Wire Transfers from Alset to Livingston

Date	From	Account	To	Bank	Amount
01/03/06	Alset IP Management	Wachovia - REDACTED 2170	Livingston, Tom & Stacy	Citizens Bank	$40,000.00
02/03/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
03/01/06	Alset IP Management	Wachovia - 2170	Livingston, Tom & Stacy	Citizens Bank	$40,000.00
03/30/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
05/04/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
05/31/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
07/03/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
08/01/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
09/01/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
10/03/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
11/02/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
12/01/06	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
01/03/07	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
02/02/07	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
03/02/07	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
04/02/07	Alset IP Management	Wachovia - 2170	Livingston, Thomas	Citizens Bank	$40,000.00
	Total				$640,000.00

Div Ex 682

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Duckkyu Chang, Kee Chang, and Duckkyu Chang TTEE Cumberland Pathology Associates, LLC (Claimants) vs. McGinn, Smith & Co., Inc., Timothy M. McGinn, David L. Smith, Thomas E. Livingston, Lex & Smith Associates Ltd., William F. Lex, McGinn Smith Advisors, LLC, and McGinn, Smith Capital Holdings Corp. (Respondents)

Case Number: 08-04924 Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Customers vs. Member, Associated Persons, and Non-Members.

REPRESENTATION OF PARTIES

Claimants Duckkyu Chang ("D. Chang"), Kee Chang ("K. Chang"), and Duckkyu Chang TTEE Cumberland Pathology Associates, LLC ("Cumberland"), hereinafter collectively referred to as "Claimants": Jenice L. Malecki, Esq., Malecki Law, New York, NY.

Respondents McGinn, Smith & Co., Inc. ("MS & Co."), Timothy M. McGinn ("McGinn"), David L. Smith ("Smith"), Thomas E. Livingston ("Livingston"), Lex & Smith Associates Ltd. ("Lex & Smith"), William F. Lex ("Lex"), McGinn, Smith Advisors, LLC ("MS Advisors"), and McGinn, Smith Capital Holdings Corp. ("MS Capital"), hereinafter collectively referred to as "Respondents": David C. Franceski, Jr., Esq., Stradley, Ronon, Stevens & Young, LLP, Philadelphia, PA. Previously represented by Christine M. Debevec, Esq., Stradley Ronon Stevens & Young, LLP, Philadelphia, PA.

CASE INFORMATION

Statement of Claim filed on or about: December 22, 2008.
D. Chang signed the Uniform Submission Agreement: December 16, 2008.
K. Chang signed the Uniform Submission Agreement: December 16, 2008.
Cumberland signed the Uniform Submission Agreement: December 16, 2008.

Joint Statement of Answer filed by Respondents MS & Co., Smith, and Lex on or about: March 12, 2009.
MS & Co. signed the Uniform Submission Agreement: March 12, 2009.
Smith signed the Uniform Submission Agreement: March 12, 2009.
Lex signed the Uniform Submission Agreement: March 12, 2009.

McGinn did not file an Answer.
McGinn signed the Uniform Submission Agreement: August 4, 2009.

Livingston did not file an Answer.
Livingston signed the Uniform Submission Agreement: August 5, 2009.

Lex & Smith did not file an Answer or sign the Uniform Submission Agreement.

MS Advisors did not file an Answer or sign the Uniform Submission Agreement.

MS Capital did not file an Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitable investments, negligence, negligent supervision, breach of contract, violations of industry rules, failure to diversify, *respondeat superior*, breach of fiduciary duty, fraud, misrepresentations, and omissions. The causes of action relate to unspecified private placement products, notes, and trusts.

Unless specifically admitted in their Answer, Respondents MS & Co., Smith, and Lex denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages in the amount of $2,577,000.00, commissions, interest, attorneys' fees, costs, and punitive damages.

Respondents MS & Co., Smith, and Lex requested Claimants' claims be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

Respondents Lex & Smith, MS Advisors, and MS Capital are not members or associated persons of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to Claimants' claims against Respondents Lex & Smith, MS Advisors, and MS Capital.

On or about June 30, 2009, Claimants filed a Motion in Support for Default Judgment against Respondents Timothy M. McGinn and Thomas E. Livingston. On or about July 10, 2009, Respondents filed an Opposition to Claimants' Motion. On August 4, 2009 a pre-hearing conference was conducted to address the Motion and the Panel, having considered the submissions and oral arguments of the parties and after due deliberation, denied the Motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

ARBITRATORS' FINDINGS

The arbitrators have provided an explanation of their decision in this Award, the explanation is for the information of the parties only and is not precedential in nature.

Dr. Chang and his wife as individuals and Dr. Chang in his role as trustee of Cumberland Pathology pension accounts appear to be intelligent, accomplished people. However, the Arbitration Panel finds no logical carryover from being very experienced at the practice of medicine or music theory or the use of Quicken software programs to account for small-business accounts receivable and accounts payable to any understanding of private placement prospectus.

Furthermore, Mr. Lex seems to be a conscientious broker and insurance salesman who is congenial. McGinn, Smith & Company as the supervisor of Mr. Lex had necessary procedures and policies in place to carry out its duties to potential customers as they had standard education programs for brokers and industry-standard supervision procedures for individual broker accounts.

The Panel has come to a unanimous decision that there is some definitive fault by Dr. Chang and some fault by three of the Respondents - Mr. Lex, Mr. David Smith, and McGinn, Smith & Co. As a preface to this decision, the Panel finds there was no role by the two individuals - Mr. Thomas Livingston or Mr. McGinn. However, in light of this finding being joint and several, and, in light of McGinn, Smith & Co. being liable, it is entirely a matter of the contractual ownership and employment relationship between either Mr. Livingston or Mr. McGinn and McGinn, Smith & Co. as to any contribution these two gentlemen may owe McGinn, Smith & Co. At the risk of being redundant, this arbitration decision does not affect any contractual responsibility Mr. Livingston and Mr. McGinn may have, if any, to reimburse McGinn, Smith & Co. for damages McGinn, Smith & Co. ultimately provides the Claimants. Furthermore, while neither party requested any expungement action by the Panel, after a review of the entire record, which included direct and cross-examination of Mr. Livingston and Mr. McGinn, on its own initiative, the Panel unanimously finds, as a matter of justice and equity, that any mention of this claim, including all allegations originating from this claim, be stricken from all FINRA records and those records FINRA may advise upon concerning both Mr. Thomas Livingston and Mr. McGinn.

The quantitative reasoning and reason for the assignment of fault is set out immediately below.

Dr. Chang and Kee Mann Chang are found to be responsible for the consequences of their own investment decisions after their stating repeatedly verbally and in writing that they had the opportunity to read investment literature and query resources such as Mr. Lex about the risks and rewards of the subject private placement notes.

The fault of Mr. Lex, Mr. Smith, and McGinn, Smith & Company is derived from the overconcentration of the Claimants' investments in these private placement notes. While Mr. Lex is certainly not responsible for preventing the Claimants from investing all of their funds into a single instrument, Mr. Lex and McGinn, Smith & Co. through Mr. David Smith [because Mr. David Smith oversaw Mr. Lex as the compliance officer for a large majority of the time period in question] could have just told Dr. Chang and Kee Mann Chang that McGinn, Smith & Co. would not play a part in these disproportionate investment actions as they developed. Mr. Lex and/or McGinn, Smith & Co. could have declined to conduct the sale of any more of these notes once the over-concentration reached a critical mass.

As to some counter-arguments presented to the arbitration Panel, the Panel finds the line of reasoning that these private placement notes were both diversified within each note, and the five or more notes were separately varied so there was not concentration, to be disingenuous. There are about a dozen or maybe two dozen small to moderately capitalized LLCs within these notes that are all either consumer service companies like residential alarm companies or discretionary-consumer goods companies like swimming pool supply firms or golf club accessory supply firms. A truly diversified portfolio would have some selections of small, mid and large capitalized businesses among the number of business areas such as some greater number of the 98 categories of businesses that Value Line created. Another counterpoint raised in the arbitration hearing with colored "pie-charts" depicting the percentage of the Chang's assets that were invested in these private placements, was that the Respondents concluded that the subject private placement notes were only 40 to 60% of the Claimants' total assets; this statement by the Respondents rings hollow. Of the liquid or near liquid assets Dr. Chang and Kee Mann Chang had, these subject notes were close to 90% of their net worth, and this aspect of the over-concentration is exacerbated by Mr. Lex only knowing a fraction of Dr. Chang's and Kee Mann Chang's total liquid/near liquid assets.

As to one other counterpoint raised by the Respondents in this case, the Panel finds that the Respondents' argument, that rescission is impossible because the "wrong" parties were sued, to be a fiction. Even while the Respondents referenced briefly and vaguely to regulatory prohibitions at the end of the Arbitration Hearing, this Panel finds that it is within regulatory parameters for Mr. Lex and/or Mr. David Smith to own the notes as individuals if McGinn, Smith & Co. believes it cannot do so. As a result of the Panel's award being joint and several, McGinn, Smith & Co. could compensate Mr. Lex and/or Mr. David Smith if McGinn, Smith & Co. chose to do so in the possible ownership interest in the subject notes ordered here to be returned by the Claimants.

