What is this document?

20 A. This is another records request from us to the
21 firm directed to their attorney.

22 Q. Focusing on a few items, item number four, what
23 are you asking for there?

24 A. Here we were asking for a schedule of fees that
25 had been created by an employee of the firm's, last name of

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1 Cooper. I believe that was referenced during our
2 on-the-record interview. Yes, in fact, it was referred to
3 by Mr. Smith in his on-the-record interview.

4 Q. Looking at item number ten. What types of
5 information are you asking for here?

6 A. Here is where we were asking for any and all
7 promissory notes that had not previously been provided to
8 us including two entities NEI Capital and TDMM Benchmark
9 Trust, which I believe we became aware of during
10 on-the-record testimony, were also entities that had made
11 similar payments to McGinn, Smith, and the other
12 principals.

13 Q. Looking at the last sentence, does it also ask
14 for any information about loans where there had been no
15 promissory note; is that a fair statement?

16 A. Yes.

17 Q. Why would you want to know about loans where
18 there was no promissory note?

19 A. Well, we were asking for all the promissory
20 notes, but we wanted to make sure we had a record of all
21 the loans that existed, whether they were documented by a
22 promissory note or not.

23 Q. Turning to Item Number Eleven. Quicken files
24 again are accounting records; is that right?

25 A. Yes.

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1 Q. One of the entities is NEI Capital?

2 A. Yes.

3 Q. Why were you interested now in the accounting
4 records for NEI Capital?

5 A. We did not previously have the accounting
6 records for NEI Capital. And as a follow-up to the
7 on-the-record interview, we wanted to see those accounting
8 records to see how they tied to the loans.

9 Q. Did McGinn, Smith respond to this request?

10 A. I believe they did.

11 Q. I show you Exhibit GH15. What is this document?

12 A. This is a response letter from McGinn, Smith &
13 Company to us dated March 1, 2010.

14 Q. If we could scroll down to item number four.
15 This says a copy of the schedule of fees as provided
16 herewith. And if we turn to the second page of the exhibit
17 there is another spreadsheet. Again, what is this
18 spreadsheet purporting to show?

19 A. This is purporting to show the fees earned and
20 the fees paid by the Four Funds that we have been
21 discussing from the years 2004 through 2010.

22 Q. Why were you interested in what fees were earned
23 and what fees were paid, for example, in the years 2008 and
24 2009?

25 A. Well, because we were questioning whether or not

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1 those were, in fact, due to be paid and the amounts that
2 were paid during those times. We are looking to reconcile
3 all the funds paid to the principals and/or the
4 broker-dealer throughout the life of the entities.

5 Q. If you would look in the upper left-hand corner,
6 there is a figure, eighty-five million and change. What
7 does that represent?

8 A. That is the total amount raised by those four
9 LLC.

10 Q. FIIN, FEIN, TAIN, and FAIN as we have been
11 discussing?

12 A. Yes.

13 Q. If you go back to page one of the exhibit, item
14 number ten, you asked for a schedule of all loans between
15 Mr. McGinn and Mr. Smith; is that right?

16 A. Yes, we did. We had asked for -- I don't know
17 if it was all or if it was all that we had not been
18 provided at that point, but, yes, we were looking for a
19 schedule of the loans that we had not already been provided
20 documentation for.

21 Q. So you were trying to supplement what you had?

22 A. Yes.

23 Q. If you flip to the last page of the exhibit.
24 Various loans transactions that are not evidenced by
25 promissory notes?

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1 A. Yes, that's is correct.

2 Q. What is this table?

3 A. This table is a listing of loans that were done
4 between the lender NEI or the lender TDMM Cable Funding,
5 LLC to principals of those firms, which is a DLS, which
6 stands for David Smith. TMM stands for Tim McGinn, and MR
7 stands for Matthew Rogers. So this is the detail of the
8 dates and the amounts and the terms of those loans.

9 Q. Going back to Exhibit GH10, if you can just hold
10 that up for a moment. That was a request -- or a response
11 that you had received in November of 2009 concerning loans
12 between various McGinn, Smith entities and Mr. McGinn,
13 Mr. Smith, and Mr. Rogers?

14 A. Yes.

15 MR. BELLISS: If we could go to the last
16 page of this exhibit, please, Ron. I am sorry, GH15?
17 BY MR. BELLISS, CONTINUED:

18 Q. These are additional loans from McGinn, Smith
19 entities to Mr. Smith, Mr. McGinn, and Mr Rogers; is that
20 right?

21 A. Yes, these were ones that were not evidenced by
22 promissory notes.

23 Q. Use the example here, the last NEI loan on the
24 sheet that's going from NEI to Mr. McGinn on November 2,
25 2009, for one hundred and thirty thousand dollars.

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1 Interest rate is three years and the term of the loan is --
2 excuse me, interest rate is three percent and the term of
3 the loan is six years; is that right?

