

INSTRUCTIONS TO N.Y. OFFICE

REDACTED

DATE 9/17/92

FROM McGinn, Smith & Co., Inc. - Dave McQuade

EIVED FOR REDACTED
COUNT NO.

-1-700

ACCOUNT
NAME

Lynn A. Smith

ACTION
TO BE
TAKEN☐ SEE
SPECIAL INSTRUCTIONS☐ SOLD S/D☐ TO BE SOLD☐ HOLD IN SAFEKEEPING☒ HOLD FIRM NAME☐ TENDER REDEM
CONVERT SUBSCRIBESPECIAL
INSTRUCTIONS

LOA to deposit enclosed

Rec'd 9/18/92 file

QUANTITY	CUSIP	SECURITY
40688 shrs	012046 10 8	Albank Financial Corporation common
		Cert.# ALBB5791

FOR BEAR STEARNS INTEROFFICE USE

FORM 4000-93-668 (3/82) PTG. 11/83

BRANCH OR CLEARING FIRM

MGS DOJ 000243

44739

Page 2

1-1

Stock/
Bond
Power

9/17/92

Trust Agreement Other

Trust Agreement Other

RE
DA
CT
ED

2600

4/03/92

001 007

#33989 ALB040192

ALB5791


ALBANK Financial Corporation

 CUSIP 012046 10 8
 SEE REVERSE FOR CERTAIN
 DEFINITIONS AND RESTRICTIONS

 INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
 COMMON STOCK

THIS CERTIFICATE IS VALID FOR THE FOLLOWING SHARES OF COMMON STOCK, \$41 PAR VALUE PER SHARE OF:

 0468-00 8531-1-90400
 DAVID J. SMITH
 8 DEATH RIDGE RD
 CLETON PARK, NY 12065

 00000000000000000000
 00000000000000000000
 00000000000000000000
 00000000000000000000

List the owner's name

FORTY THOUSAND SIX HUNDRED EIGHTY EIGHT

FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK, \$41 PAR VALUE PER SHARE OF:

ALBANK Financial Corporation (the "Corporation"). The shares represented by this certificate (the "Shares") are transferable only on the stock transfer books of the Corporation by the holder of record, hereof, in person or by his or her duly authorized attorney or legal representative, upon the surrender of this certificate properly endorsed. This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

IN WITNESS WHEREOF, ALBANK Financial Corporation has caused this certificate to be executed by the facsimile signatures of its duly authorized officers and has caused a facsimile of its corporate seal to be hereunto affixed.

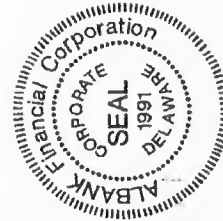
DATED:

APR 1 1992

 Countersigned and Registered:
 MANUFACTURERS HANOVER TRUST COMPANY
 (New York, New York)

By

 Transfer Agent
 and Registrar

 Authorized Signatory


 Chairman, President and Chief Executive Officer

 Secretary



This certificate and the Shares are issued and shall be held subject to all the provisions of the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") and any amendments thereto (copies of which are on file with the Transfer Agent), to all of which provisions the holder, by acceptance hereof, assents.

The Shares are subject to a limitation contained in the Certificate of Incorporation to the effect that in no event shall any record owner of any outstanding Common Stock which is beneficially owned, directly or indirectly, by a person who beneficially owns in excess of 10% of the then outstanding shares of Common Stock (the "Limit") be entitled or permitted to any vote in respect of shares held in excess of the Limit.

The Board of Directors of the Corporation is authorized by resolution or resolutions, from time to time adopted, to provide for the issuance of preferred stock in series and to fix the designations, powers, preferences and rights (including, without limitation, voting rights) of the shares of each such series and any qualifications, limitations or restrictions thereof. The Corporation will furnish to any shareholder upon request and without charge a full description of each class of stock and any series thereof.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in common
 TEN ENT — as tenants by the entirety
 JT TEN — as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT — _____ Custodian _____
 (Cust) (Minor)
 under Uniform Gifts to Minors Act _____
 (State)

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFICATION NUMBER OF ASSIGNEE

(Please print or typewrite name and address including postal zip code of assignee)

of the Common Stock represented by the within certificate and do hereby irrevocably constitute and appoint _____

BEIGER STEARNS SECURITIES CORPORATION Attorney
 to transfer the said stock on the books of the within-named Corporation with full power of substitution in the premises.