In determining the Award of $805,110.00, the Arbitration Panel has accounted for in a partial rescission of the purchase of the subject notes: (1) the interest earned by the notes while the Claimants actually held these notes, (2) an imputed interest the Claimants would have conservatively earned with the $805,110.00 if they had never purchased some of these notes, and (3) there is no purposeful assault on the public good by the Respondents so NO punitive damages are awarded.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents McGinn, Smith & Co., Inc., William Lex, and David Smith are jointly and severally liable for and shall pay to Claimants $805,110.00 in compensatory damages. Concurrently Dr. Chang, Kee Mann Chang, and Cumberland Pathology Associates are to provide ownership rights to the Respondents of 45% of the face value of the initial value of private placement notes as defined below.
    a. Payment of $805,110.00 shall be made within 30 days of the issuance

of this Award, and any amount paid after 30 days from the Award issuance date will be subject to post-judgment interest of 6% per Pennsylvania statutes.

b. Concurrently with the payment of the full amount of funds to the Claimants in the amount of $805,110.00, the Claimants shall sign over to the specific Respondent party(s) [designated before hand by the Respondents] all ownership rights the Claimants have to 45% of the face value of the "notes" to the Respondents [the particular private placement notes will be chosen by the Claimants].
c. The 45% shall be that percentage of the face value [initial purchase value before commissions are deducted] of the total subject "notes" value when initially purchased by the Claimants.
d. The universe of these "notes" are defined as: all FEIN, FIIN, TAIN, notes held by Dr. Chang on December 11, 2009; and all FAIN, FIRST LINE, INEX notes held by Dr. Chang's IRA as of December 11, 2009; and all FIIN, FAIN, FEIN notes held by Kee Mann Chang as of December 11, 2009; and all INEX and FAIN notes held by Cumberland Pathology Associates, LLC as of December 11, 2009.
e. In addition, if any interest/return of principal of the universe of notes as set out above occurs from the date of this Award until the funds are actually received by the Claimants, then the amount of the interest/return of principal shall also be returned to the Respondents immediately.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Timothy M. McGinn's (CRD #813935) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to Notice to Members 04-16, Respondent Timothy M. McGinn must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

   Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

   Pursuant to the Rule 12805 of the Code, the arbitration panel has made the following Rule 2080 affirmative findings of fact:

   The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

   The arbitration panel has made the above Rule 2080 finding based on the following reasons:

   The Panel has come to a unanimous decision that there is some definitive fault by Dr. Chang and some fault by three of the Respondents - Mr. Lex, Mr. David Smith, and McGinn, Smith & Co. As a preface to this decision, the Panel finds there was no role by the two individuals - Mr. Thomas Livingston or Mr. McGinn. However, in light of this finding being joint and several, and, in light of McGinn, Smith & Co. being liable, it is entirely a matter of the contractual ownership and employment relationship between either Mr. Livingston or Mr. McGinn and McGinn, Smith & Co. as to any contribution these two gentlemen may owe McGinn, Smith & Co. Furthermore, while neither party requested any expungement action by the Panel, after a review of the entire record, which included direct and cross-examination of Mr. Livingston and Mr. McGinn, on its own initiative, the Panel unanimously finds, as a matter of justice and equity, that any mention of this claim, including all allegations originating from this claim, be stricken from all FINRA records and those records FINRA may advise upon concerning both Mr. Thomas Livingston and Mr. McGinn.

3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Thomas E. Livingston's (CRD #864264) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to Notice to Members 04-16, Respondent Thomas E. Livingston must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

   Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

   Pursuant to the Rule 12805 of the Code, the arbitration panel has made the following Rule 2080 affirmative findings of fact:

   The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

   The arbitration panel has made the above Rule 2080 finding based on the following reasons:

   > The Panel has come to a unanimous decision that there is some definitive fault by Dr. Chang and some fault by three of the Respondents - Mr. Lex, Mr. David Smith, and McGinn, Smith & Co. As a preface to this decision, the Panel finds there was no role by the two individuals - Mr. Thomas Livingston or Mr. McGinn. However, in light of this finding being joint and several, and, in light of McGinn, Smith & Co. being liable, it is entirely a matter of the contractual ownership and employment relationship between either Mr. Livingston or Mr. McGinn and McGinn, Smith & Co. as to any contribution these two gentlemen may owe McGinn, Smith & Co. Furthermore, while neither party requested any expungement action by the Panel, after a review of the entire record, which included direct and cross-examination of Mr. Livingston and Mr. McGinn, on its own initiative, the Panel unanimously finds, as a matter of justice and equity, that any mention of this claim, including all allegations originating from this claim, be stricken from all FINRA records and those records FINRA may advise upon concerning both Mr. Thomas Livingston and Mr. McGinn.

4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees
FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial claim filing fee	= $1,800.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees
Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, McGinn, Smith & Co., Inc., is assessed the following:

Member surcharge	= $2,800.00
Pre-hearing process fee	= $ 750.00
Hearing process fee	= $5,000.00

Hearing Session Fees and Assessments
The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ $450.00			= $ 450.00
Pre-hearing conference:	August 11, 2009	1 session	
Three (3) Pre-hearing sessions with Panel @ $1,200.00			= $3,600.00
Pre-hearing conferences:	May 4, 2009	1 session	
	August 4, 2009	1 session	
	September 10, 2009	1 session	
Twenty (20) Hearing sessions @ $1,200.00			= $24,000.00
Hearing Dates:	October 12, 2009	2 sessions	
	October 13, 2009	2 sessions	
	October 14, 2009	2 sessions	
	October 15, 2009	2 sessions	
	October 16, 2009	2 sessions	
	October 19, 2009	2 sessions	
	October 20, 2009	2 sessions	
	December 8, 2009	2 sessions	
	December 10, 2009	2 sessions	
	December 11, 2009	2 sessions	
Total Hearing Session Fees			= $28,050.00

1. The Panel has assessed $14,025.00 of the hearing session fees jointly and severally to Claimants.

2. The Panel has assessed $14,025.00 of the hearing session fees jointly and severally to Respondents McGinn, Smith & Co., Inc., William F. Lex, and David L. Smith.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Thomas B. Salzer	-	Public Arbitrator, Presiding Chairperson
Edward Greer	-	Public Arbitrator
Kenneth J. Beahan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

12-31-09

Thomas B. Salzer
Public Arbitrator, Presiding Chairperson

Signature Date

Edward Greer
Public Arbitrator

Signature Date

Kenneth J. Beahan
Non-Public Arbitrator

Signature Date

December 31, 2009

Date of Service (For FINRA Dispute Resolution use only)

ARBITRATION PANEL

Thomas B. Salzer	-	Public Arbitrator, Presiding Chairperson
Edward Greer	-	Public Arbitrator
Kenneth J. Beahan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas B. Salzer
Public Arbitrator, Presiding Chairperson

Signature Date

Edward Greer
Edward Greer
Public Arbitrator

12/30/09
Signature Date

Kenneth J. Beahan
Non-Public Arbitrator

Signature Date

December 31, 2009
Date of Service (For FINRA Dispute Resolution use only)

ARBITRATION PANEL

Thomas B. Salzer	-	Public Arbitrator, Presiding Chairperson
Edward Greer	-	Public Arbitrator
Kenneth J. Beahan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas B. Salzer
Public Arbitrator, Presiding Chairperson

Signature Date

Edward Greer
Public Arbitrator

Signature Date

Kenneth J. Beahan
Non-Public Arbitrator

12/30/2009
Signature Date

December 31, 2009
Date of Service (For FINRA Dispute Resolution use only)

PLAINTIFF'S EXHIBIT NO. 214 FOR IDENTIFICATION DATE: 7/19/2011 RPTR: [illegible]

LARA

McGinnSmith & Company, Inc.

Investment Bankers • Investment Brokers

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

May 13, 2008

Mr. & Mrs. Bernard H Cohen
PO Box 439
Rock Hill, NY 12775-

Re: $60000 First Advisory Income Notes, LLC – Internal Investment # 4262
Registration: Bernard H. Cohen & Lorraine T. Cohen JTWROS

Dear Mr. & Mrs. Cohen:

In our communication of February 11, 2008 we outlined for you the negative impact that the present credit crisis resulting from the sub-prime mortgage collapse was having on First Advisory Income Notes (FAIN), LLC. We provided the background leading to the crisis and reasons why we felt it was likely to worsen before the markets were able to stabilize. We cited the tremendous losses that the major commercial and investment banks were being forced to take and that these losses were spreading to institutions worldwide and to credit markets far beyond the mortgage business. We mentioned that the major impact was on market liquidity and that debt holders were being forced to sell securities and investments at prices below fair market value in an effort to deleverage their balance sheets and to meet forced margin calls. Unfortunately, all the problems that we cited have become more acute, and by now the daily news brings repeated announcements of the adverse effects the crisis is having on the general economy and of major financial institutional failures such as the collapse of Bear Stearns, Inc.