4 A. That's what it reads, yes.

5 Q. Based upon the representation in this schedule,
6 who did you assume the lender was?

7 A. An entity called NEI Capital.

8 Q. When did you assume the loan payment had been
9 made?

10 A. On -- based on what is right here, on
11 November 2, 2009.

12 Q. In fact, if that information was not accurate
13 would you have wanted to know that?

14 A. Yes.

15 Q. Based upon your experience is it at all unusual
16 to have loans for several hundred thousands of dollars
17 without some type of loan documentation?

18 A. Yes, that would be -- that would not be the
19 norm.

20 Q. Finally, if we could go to item eleven on the
21 first page of the document. It says enclosed are the
22 firm's Quicken data files for NEI Capital and TDMM
23 Benchmark Trust 09. You apparently were provided with a CD
24 of the accounting records?

25 A. I believe that's the case, yes.

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1 Q. When you received the accounting records, do you
2 believe that they are accurate?

3 A. Yes.

4 Q. If material changes had been made to those
5 records, would you have wanted to have known it?

6 A. Yes.

7 Q. Finally Exhibit 16, what is this document?

8 A. This is a cover letter for provision of records
9 by the firm to FINRA with due diligence files for NEI
10 Capital.

11 Q. Why would you as an examiner be interested in
12 what are called due diligence files?

13 A. Due diligence files would be whatever
14 documentation that, you know, a placement firm or a
15 broker-dealer that is selling these would have done into
16 the entity that is actually issuing the funds, its
17 financials, its management, its history because this is a
18 broker-dealer that is selling this and actually
19 recommending this investment to its customers. So if they
20 are going to be making that recommendation, they need to
21 have done due diligence into the entity that it is selling.
22 And so we wanted to see what documentation they had related
23 to NEI Capital and its finances, especially in lieu of
24 loans it had made.

25 Q. Going back to your earlier testimony, I think

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1 you testified that in late 2009 FINRA was looking at
2 McGinn, Smith net capital compliance. What is the concern
3 at that time?

4 A. Well, as we conducted a review of their net
5 capital position in that cycle examination in 2009, we
6 became concerned that they, in fact, were not adequately
7 capitalized per the rules to conduct the business that they
8 are conducting.

9 Q. For a broker-dealer the size of McGinn, Smith,
10 what was their net capital requirement?

11 A. Based on the business that they conducted, they
12 had minimum net capital requirement of one hundred thousand
13 dollars.

14 Q. What happens if the broker-dealer goes below
15 that threshold?

16 A. If they go below the -- their net capital level,
17 they are expected to provide a notification that goes to
18 the SEC and goes to us at FINRA, and they are to cease
19 conducting their brokerage business. They can only conduct
20 liquidations. Essentially they can facilitate their
21 clients to sell their positions, but that is the only
22 business they can conduct.

23 Q. At some point late in 2009, did FINRA, in fact,
24 determine that McGinn, Smith was no longer in net capital
25 compliance?

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1 A. Yes, we did.

2 Q. What happened?

3 A. We informed the firm after requiring them to
4 conduct a computation as of the end of the day before to
5 prove to us that they were, in fact, in compliance. We
6 reviewed that computation and deemed that there were
7 adjustments that should have been made, and, in fact, put
8 them under capital compliance. We informed them of that,
9 and I don't believe they conducted any business after that
10 point.

11 Q. What, if anything, can a broker-dealer do while
12 it is below its net capital requirement?

13 A. I mean, they are still members of our
14 organization, but as far as trade activity, brokerage
15 operations for their customers, all they can do is
16 liquidate their customers' position or facilitate their
17 customers being able to sell the positions that they have.

18 Q. Can the broker-dealer still actively try to sell
19 investments to prospective investors?

20 A. No.

21 Q. Even though the broker-dealer can still be
22 permitted to liquidate accounts as you just testified to,
23 does it still have any reporting obligations to you?

24 A. Yes, they do. They are still members of our
25 organization. They still have requirements to file

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1 financial reports with us on a monthly or quarterly basis
2 depending on the level of firm they are, and they are still
3 required to conduct an annual audit and provide that to
4 FINRA.

5 Q. What was the situation with McGinn, Smith after
6 it went under its net capital requirements in late 2009,
7 what happened?

8 A. They -- no annual audit was filed as of the year
9 end of 2009. And therefore, during 2010, the firm was
10 expelled over time.

11 Q. What does that mean?

12 A. The firm was permanently not allowed to conduct
13 business. They wouldn't be able to recapitalize and
14 continue conducting business. We no longer permitted the
15 firm to conduct business.

16 Q. I would retrieve those exhibits from you.

17 MR. BELLISS: Thank you, Mr. Rowen. No
18 further questions.

19 THE COURT: Defense may cross-examine.

20

21 CROSS-EXAMINATION BY MR. JONES:

22 Q. Good afternoon, Mr. Rowen. My name is
23 Stuart Jones. I represent Mr. McGinn. I just have a few
24 questions for you.

25 THE COURT: Put that down.