DATED _____

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without any change whatever.

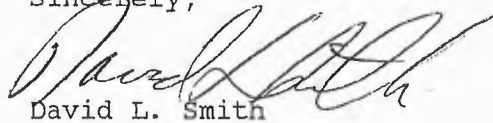
September 17, 1992

Bear Stearns Securities Corp.
One Metrotech Center
Brooklyn, NY 11201

Dear Sirs:

Please accept this letter as authorization to deposit 40688
shares of Albanc Financial Corporation in my name to account
number REDACT 91-1-1 Lynn A. Smith.

Sincerely,



David L. Smith

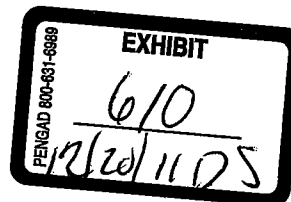


Investment Bankers • Investment Brokers

99 Pine Street
Albany, NY 12207
528-449-5131
Fax 518-449-4894
www.mcginnsmith.com

VIA EMAIL: REDACTED com

January 11, 2009



Dear Dave,

I have been reviewing the options to consider in addressing the Chang award. Initially, I assumed MS would not pay, Lex most likely would not pay, and I would not pay. I met with a bankruptcy attorney regarding the firm and my personal situation last week. As you can imagine, there are serious consequences no matter the course of action. My thinking had been driven by the unfairness (in my opinion) that Chang would recover at the expense of other Fund noteholders. What I have not previously disclosed to you is that the Funds owe substantial fees to McGinn, Smith, MS Advisors, and MS Capital Holdings. Part of these fees are pledged as collateral for loans and investments that the Funds made in MS or its affiliates over the years, as I always believed that would remove any conflict of interest questions. However, there is still a fair amount of money owed to these entities beyond the collateral. I am reconciling all those amounts this week.

I am beginning to realize that by not taking those fees to pay for various liabilities, including attorney fees, that I am foolishly compromising the rest of my life. I will be forever burdened with at the very least a lien on my wages, and there is some risk that the equity that is not in my wife's name or protected by Trusts could be served with a lien to satisfy the judgments. This equity is primarily in the form of two properties, my home in Saratoga (jointly owned) and my home in Florida (transferred to my wife solely last April). That equity in the aggregate represents \$1,600,000.

I am providing this information to you as I believe you can be of assistance to me as I face some of the legalities as they relate to the Funds. Payments scheduled for the Senior under the restructuring plan are due for FIIN and TAIN on January 15, FEIN on January 30, and FAIN on February 15. I am considering withholding these payments on the basis that those dollars are due to the MS entities on a preferred basis, as declared in the note indenture and that I have the right to use those dollars to satisfy the liabilities of the firm for Chang and potentially others. These decisions will alter the restructure plan, but I am coming to the conclusion that without noteholder approval I should probably be paying liabilities as preference demands, McGinn, Smith et. al. and then the Seniors as able. Prudence demands keeping capital for legal challenges to some of the creditors of the Funds' investments and a whole host of things. This means preparing a current balance sheet, including the liabilities to McGinn,

Smith, writing down some investments to account for potential losses, and give the noteholders some choices. McGinn, Smith has not taken any fees earned after 2007. This decision seemed the appropriate one at the time due to the lack of performance and default on the notes. However, that decision led to McGinn, Smith ultimately being out of compliance for net capital and basically shutting down a business that Tim and I built for 29 years. I have a habit of putting my welfare behind others, and I am beginning to thank I am a fool. FINRA seems to think our management of these Funds makes us unsuitable to be in the securities business and maybe they are right. But I don't believe I should be forced to share my earnings for the rest of my life with the likes of Dr. Chang or that my alleged inattention as a compliance officer should result in millions of dollars owed to clients. There should be some corporate protection for incompetency.