The central theme for all fixed income investments and managed funds of such investments has been the inability to refinance their investments and thus be forced to cease or eliminate interest payments and distributions. Leading the way in this category has been the area of Auction Rate Securities (ARS) which are long term municipal bonds, corporate bonds, and preferred stocks that are traded at auctions that set the instrument's interest rate and ultimately the price of the security. The market in total is somewhere around $320 billion and it is estimated that $80 billion or 25% of the market has recently failed. These investments were often marketed as substitutes for money market accounts with a higher yield. Many businesses invested their excess cash in these instruments and now find themselves not only not receiving interest, but with no access to their cash as well. The good news is that the majority of the underlying investments are still paying interest, but the funds just are not able to refinance them at rates that allow them to pay investors their principal.

Since our last communication with you, two of our investments have been forced to eliminate their dividend or cease distributions. One was a result of their loss of refinancing from a bank that was a major lender to Countrywide Credit, the country's largest sub-prime mortgage lender and who suffered major losses from that relationship and had to withdraw their commitment. The other was a holder of only AAA mortgages and who in November assured us that they were at limited risk and the dividend was safe. In February, they were forced to sell most of their portfolio to meet margin calls and suffered losses that have wiped out their earnings and their ability to pay their dividend. This in turn has put increased pressure on our cash flow and our ability to meet our obligations. Consequently, we are being forced to eliminate the interest payment to the Junior Subordinated debt holders for this quarter.

In keeping with our goal to solve the longer term problem of capital preservation we have been working on two fronts. First, we are working with individual companies within our portfolio to help them gain access to capital that would allow them to operate during this crisis. I am pleased to report, that in two of our investments we have been successful and that I am confident that later in the year both of these companies will be successful in obtaining permanent financing that will bring liquidity back to our investment.

The second area is to restructure the Funds, or at least the Junior Subordinated debt, in order to have a plan that will provide investors with an eventual exit. The issues here are complex because of the need to preserve the rights of the Senior and Senior Subordinated Noteholders. We have engaged securities counsel to assist us with the restructuring, but they have not yet been willing to provide a legal opinion as to a particular course of action. One of the ideas that we are pursuing is that instead of a total restructuring that will carry the risk that the Senior Noteholders might find objectionable we will keep the structure intact, but offer Junior Subordinated Noteholders an opportunity to receive equity in other investments that will provide them an additional source of return for their investment in the FUNDS.

In addition to having the cash flow in the FUNDS recently reduced and therefore causing us to suspend the quarterly interest for the Junior Subordinated Noteholders, we have also been advised by counsel that distributions at this time quite probably reflect a return of capital and not interest, and therefore distributions might be considered an invasion of the principal due to the Senior and Senior Subordinated Noteholders. This is a result of not knowing how and where to price our investments in these very illiquid markets. We have also heard from several Junior Subordinated Noteholders that until market conditions become clearer, they would rather suspend their distributions which are taxable interest in order to preserve future distributions of return of capital which of course are not taxable.

We do expect to have a better picture by next quarter as to a specific plan of action available to us going forward and of course the hope that markets will at least stabilize and stop retreating. However, we repeat, we do not view this crisis to be easily settled or to exhaust itself anytime soon. There has been severe and long lasting damage to the U.S. and world financial markets that will require patience to work through.

As always, if there are any questions regarding your account or this memorandum, please contact your McGinn, Smith & Company representative.

Sincerely,

David L. Smith
Managing Member
McGinn Smith Advisors

DLS/gbg

First Independent Income Notes, LLC
99 Pine Street
Albany, NY 12207
Phone 518-449-5131
Fax 518-449-4894

October 13, 2008

Mr. & Mrs. Joseph J. Mayberry
REDACTED
Lancaster, PA 17602-1390

Re: $5,000 First Independent Income Notes 7% due 12/15/08
Internal Investment # 5681
Registration: JOSEPH J MAYBERRY & MARY A MAYBERRY JTWROS

COPY

Dear Mr. & Mrs. Mayberry:

This communication is being sent to investors of First Independent Income Notes, LLC (the FUND) in each of the three classes of Notes, Senior, Senior Subordinated, and Junior maturing on December 15, 2008. The purpose of the communication is to apprise you of the status of your investment and also inform you of the restructuring plan that has been presented to the FUND's Trustee, McGinn, Smith Capital Holdings Corp. by the FUND's managing member, McGinn, Smith Advisors, LLC.

McGinn, Smith Advisors, LLC (MSA) has determined that as a result of losses incurred in the FUND's investments and the total illiquidity for the vast majority of the FUND's investments it is not possible to redeem the Notes on the due date of December 15, 2008 and will require a restructuring of all classes of Notes. In restructuring the notes, MSA has taken into account the responsibility of the Trustee to address both the principal and interest payments due to the Senior noteholders and therefore must reschedule future interest and principal payments for all three classes of noteholders, giving priority to the Senior noteholders. Based on best estimates of current cash flow and present liquidity, MSA has developed a plan that alters scheduled interest and principal payments for all three classes. All three classes are having their maturities extended and their interest payments reduced. MSA has the responsibility to manage the FUND consistent with the provisions of the note's indenture and in a manner that best protects the assets of the FUND. Accordingly, MSA will be presenting a plan outlined later in this communication that in its sole judgment provides for an orderly liquidation of assets, payment of reasonably expected cash flows, and gives priority to the Senior Noteholders over the Senior Subordinated Noteholders and the Junior Noteholders. The plan takes into account that current conditions in financial credit markets presently offer

no liquidity for almost any financial instrument other than U.S. Treasury Notes and Bonds. The investments in the FUND are primarily non public securities that presently have no secondary market for resale and in fact do not have the ability to even establish a fair market value. The plan makes assumptions that cannot be relied upon with any certainty. Events in the US and world financial markets have been changing with a degree of volatility never before experienced at any time in history. The Credit market crisis that started approximately 18 months ago with the troubles in the sub prime mortgage market has accelerated to the point that threatens to impair the entire world's financial foundations and has spread from Wall Street to Main Street. Under these conditions, any planning has to be subject to changing events. We have assumed that markets will continue to be unstable and primarily illiquid for at least two years. The damage to the world's banking system and investment markets is very severe and in our judgment will dramatically change the nature of markets for years to come. While governments, worldwide are rushing to shore up the system with liquidity and taking steps to restore confidence the fact is that no one knows what the ultimate impact of their actions and the reaction of markets will be. What was initially a financial crisis is now a full blown worldwide economic crisis with unknown consequences. MSA is fully confident that financial markets will eventually stabilize and that investor confidence and liquidity will be restored. Anything less is just not acceptable, and therefore the allocation of resources, new efforts of governmental oversight and regulation, and cooperation on a global scale of financial markets is expected to ultimately resolve the present crisis. But the aforementioned intervention in markets will certainly change the way markets work and with any change comes the need for patience and time for investors to first understand and then accept those changes.

As I write this memo the US Stock Market has just finished the day with the Dow Jones Industrial average down over 500 points and down almost 900 points for the last two days. This of course is subsequent to the "rescue bill" or formally the "Emergency Economic Stabilization Act of 2008" signed into law last Friday after several weeks of Congressional wrangling. While in my opinion this was a necessary first step, the idea in some circles that its ultimate passage would bring instant cure to what was ailing the credit markets was ill founded. The stock market's decline is just a symptom of the credit crisis, and while I am in total sympathy for all of us suffering market losses, the real issue is the total lack of liquidity in the credit markets. This is the major issue that impacts your investment in the FUND. Lack of liquidity simply means that there are no efficient markets to buy and sell investments because investors have lost confidence that they can fairly judge what those investments are worth. As the events of the mortgage markets and eventually all fixed income markets played out over the last 18 months, investors repeatedly got burned on making a decision to invest. A sophisticated hedge fund investor made a $1.8 billion investment last April in Washington Mutual, the country's largest saving bank, only to see it reduced to zero after being taken over by the FDIC last month. National political leaders assured us this summer that Fannie Mae and Freddie Mac, our two leading GSE (Government Sponsored Enterprises) mortgage lenders, were financially sound only to be declared bankrupt and taken over by the FDIC in mid September. Three of the five largest investment banks, Bear Stearns, Merrill Lynch, and Lehman Brothers no longer exist. AIG, the world's largest insurance

COH

company required an $85 billion cash infusion and equity investors were wiped out. Hundreds of banks and mortgage companies have been closed including the forced sales of Wachovia to Wells Fargo and Citi Corp. Virtually all financial institutions have had to either cut or eliminate dividends in order to strengthen their balance sheets. Other evidence of the cessation of liquidity in the credit markets include:

1.) billion dollar hedge funds such as D.B. Zwirn and Pardus Capital Management refused to allow investors to redeem because they were unable to sell assets to raise cash
2.) last week $120 billion of commercial paper not marketable, causing companies to lose liquidity for normal operating functions like payroll
3.) despite a lowering of interest rates, banks refusing to lend overnight to other banks from fear of not knowing the financial soundness of the borrower
4.) Reserve Money Market Fund assets fall below the one dollar redemption price and overnight withdrawal of $40 billion of the $60 billion in assets forces the fund to cease redemptions
5.) The College Fund, who manages assets for 1500 college endowments and their operating funds restrict access to their money market fund to 38% of their deposits and state that 100% of your capital won't be available until 2010

CM

There are hundreds of other examples that have occurred and demonstrate the liquidity crisis. Most of you are aware of this because the media has been giving this story full attention for months. The reason that it is important for you to be aware of the freezing of the credit markets is because it impacts the investments in the FUND in a variety of ways. First, if the most liquid and strongest investment assets such as money market funds, commercial paper, and mortgages are having difficulty in finding buyers, than the ability for almost all other assets to have liquidity is impossible. Second, if forced to sell these assets in order to redeem the notes, the market price would be far below fair market value. As an example, Merrill Lynch in July, in an effort to get some of these assets off their balance sheet and receive cash, sold $30 billion worth for just 22 cents on the dollar. And even then, the buyer forced Merrill Lynch to finance 75% of the purchase with a non-recourse loan which meant the true cost of the purchase was just 6 cents on the dollar. Third, many of the assets, including loans of the companies in our portfolio, were dependent on subsequent financing in order to repay us. Often, our loans were bridge loans to companies until they could get permanent financing through stock or bond offerings. The initial public offerings (IPO's) hit a 5 year low in July and included only some of the most visible companies in the world such as Visa International. Of the 25 billion dollars in offerings through July, Visa accounted for 18 billion dollars, leaving just 6 billion dollars for the other 23 companies taken public. Thus, the companies in our portfolio have been totally shut out, and in several instances the capital raises included money to satisfy their debts to us or to provide us with liquidity for our investments. When these offerings will once again be available is not determinable, but it is not likely to be anytime soon.

So what is next for what former Chairman of the Federal Reserve, Alan Grenspan, has identified as the once in a century financial crisis? First, the Federal Government continues to be active through all of its agencies. As mentioned earlier, Congress recently passed a bill that is to provide $700 billion dollars to help purchase some of these distressed assets and restore liquidity to the banks so that they can begin to make the loans and provide the credit that allows our economy to begin to function normally. The SEC has decreed that short selling in financial stocks is no longer permitted until further notice. The FDIC has instituted an insurance program for money market funds. They have raised FDIC insurance on bank deposits from $100,000 per account to $250000. This week they have opened the discount window, normally reserved only for banks, to allow for the purchase of commercial paper. Those actions are designed to both restore a semblance of confidence and provide sufficient liquidity for the most critical markets of our economy. However, time is what ultimately is required for banks and financial institutions to deleverage their balance sheets and restore sufficient liquidity that will allow them to once again start lending to businesses and consumers. J.P. Morgan, one of our leading financial institutions, believes that credit losses will eventually exceed 4 trillion dollars and that the housing price decline will bottom out down 30% from 2006 levels and last until 2010.

MSA has tried to evaluate and model the impact of the current crisis on its own investments and put forth a plan that provides for all classes of note holders to first get their principal back and second provide them with some return on their investment in the interim. We have communicated with some of you earlier in the year indicating that MS was working on a plan to meet those objectives, mindful of the Senior notes and the subordination issues of the other two classes. Anything that we would have proposed earlier this year certainly would have already proven to be too optimistic. Thus, our current plan we believe to be very achievable, and we are hopeful that as markets and liquidity are restored to a more normal operational mode, we in fact may be able to accelerate the repayment. However, we must emphasize that we are in unchartered waters and what we have learned from the last 18 months is to expect the unexpected. CWH

The plan calls for immediate implementation on the next interest payment due date. We have taken great care, and with consultation with our attorneys, to present a plan that we believe to be fair, protect all classes, and still give priority to the rule of seniority. We understand that many of you have personal liquidity issues due to retirement or other financial needs and this plan may put a personal hardship on you. MSA and its affiliate McGinn, Smith & Co. will be making its own sacrifice. Management fees, commissions, and administrative fees aggregate approximately $2,750,000 per year for all of our FUNDs that are part of this reorganization. In an effort to improve liquidity we have agreed to forfeit all such future fees while this reorganization plan is in effect. Legal fees attributed to defense of our actions and fees incurred in the pursuit of recovering any of our investments will be the responsibility of the FUNDs. The plan will be implemented for the benefit of all investors. Obviously, to be fair and acceptable to all investors, we cannot entertain a different approach for individual investors. If circumstances change in the future, hopefully for the better, we reserve the right to restructure and implement a new plan.

In conclusion, we thank you in advance for your patience and understanding of the very difficult position that we are in. If there are any questions regarding your accounts or this memorandum, please contact your McGinn, Smith & Company representative.

Sincerely,

David L. Smith
Managing Partner
McGinn, Smith Advisors

DLS/gg

COM

The attached is the restructuring plan for First Independent Income Notes, LLC (FIIN) for the Senior, Senior Subordinated, and Junior Noteholders. This Schedule makes no attempt to configure the benefit of asset sales beyond approximately 8% per year of the capital base for the first 6 years due to the manager's inability to predict the timing and price received for asset sales. While we believe that the market environment will remain difficult for the first 2-3 years for asset sales, we remain optimistic that the market should improve subsequent to that period. Fifty percent of the proceeds of those sales will be a return of principal to the Senior noteholders until they are paid in full. Subsequently, the same 50% of asset sales will be returned as principal to the Senior Subordinated noteholders. When both Senior and Senior Subordinated noteholders are paid out in full, distribution of future sales to the Junior noteholders will be at the discretion of MSA, deemed to be consistent with successfully being able to return full principal to those Junior noteholders.

C0P1

The attached is the restructuring plan for First Independent Income Notes, LLC (FIIN) for the Senior, Senior Subordinated, and Junior Noteholders. This Schedule makes no attempt to configure the benefit of asset sales beyond approximately 8% per year of the capital base for the first 6 years due to the manager's inability to predict the timing and price received for asset sales. While we believe that the market environment will remain difficult for the first 2-3 years for asset sales, we remain optimistic that the market should improve subsequent to that period. Fifty percent of the proceeds of those sales will be a return of principal to the Senior noteholders until they are paid in full. Subsequently, the same 50% of asset sales will be returned as principal to the Senior Subordinated noteholders. When both Senior and Senior Subordinated noteholders are paid out in full, distribution of future sales to the Junior noteholders will be at the discretion of MSA, deemed to be consistent with successfully being able to return full principal to those Junior noteholders.

CoH

First Independent Income Notes, LLC
Restructuring Plan of October 2008

I. Senior Notes 7%, due December 15, 2008

Payments: October 15th
January 15th
April 15th
July 15th

1. Starting October 15, 2008 through July 15, 2009
   Annual rate of 5%, interest only

2. Starting October 15, 2009 through October 15, 2014
   Annual rate of 5%
   10 year amortization

3. Maturity – October 15, 2014

<u>Example of $100,000 note:</u>

1st year: 5% interest
4 quarterly payments of $1,250

2nd – 6th year - 5% interest, 10 year amortization
20 quarterly payments of $3,192.14

Maturity payment - $56,179.51

Note: 50% of all liquidated investment proceeds will be applied immediately to principal.

II. Senior Subordinated Notes 7.5%, due December 15, 2008

Copy

Payments: October 15th
January 15th
April 15th
July 15th

1. 1st payment October 15, 2010 through July 15, 2013
   Annual rate of 3%,
   10 year amortization

2. Starting October 15, 2013 through July 15, 2020
   Annual rate of 6%
   7 year amortization

   Final payment July 15, 2020

   <u>Example of $100,000 note</u>:

Year 1-2	no payments
Year 3-5	3% interest, 10 year amortization
	12 quarterly payments of $2,903.02
Year 6-12	6% interest, 7 years amortization
	28 quarterly payments of $3,215.20

Note: *Starting in year 7, 50% of all liquidated investment proceeds will be applied immediately to principal.*

III. Junior Subordinated Notes 10.25%, due December 15, 2008

Payments: October 15th
January 15th
April 15th
July 15th

1. 1st payment October 15, 2010 through July 15, 2014
   5% principal only

2. Starting October 15, 2014 through July 15, 2023
   Annual rate of 5%,
   15 year amortization

3. Maturity July 15, 2003

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   <u>Example of $100,000 note:</u>

Year 1-2	no payments
Year 3-6	5% principal only 16 quarterly payments of $1,250
Year 7-15	5% cpn, 15 year amortization
	36 payments of $1,903.19

Maturity payment - $39,251.93

PLAINTIFF'S EXHIBIT NO. 218 FOR IDENTIFICATION DATE: 7/19/2011 RPTR:

Third Albany Income Notes, LLC

99 Pine Street
Albany, NY 12207
Phone 518-449-5131
Fax 518-449-4894

October 13, 2008

Mr. Joseph J Mayberry
REDACTED
Lancaster, PA 17602-1390

Re: $30,000 Third Albany Income Notes 7.75% due 12/15/09
Internal Investment # 7657
Registration: NFS/FMTC IRA FBO Joseph J Mayberry IRA

Dear Mr. Mayberry:

This communication is being sent to investors of Third Albany Income Notes, LLC (TAIN) in each of the three classes of Notes, Senior, Senior Subordinated, and Junior maturing on December 15, 2008, December 15, 2009, and December 15, 2009 respectfully. The purpose of the communication is to apprise you of the status of your investment and also inform you of the restructuring plan that has been presented to the FUND's Trustee, McGinn, Smith Capital Holdings Corp. by the FUND's managing member, McGinn, Smith Advisors, LLC.

McGinn, Smith Advisors, LLC (MSA) has determined that as a result of losses incurred in the FUND's investments and the total illiquidity for the vast majority of the FUND's investments it is not possible to redeem the Senior Notes on the due date of December 15, 2008 and will require a restructuring of all classes of Notes. In restructuring the notes, MSA has taken into account the responsibility of the Trustee to address both the principal and interest payments due to the Senior noteholders and therefore must reschedule future interest and principal payments for all three classes of noteholders, giving priority to the Senior noteholders. Based on best estimates of current cash flow and present liquidity, MSA has developed a plan that alters scheduled interest and principal payments for all three classes. All three classes are having their maturities extended and their interest payments reduced. MSA has the responsibility to manage the FUND consistent with the provisions of the note's indenture and in a manner that best protects the assets of the FUND. Accordingly, MSA will be presenting a plan outlined later in this communication that in its sole judgment provides for an orderly liquidation of assets, payment of reasonably expected cash flows, and gives priority to the Senior Noteholders over the Senior Subordinated Noteholders and the Junior Noteholders. The plan takes into account that current conditions in financial credit markets presently offer

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no liquidity for almost any financial instrument other than U.S. Treasury Notes and Bonds. The investments in the FUND are primarily non public securities that presently have no secondary market for resale and in fact do not have the ability to even establish a fair market value. The plan makes assumptions that cannot be relied upon with any certainty. Events in the US and world financial markets have been changing with a degree of volatility never before experienced at any time in history. The Credit market crisis that started approximately 18 months ago with the troubles in the sub prime mortgage market has accelerated to the point that threatens to impair the entire world's financial foundations and has spread from Wall Street to Main Street. Under these conditions, any planning has to be subject to changing events. We have assumed that markets will continue to be unstable and primarily illiquid for at least two years. The damage to the world's banking system and investment markets is very severe and in our judgment will dramatically change the nature of markets for years to come. While governments, worldwide are rushing to shore up the system with liquidity and taking steps to restore confidence the fact is that no one knows what the ultimate impact of their actions and the reaction of markets will be. What was initially a financial crisis is now a full blown worldwide economic crisis with unknown consequences. MSA is fully confident that financial markets will eventually stabilize and that investor confidence and liquidity will be restored. Anything less is just not acceptable, and therefore the allocation of resources, new efforts of governmental oversight and regulation, and cooperation on a global scale of financial markets is expected to ultimately resolve the present crisis. But the aforementioned intervention in markets will certainly change the way markets work and with any change comes the need for patience and time for investors to first understand and then accept those changes.

As I write this memo the US Stock Market has just finished the day with the Dow Jones Industrial average down over 500 points and down almost 900 points for the last two days. This of course is subsequent to the "rescue bill" or formally the "Emergency Economic Stabilization Act of 2008" signed into law last Friday after several weeks of Congressional wrangling. While in my opinion this was a necessary first step, the idea in some circles that its ultimate passage would bring instant cure to what was ailing the credit markets was ill founded. The stock market's decline is just a symptom of the credit crisis, and while I am in total sympathy for all of us suffering market losses, the real issue is the total lack of liquidity in the credit markets. This is the major issue that impacts your investment in the FUND. Lack of liquidity simply means that there are no efficient markets to buy and sell investments because investors have lost confidence that they can fairly judge what those investments are worth. As the events of the mortgage markets and eventually all fixed income markets played out over the last 18 months, investors repeatedly got burned on making a decision to invest. A sophisticated hedge fund investor made a $1.8 billion investment last April in Washington Mutual, the country's largest saving bank, only to see it reduced to zero after being taken over by the FDIC last month. National political leaders assured us this summer that Fannie Mae and Freddie Mac, our two leading GSE (Government Sponsored Enterprises) mortgage lenders, were financially sound only to be declared bankrupt and taken over by the FDIC in mid September. Three of the five largest investment banks, Bear Stearns, Merrill Lynch, and Lehman Brothers no longer exist. AIG, the world's largest insurance

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company required an $85 billion cash infusion and equity investors were wiped out. Hundreds of banks and mortgage companies have been closed including the forced sales of Wachovia to Wells Fargo and Citi Corp. Virtually all financial institutions have had to either cut or eliminate dividends in order to strengthen their balance sheets. Other evidence of the cessation of liquidity in the credit markets include:

1.) billion dollar hedge funds such as D.B. Zwirn and Pardus Capital Management refused to allow investors to redeem because they were unable to sell assets to raise cash
2.) last week $120 billion of commercial paper not marketable, causing companies to lose liquidity for normal operating functions like payroll
3.) despite a lowering of interest rates, banks refusing to lend overnight to other banks from fear of not knowing the financial soundness of the borrower
4.) Reserve Money Market Fund assets fall below the one dollar redemption price and overnight withdrawal of $40 billion of the $60 billion in assets forces the fund to cease redemptions
5.) The College Fund, who manages assets for 1500 college endowments and their operating funds restrict access to their money market fund to 38% of their deposits and state that 100% of your capital won't be available until 2010

There are hundreds of other examples that have occurred and demonstrate the liquidity crisis. Most of you are aware of this because the media has been giving this story full attention for months. The reason that it is important for you to be aware of the freezing of the credit markets is because it impacts the investments in the FUND in a variety of ways. First, if the most liquid and strongest investment assets such as money market funds, commercial paper, and mortgages are having difficulty in finding buyers, than the ability for almost all other assets to have liquidity is impossible. Second, if forced to sell these assets in order to redeem the notes, the market price would be far below fair market value. As an example, Merrill Lynch in July, in an effort to get some of these assets off their balance sheet and receive cash, sold $30 billion worth for just 22 cents on the dollar. And even then, the buyer forced Merrill Lynch to finance 75% of the purchase with a non-recourse loan which meant the true cost of the purchase was just 6 cents on the dollar. Third, many of the assets, including loans of the companies in our portfolio, were dependent on subsequent financing in order to repay us. Often, our loans were bridge loans to companies until they could get permanent financing through stock or bond offerings. The initial public offerings (IPO's) hit a 5 year low in July and included only some of the most visible companies in the world such as Visa International. Of the 25 billion dollars in offerings through July, Visa accounted for 18 billion dollars, leaving just 6 billion dollars for the other 23 companies taken public. Thus, the companies in our portfolio have been totally shut out, and in several instances the capital raises included money to satisfy their debts to us or to provide us with liquidity for our investments. When these offerings will once again be available is not determinable, but it is not likely to be anytime soon.

CLM

So what is next for what former Chairman of the Federal Reserve, Alan Grenspan, has identified as the once in a century financial crisis? First, the Federal Government continues to be active through all of its agencies. As mentioned earlier, Congress recently passed a bill that is to provide $700 billion dollars to help purchase some of these distressed assets and restore liquidity to the banks so that they can begin to make the loans and provide the credit that allows our economy to begin to function normally. The SEC has decreed that short selling in financial stocks is no longer permitted until further notice. The FDIC has instituted an insurance program for money market funds. They have raised FDIC insurance on bank deposits from $100,000 per account to $250000. This week they have opened the discount window, normally reserved only for banks, to allow for the purchase of commercial paper. Those actions are designed to both restore a semblance of confidence and provide sufficient liquidity for the most critical markets of our economy. However, time is what ultimately is required for banks and financial institutions to deleverage their balance sheets and restore sufficient liquidity that will allow them to once again start lending to businesses and consumers. J.P. Morgan, one of our leading financial institutions, believes that credit losses will eventually exceed 4 trillion dollars and that the housing price decline will bottom out down 30% from 2006 levels and last until 2010.

MSA has tried to evaluate and model the impact of the current crisis on its own investments and put forth a plan that provides for all classes of note holders to first get their principal back and second provide them with some return on their investment in the interim. We have communicated with some of you earlier in the year indicating that MS was working on a plan to meet those objectives, mindful of the Senior notes and the subordination issues of the other two classes. Anything that we would have proposed earlier this year certainly would have already proven to be too optimistic. Thus, our current plan we believe to be very achievable, and we are hopeful that as markets and liquidity are restored to a more normal operational mode, we in fact may be able to accelerate the repayment. However, we must emphasize that we are in unchartered waters and what we have learned from the last 18 months is to expect the unexpected.

The plan calls for immediate implementation on the next interest payment due date. We have taken great care, and with consultation with our attorneys, to present a plan that we believe to be fair, protect all classes, and still give priority to the rule of seniority. We understand that many of you have personal liquidity issues due to retirement or other financial needs and this plan may put a personal hardship on you. MSA and its affiliate McGinn, Smith & Co. will be making its own sacrifice. Management fees, commissions, and administrative fees aggregate approximately $2,750,000 per year for all of our FUNDs that are part of this reorganization. In an effort to improve liquidity we have agreed to forfeit all such future fees while this reorganization plan is in effect. Legal fees attributed to defense of our actions and fees incurred in the pursuit of recovering any of our investments will be the responsibility of the FUNDs. The plan will be implemented for the benefit of all investors. Obviously, to be fair and acceptable to all investors, we cannot entertain a different approach for individual investors. If circumstances change in the future, hopefully for the better, we reserve the right to restructure and implement a new plan.

Off

In conclusion, we thank you in advance for your patience and understanding of the very difficult position that we are in. If there are any questions regarding your accounts or this memorandum, please contact your McGinn, Smith & Company representative.

Sincerely,

David L. Smith

David L. Smith
Managing Partner
McGinn, Smith Advisors

DLS/gg

CoH

The attached is the restructuring plan for Third Albany Income Notes, LLC (TAIN) for the Senior, Senior Subordinated, and Junior Noteholders. This Schedule makes no attempt to configure the benefit of asset sales beyond approximately 8% per year of the capital base for the first 6 years due to the manager's inability to predict the timing and price received for asset sales. While we believe that the market environment will remain difficult for the first 2-3 years for asset sales, we remain optimistic that the market should improve subsequent to that period. Fifty percent of the proceeds of those sales will be a return of principal to the Senior noteholders until they are paid in full. Subsequently, the same 50% of asset sales will be returned as principal to the Senior Subordinated noteholders. When both Senior and Senior Subordinated noteholders are paid out in full, distribution of future sales to the Junior noteholders will be at the discretion of MSA, deemed to be consistent with successfully being able to return full principal to those Junior noteholders.

Copy

Third Albany Income Notes, LLC
Restructuring Plan of October 2008

I. Senior Notes 7%, due December 15, 2008

Payments: October 15th
January 15th
April 15th
July 15th

1. Starting October 15, 2008 through July 15, 2009
Annual rate of 5%, interest only

2. Starting October 15, 2009 through October 15, 2014
Annual rate of 5%
10 year amortization

3. Maturity – October 15, 2014

<u>Example of $100,000 note:</u>

1st year: 5% interest
4 quarterly payments of $1,250

2nd – 6th year - 5% interest, 10 year amortization
20 quarterly payments of $3,192.14

Maturity payment - $56,179.51

Note: 50% of all liquidated investment proceeds will be applied immediately to principal.

II. Senior Subordinated Notes 7.5%, due December 15, 2008

Payments: October 15th
January 15th
April 15th
July 15th

CON

1. 1st payment October 15, 2010 through July 15, 2013
   Annual rate of 3%,
   10 year amortization

2. Starting October 15, 2013 through July 15, 2020
   Annual rate of 6%
   7 year amortization

   Final payment July 15, 2020

   <u>Example of $100,000 note</u>:

Year 1-2	no payments
Year 3-5	3% interest, 10 year amortization 12 quarterly payments of $2,903.02
Years 6-12	6% interest, 7 years amortization 28 quarterly payments of $3,215.20

Note: *Starting in year 7, 50% of all liquidated investment proceeds will be applied immediately to principal.*

III. Junior Subordinated Notes 10.25%, due December 15, 2008

Payments: October 15th
January 15th
April 15th
July 15th

1. 1st payment October 15, 2010 through July 15, 2014
   5% principal only

2. Starting October 15, 2014 through July 15, 2023
   Annual rate of 5%,
   15 year amortization

3. Maturity July 15, 2023

   <u>Example of $100,000 note:</u>

Year 1-2	no payments
Year 3-6	5% principal only 16 quarterly payments of $1,250
Year 7-15	5% cpn, 15 year amortization 36 payments of $1,903.19

Maturity payment - $39,251.93

CJM

First Excelsior Income Notes, LLC

99 Pine Street
Albany, NY 12207
Phone 518-449-5131
Fax 518-449-4894

October 20, 2008

Mr. Michael Favish
REDACTED

San Diego, CA 92127-

Re: $100000 First Excelsior Income Notes 10.25% due 1/30/2009
Internal Investment # 3688
Registration: Michael Favish Living Trust dtd 10/08/2001, Michael Favish TTEE

Dear Mr. Favish:

This communication is being sent to investors of First Excelsior Income Notes, LLC (the FUND) in each of the three classes of Notes, Senior, Senior Subordinated, and Junior maturing on January 30, 2009. The purpose of the communication is to apprise you of the status of your investment and also inform you of the restructuring plan that has been presented to the FUND's Trustee, McGinn, Smith Capital Holdings Corp. by the FUND's managing member, McGinn, Smith Advisors, LLC.

McGinn, Smith Advisors, LLC (MSA) has determined that as a result of losses incurred in the FUND's investments and the total illiquidity for the vast majority of the FUND's investments it is not possible to redeem the Notes on the due date of January 30, 2009 and will require a restructuring of all classes of Notes. In restructuring the notes, MSA has taken into account the responsibility of the Trustee to address both the principal and interest payments due to the Senior noteholders and therefore must reschedule future interest and principal payments for all three classes of noteholders, giving priority to the Senior noteholders. Based on best estimates of current cash flow and present liquidity, MSA has developed a plan that alters scheduled interest and principal payments for all three classes. All three classes are having their maturities extended and their interest payments reduced. MSA has the responsibility to manage the FUND consistent with the provisions of the note's indenture and in a manner that best protects the assets of the FUND. Accordingly, MSA will be presenting a plan outlined later in this communication that in its sole judgment provides for an orderly liquidation of assets, payment of reasonably expected cash flows, and gives priority to the Senior Noteholders over the Senior Subordinated Noteholders and the Junior Noteholders. The plan takes into account that current conditions in financial credit markets presently offer no liquidity for almost any financial instrument other than U.S. Treasury Notes and Bonds. The investments in the FUND are primarily non public securities that presently have no secondary market for resale and in fact do not have the ability to even establish a fair market value. The plan makes assumptions that cannot be relied upon with any certainty. Events in the US and world financial markets have been changing with a degree of volatility never before experienced at any time in history. The Credit market crisis that started approximately 18 months ago with the troubles in the sub prime mortgage market has accelerated to the point that threatens to impair the entire world's financial foundations and has spread from Wall Street to Main Street. Under these conditions, any planning has to be subject to changing events. We have assumed that markets will continue to be unstable and primarily illiquid for at least two years. The damage to the world's banking system and investment markets is very severe and in our judgment will dramatically change the nature of markets for years to come. While governments, worldwide are rushing to shore up the system with liquidity and taking steps to restore confidence the fact is that no one knows what the ultimate impact of their actions and the reaction of markets will be. What was initially a financial crisis is now a full blown worldwide economic crisis with unknown consequences. MSA is fully confident that financial markets will eventually stabilize and that investor confidence and liquidity will be restored. Anything less is just not acceptable, and therefore the allocation of resources, new efforts of governmental oversight and regulation, and cooperation on a global scale of financial markets is expected to ultimately resolve the present crisis. But the aforementioned intervention in markets will certainly change the way markets work and with any change comes the need for patience and time for investors to first understand and then accept those changes.

As I write this memo, the US Stock Market has undergone incredible volatility in the last two weeks and has lost approximately 20% of its value. This of course is subsequent to the "rescue bill" or formally the "Emergency Economic Stabilization Act of 2008" signed into law last Friday after several weeks of Congressional wrangling. While in my opinion this was a necessary first step, the idea in some circles that its ultimate passage would bring instant cure to what was ailing the credit markets was ill founded. The stock market's decline is just a symptom of the credit crisis, and while I am in total sympathy for all of us suffering market losses, the real issue is the total lack of liquidity in the credit markets. This is the major issue that impacts your investment in the FUND. Lack of liquidity simply means that there are no efficient markets to buy and sell investments because investors have lost confidence that they can fairly judge what those investments are worth. As the events of the mortgage markets and eventually all fixed income markets played out over the last 18 months, investors repeatedly got burned on making a decision to invest. A sophisticated hedge fund investor made a $1.8 billion investment last April in Washington Mutual, the country's largest saving bank, only to see it reduced to zero after being taken over by the FDIC last month. National political leaders assured us this summer that Fannie Mae and Freddie Mac, our two leading GSE (Government Sponsored Enterprises) mortgage lenders, were financially sound only to be declared bankrupt and taken over by the FDIC in mid September. Three of the five largest investment banks, Bear Stearns, Merrill Lynch, and Lehman Brothers no longer exist. AIG, the world's largest insurance company required an $85 billion cash infusion and equity investors were wiped out. Hundreds of banks and mortgage companies have been closed including the forced sales of Wachovia to Wells Fargo and Citi Corp. Virtually all financial institutions have had to either cut or eliminate dividends in order to strengthen their balance sheets. Other evidence of the cessation of liquidity in the credit markets include:

1.) billion dollar hedge funds such as D.B. Zwirn and Pardus Capital Management refused to allow investors to redeem because they were unable to sell assets to raise cash
2.) last week $120 billion of commercial paper not marketable, causing companies to lose liquidity for normal operating functions like payroll
3.) despite a lowering of interest rates, banks refusing to lend overnight to other banks from fear of not knowing the financial soundness of the borrower
4.) Reserve Money Market Fund assets fall below the one dollar redemption price and overnight withdrawal of $40 billion of the $60 billion in assets forces the fund to cease redemptions
5.) The College Fund, who manages assets for 1500 college endowments and their operating funds restrict access to their money market fund to 38% of their deposits and state that 100% of your capital won't be available until 2010

There are hundreds of other examples that have occurred and demonstrate the liquidity crisis. Most of you are aware of this because the media has been giving this story full attention for months. The reason that it is important for you to be aware of the freezing of the credit markets is because it impacts the investments in the FUND in a variety of ways. First, if the most liquid and strongest investment assets such as money market funds, commercial paper, and mortgages are having difficulty in finding buyers, than the ability for almost all other assets to have liquidity is impossible. Second, if forced to sell these assets in order to redeem the notes, the market price would be far below fair market value. As an example, Merrill Lynch in July, in an effort to get some of these assets off their balance sheet and receive cash, sold $30 billion worth for just 22 cents on the dollar. And even then, the buyer forced Merrill Lynch to finance 75% of the purchase with a non-recourse loan which meant the true cost of the purchase was just 6 cents on the dollar. Third, many of the assets, including loans of the companies in our portfolio, were dependent on subsequent financing in order to repay us. Often, our loans were bridge loans to companies until they could get permanent financing through stock or bond offerings. The initial public offerings (IPO's) hit a 5 year low in July and included only some of the most visible companies in the world such as Visa International. Of the 25 billion dollars in offerings through July, Visa accounted for 18 billion dollars, leaving just 6 billion dollars for the other 23 companies taken public. Thus, the companies in our portfolio have been totally shut out, and in several instances the capital raises included money to satisfy their debts to us or to provide us with liquidity for our investments. When these offerings will once again be available is not determinable, but it is not likely to be anytime soon.

So what is next for what former Chairman of the Federal Reserve, Alan Grenspan, has identified as the once in a century financial crisis? First, the Federal Government continues to be active through all of its agencies. As mentioned earlier, Congress recently passed a bill that is to provide $700 billion dollars to help purchase some of these distressed assets and restore liquidity to the banks so that they can begin to make the loans and provide the credit that allows our economy to begin to function normally. The SEC has decreed that short selling in financial stocks is no longer permitted until further notice. The FDIC has instituted an insurance program for money market funds. They have raised FDIC insurance on bank deposits from $100,000 per account to $250000. This week they have opened the discount window, normally reserved only for banks, to allow for the purchase of commercial paper. Those actions are designed to both restore a semblance of confidence and provide sufficient liquidity for the most critical markets of our economy. However, time is what ultimately is required for banks and financial institutions to deleverage their balance sheets and restore sufficient liquidity that will allow them to once again start lending to businesses and consumers. J.P. Morgan, one of our leading financial institutions, believes that credit losses will eventually exceed 4 trillion dollars and that the housing price decline will bottom out down 30% from 2006 levels and last until 2010.

MSA has tried to evaluate and model the impact of the current crisis on its own investments and put forth a plan that provides for all classes of note holders to first get their principal back and second provide them with some return on their investment in the interim. We have communicated with some of you earlier in the year indicating that MS was working on a plan to meet those objectives, mindful of the Senior notes and the subordination issues of the other two classes. Anything that we would have proposed earlier this year certainly would have already proven to be too optimistic. Thus, our current plan we believe to be very achievable, and we are hopeful that as markets and liquidity are restored to a more normal operational mode, we in fact may be able to accelerate the repayment. However, we must emphasize that we are in unchartered waters and what we have learned from the last 18 months is to expect the unexpected.

The plan calls for immediate implementation on the next interest payment due date. We have taken great care, and with consultation with our attorneys, to present a plan that we believe to be fair, protect all classes, and still give priority to the rule of seniority. We understand that many of you have personal liquidity issues due to retirement or other financial needs and this plan may put a personal hardship on you. MSA and its affiliate McGinn, Smith & Co. will be making its own sacrifice. Management fees, commissions, and administrative fees aggregate approximately $2,750,000 per year for all of our FUNDs that are part of this reorganization. In an effort to improve liquidity we have agreed to forfeit all such future fees while this reorganization plan is in effect. Legal fees attributed to defense of our actions and fees incurred in the pursuit of recovering any of our investments will be the responsibility of the FUNDs. The plan will be implemented for the benefit of all investors. Obviously, to be fair and acceptable to all investors, we cannot entertain a different approach for individual investors. If circumstances change in the future, hopefully for the better, we reserve the right to restructure and implement a new plan.

In conclusion, we thank you in advance for your patience and understanding of the very difficult position that we are in. If there are any questions regarding your accounts or this memorandum, please contact your McGinn, Smith & Company representative.

Sincerely,

David L. Smith
Managing Partner
McGinn, Smith Advisors

DLS/gg

PLAINTIFF'S EXHIBIT NO. 220 FOR IDENTIFICATION DATE: 7/19/2011

First Advisory Income Notes, LLC

99 Pine Street
Albany, NY 12207
Phone 518-449-5131
Fax 518-449-4894

October 22, 2008

Mr. Joseph J. Mayberry
REDACTED
Lancaster, PA 17602-

Re: $10000 First Advisory Income Notes 7% due 11/15/2008
Internal Investment # 5413
Registration: NFS/FMTC IRA FBO Joseph J Mayberry

Dear Mr. Mayberry:

This communication is being sent to investors of First Advisory Income Notes, LLC (the FUND) in each of the three classes of Notes, Senior, Senior Subordinated, and Junior maturing on November 15, 2008, November 15, 2008, and November 15, 2010 respectfully. The purpose of the communication is to apprise you of the status of your investment and also inform you of the restructuring plan that has been presented to the FUND's Trustee, McGinn, Smith Capital Holdings Corp. by the FUND's managing member, McGinn, Smith Advisors, LLC.

McGinn, Smith Advisors, LLC (MSA) has determined that as a result of losses incurred in the FUND's investments and the total illiquidity for the vast majority of the FUND's investments it is not possible to redeem the Notes on the due date of November 15, 2008 and will require a restructuring of all classes of Notes. In restructuring the notes, MSA has taken into account the responsibility of the Trustee to address both the principal and interest payments due to the Senior noteholders and therefore must reschedule future interest and principal payments for all three classes of noteholders, giving priority to the Senior noteholders. Based on best estimates of current cash flow and present liquidity, MSA has developed a plan that alters scheduled interest and principal payments for all three classes. All three classes are having their maturities extended and their interest payments reduced. MSA has the responsibility to manage the FUND consistent with the provisions of the note's indenture and in a manner that best protects the assets of the FUND. Accordingly, MSA will be presenting a plan outlined later in this communication that in its sole judgment provides for an orderly liquidation of assets, payment of reasonably expected cash flows, and gives priority to the Senior Noteholders over the Senior Subordinated Noteholders and the Junior Noteholders. The plan takes into account that current conditions in financial credit markets presently offer

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no liquidity for almost any financial instrument other than U.S. Treasury Notes and Bonds. The investments in the FUND are primarily non public securities that presently have no secondary market for resale and in fact do not have the ability to even establish a fair market value. The plan makes assumptions that cannot be relied upon with any certainty. Events in the US and world financial markets have been changing with a degree of volatility never before experienced at any time in history. The Credit market crisis that started approximately 18 months ago with the troubles in the sub prime mortgage market has accelerated to the point that threatens to impair the entire world's financial foundations and has spread from Wall Street to Main Street. Under these conditions, any planning has to be subject to changing events. We have assumed that markets will continue to be unstable and primarily illiquid for at least two years. The damage to the world's banking system and investment markets is very severe and in our judgment will dramatically change the nature of markets for years to come. While governments, worldwide are rushing to shore up the system with liquidity and taking steps to restore confidence the fact is that no one knows what the ultimate impact of their actions and the reaction of markets will be. What was initially a financial crisis is now a full blown worldwide economic crisis with unknown consequences. MSA is fully confident that financial markets will eventually stabilize and that investor confidence and liquidity will be restored. Anything less is just not acceptable, and therefore the allocation of resources, new efforts of governmental oversight and regulation, and cooperation on a global scale of financial markets is expected to ultimately resolve the present crisis. But the aforementioned intervention in markets will certainly change the way markets work and with any change comes the need for patience and time for investors to first understand and then accept those changes.

As I write this memo, the US Stock Market has undergone incredible volatility in the last two weeks and has lost approximately 20% of its value. This of course is subsequent to the "rescue bill" or formally the "Emergency Economic Stabilization Act of 2008" signed into law October 3rd, after several weeks of Congressional wrangling. While in my opinion this was a necessary first step, the idea in some circles that its ultimate passage would bring instant cure to what was ailing the credit markets was ill founded. The stock market's decline is just a symptom of the credit crisis, and while I am in total sympathy for all of us suffering market losses, the real issue is the total lack of liquidity in the credit markets. This is the major issue that impacts your investment in the FUND. Lack of liquidity simply means that there are no efficient markets to buy and sell investments because investors have lost confidence that they can fairly judge what those investments are worth. As the events of the mortgage markets and eventually all fixed income markets played out over the last 18 months, investors repeatedly got burned on making a decision to invest. A sophisticated hedge fund investor made a $1.8 billion investment last April in Washington Mutual, the country's largest saving bank, only to see it reduced to zero after being taken over by the FDIC last month. National political leaders assured us this summer that Fannie Mae and Freddie Mac, our two leading GSE (Government Sponsored Enterprises) mortgage lenders, were financially sound only to be declared bankrupt and taken over by the FDIC in mid September. Three of the five largest investment banks, Bear Stearns, Merrill Lynch, and Lehman Brothers no longer exist. AIG, the world's largest insurance company required an $85 billion cash infusion

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and equity investors were wiped out. Hundreds of banks and mortgage companies have been closed including the forced sales of Wachovia to Wells Fargo and Citi Corp. Virtually all financial institutions have had to either cut or eliminate dividends in order to strengthen their balance sheets. Other evidence of the cessation of liquidity in the credit markets include:

1.) billion dollar hedge funds such as D.B. Zwirn and Pardus Capital Management refused to allow investors to redeem because they were unable to sell assets to raise cash
2.) last week $120 billion of commercial paper not marketable, causing companies to lose liquidity for normal operating functions like payroll
3.) despite a lowering of interest rates, banks refusing to lend overnight to other banks from fear of not knowing the financial soundness of the borrower
4.) Reserve Money Market Fund assets fall below the one dollar redemption price and overnight withdrawal of $40 billion of the $60 billion in assets forces the fund to cease redemptions
5.) The College Fund, who manages assets for 1500 college endowments and their operating funds restrict access to their money market fund to 38% of their deposits and state that 100% of your capital won't be available until 2010

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COH

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The plan calls for immediate implementation on the next interest payment due date. We have taken great care, and with consultation with our attorneys, to present a plan that we believe to be fair, protect all classes, and still give priority to the rule of seniority. We understand that many of you have personal liquidity issues due to retirement or other financial needs and this plan may put a personal hardship on you. MSA and its affiliate McGinn, Smith & Co. will be making its own sacrifice. Management fees, commissions, and administrative fees aggregate approximately $2,750,000 per year for all of our FUNDs that are part of this reorganization. In an effort to improve liquidity we have agreed to forfeit all such future fees while this reorganization plan is in effect. Legal fees attributed to defense of our actions and fees incurred in the pursuit of recovering any of our investments will be the responsibility of the FUNDs. The plan will be implemented for the benefit of all investors. Obviously, to be fair and acceptable to all investors, we cannot entertain a different approach for individual investors. If circumstances change in the future, hopefully for the better, we reserve the right to restructure and implement a new plan.

In conclusion, we thank you in advance for your patience and understanding of the very difficult position that we are in. If there are any questions regarding your accounts or this memorandum, please contact your McGinn, Smith & Company representative.

Sincerely,

David L. Smith
Managing Partner
McGinn, Smith Advisors

DLS/gg

CMY

The attached is the restructuring plan for First Advisory Income Notes, LLC (FAIN) for the Senior, Senior Subordinated, and Junior Noteholders. This Schedule makes no attempt to configure the benefit of asset sales beyond approximately 8% per year of the capital base for the first 6 years due to the manager's inability to predict the timing and price received for asset sales. While we believe that the market environment will remain difficult for the first 2-3 years for asset sales, we remain optimistic that the market should improve subsequent to that period. Fifty percent of the proceeds of those sales will be a return of principal to the Senior noteholders until they are paid in full. Subsequently, the same 50% of asset sales will be returned as principal to the Senior Subordinated noteholders. When both Senior and Senior Subordinated noteholders are paid out in full, distribution of future sales to the Junior noteholders will be at the discretion of MSA, deemed to be consistent with successfully being able to return full principal to those Junior noteholders.

COPY

First Advisory Income Notes, LLC
Restructuring Plan of October 2008

I. Senior Notes 7%, due November 15, 2008

Payments: November 15th
February 15th
May 15th
August 15th

1. Starting November 15, 2008 through August 15, 2009
Annual rate of 5%, interest only

2. Starting November 15, 2009 through November 15, 2014
Annual rate of 5%
10 year amortization

3. Maturity – November 15, 2014

<u>Example of $100,000 note:</u>

1st year: 5% interest
4 quarterly payments of $1,250

2nd – 6th year - 5% interest, 10 year amortization
20 quarterly payments of $3,192.14

Maturity payment - $56,179.51

Note: 50% of all liquidated investment proceeds will be applied immediately to principal.

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II. Senior Subordinated Notes 7.75%, due November 15, 2008

Payments: November 15th
February 15th
May 15th
August 15th

1. 1st payment November 15, 2010 through August 15, 2013
   Annual rate of 3%,
   10 year amortization

2. Starting November 15, 2013 through August 15, 2020
   Annual rate of 6%
   7 year amortization

   Final payment November 15, 2020

   <u>Example of $100,000 note</u>:

Year 1-2	no payments
Year 3-5	3% interest, 10 year amortization 12 quarterly payments of $2,903.02
Year 6-12	6% interest, 7 years amortization 28 quarterly payments of $3,215.20

Note: *Starting in year 7, 50% of all liquidated investment proceeds will be applied immediately to principal.*

III. Junior Subordinated Notes 10.25%, due November 15, 2010

Payments: November 15th
February 15th
May 15th
August 15th

1. 1st payment November 15, 2010 through August 15, 2014
   5% principal only

2. Starting November 15, 2014 through August 15, 2023
   Annual rate of 5%,
   15 year amortization

3. Maturity August 15, 2023

   <u>Example of $100,000 note:</u>

Year 1-2	no payments
Year 3-6	5% principal only 16 quarterly payments of $1,250
Year 7-15	5% cpn, 15 year amortization 36 payments of $1,903.19

Maturity payment - $39,251.93

COPY

McGinnSmith
& Company, Inc.

Investment Bankers • Investment Brokers

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

TO: All Employees
FROM: Joseph B. Carr, General Counsel, McGinn, Smith & Co., Inc. ("McGinn Smith" or the "Firm")
DATE: December 21, 2009

On Friday, December 18, 2009 at 4:03 pm, McGinn Smith was ordered by FINRA to cease business as a result of being in violation of its net capital requirement. FINRA's order resulted from an audit conducted by its regulatory staff during the days of December 16th-18th. Until the Firm is again in compliance with the net capital provision, no business, other than liquidation sales or short covering buys, may be instituted. Any violation of this order will result in the potential of severe penalties, including fines and license suspensions for the perpetrators and their supervisors. Any and all orders that would qualify as liquidating orders must be pre-approved by Andy Guzzetti, Brian Mayer, David Smith or Tim McGinn.

FINRA's position is that the Firm had not adequately accrued legal bills that have resulted from the Firm's on going arbitrations. The Firm's position is that those bills were the responsibility of McGinn, Smith Holdings, LLC ("Holdings") through its wholly owned subsidiary, McGinn, Smith Advisors, LLC ("Advisors") since the arbitration from which the legal bills arose (Chang vs. McGinn, Smith et al) was a direct result of the Chang's investments in the LLC's of FIIN, FEIN, TAIN, and FAIN. All of those LLC's are owned and managed by Advisors, an entity that is <u>not governed</u> by FINRA and an entity that FINRA <u>has no regulatory control over</u>. In fact, legal bills incurred since last February pertaining to the Chang arbitration had been paid by Holdings or its subsidiaries. FINRA's position is that since the Firm was named in the arbitration, it has a joint and several obligations to defend the action and is thus responsible for the legal costs. The legal costs accruing for this action are approximately $340,000. By assessing that liability to the Firm, the Firm, as of Friday, fell out of compliance with its net capital requirement. While I strongly disagreed with FINRA's position, and sought support from outside counsel, FINRA always has both the final and immediate word on such matters.

What is now important is what decisions are to be made going forward. The Firm is faced with some very difficult choices. If the Firm were to inject sufficient capital to regain compliance, that capital would be subject immediately to the risk of an adverse award coming from the Chang arbitration, which could occur momentarily. The arbitration was concluded on December 11, 2009. Plaintiffs are seeking approximately $2,500,000. (They are actually seeking some $9,500,000 for punitive damages under

Pennsylvania law, but we believe that claim to be spurious and without merit and highly unlikely to be awarded). Thus, an adverse award could immediately put the Firm back into non-compliance with its net capital requirement and it would find itself in the same position that it is in today. With the pending transfer of accounts to Dinosaur Securities through the recently formed RIA's of DLG, LLC and RMR, LLC, the risk/reward of a capital infusion to enable the Firm to do business for approximately one month is neither prudent nor responsible.

Management will be making a number of decisions in the immediate days ahead and will keep you informed of these decisions on a 'need to know" basis.

This development is not to be shared with anyone outside of the Firm or your own immediate family. We are all seeking as smooth of a transition in the coming weeks as possible, and we obviously wish to retain the confidence of our customers. Public exposure of this development would be harmful to our intent to keep our business intact and to retain our reputation in the financial community. If you receive unsolicited orders that are not of a liquidating nature, you must refuse those orders and give your client an honest answer. However, do not attempt to provide any sort of detailed answer. Defer that to management. Simply state that management has instructed its brokers that they are not able to accept unsolicited orders at this time and if the client feels it necessary to put in such an order, he will have to do it elsewhere.

Obliviously, this development is highly negative for all parties involved, brokers, customers, and all McGinn Smith personnel. Coming just weeks before the transition of our accounts is particularly unsettling. Management of the Firm deeply apologizes for the hardship and inconvenience that this is causing and is doing everything possible to minimize the impact and to expedite the transition to the new business entities. ~~Management will be addressing these issues in a separate communication.~~ Dave Smith has assured me that everyone will receive all wages due and any commissions earned and paid to McGinn Smith in a prompt and timely manner.

Thank you for your patience and understanding.

Joseph B. Carr