Finally, I am meeting again with the bankruptcy attorney this week and expect to have some more answers to what options are available to me. I would like you to give some thought as to how we should approach the noteholders if we decide not to make the payments as scheduled. Also, all of these decisions will be impacted on the extent that insurance coverage is available. We are not likely to have that decision before the payments are due, and that is another reason to withhold the payments for the moment. In addition, the restructuring plan always contemplated MS or its affiliates being able to contribute to the Funds from future deals. Now that McGinn, Smith is on the cusp of being forced out of business, those contributions will obviously not be available.

A lot for you to think about, but I thought it would be better for you to have a little background before we spoke.

Best Regards,

Dave Smith

PS. Obviously Bill Lex plays a huge role here. Any plan to pay Chang must include him. The payments due to the Seniors this month are almost exclusively clients of Lex, and therefore he has his own agenda as to how and whether Chang is paid, particularly if payments are compromised as a result of the decision.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

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

**ANSWER TO SECOND
AMENDED COMPLAINT**
10 Civ. 457 (GLS/DRH)

Defendants,

**LYNN A. SMITH, and
NANCY MCGINN,**

Relief Defendants, and

**DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,**

Intervenor.

Defendant David L. Smith, by his attorneys, Dreyer Boyajian LLP, as and for an answer to the plaintiff's second amended complaint, herein alleges as follows:

1. Denies each and every allegation and/or statement contained in paragraphs 1, 2, 3, 4, 5, 6, 16, 17, 18, 19, 20, 21, 22, 41, 45, 46, 47, 48, 51, 52, 54, 56, 57, 58, 59, 63, 64, 66, 70, 72, 76, 83, 84, 85, 86, 87, 90, 91, 92, 96, 97, 98, 100, 102, 104, 105, 107, 110, 112, 113, 115, 118, 120, 131, 132, 133, 136, 138, 139, 143, 155, 156, 162, 163, 166, 167, 168, 170, 175, 178, 179, 181, 182, 184, 185, 186, 187, 188, 189, 191, 192, 193, 195, 196, 197, 200, 201, 202, 207, 208 and 209 of the Complaint and refers all questions of law to the court.

2. Admits the allegations contained in paragraphs 34, 35, 36, 37, 42, and 43 of the Complaint.

3. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations and/or statements contained in paragraphs 28, 37, 55, 56, 103, 106, 117, 121, 123, 140, 149, 150, 151, 153, 157, 158, 159, 160, 161, 164, 165, 171, 172, 173, 174, 204, 205, 210 and 211 of the Complaint, except deny all statements, suggestion, or inference of fraud, and refers all questions of law to the Court.

4. Denies every allegation and/or statement contained in paragraphs 44, 45, 53, 60, 61, 62, 65, 67, 69, 71, 73, 74, 75, 77, 78, 79, 80, 81, 82, 88, 89, 93, 94, 95, 99, 108, 109, 111, 114, 124, 125, 126, 134, 135, 137, 145, 146, 148, 152, of the Complaint and respectfully refers the court to the original documents and emails referenced therein, to the extent they exist.

5. Denies each and every allegation and/or statement contained in paragraph 7, 8, 9, 10, 11, 12, 13, 14, 15, and 154 of the Complaint as to the allegations of fraud and refers the Court to the Docket for accurate information regarding the procedural history of this case.

6. No response is required to paragraphs 23, 24, and 25 of the Complaint.

7. Neither admit nor deny the allegations set forth in paragraphs 26, 27, 177, 196, 199 and 200 of the Complaint, which state legal conclusions to which no responsive pleading is required, but to the extent said allegations are deemed factual, and denies each and every such allegations and refer questions of law to the Court.

8. Admits the allegations contained in paragraph 29 of the Complaint except deny Smith owns about 50% of MS & Co. and about 50% of MS Advisors, and affirms that David Smith is 66 years old.

9. Admits McGinn, Smith & Co., Inc. ("MS & Co.") is a registered broker-dealer and

New York corporation founded in 1981 by Smith and McGinn and has its principal place of business at 99 Pine Street, Albany, New York and denies all other allegations contained in paragraph 30 of the Complaint.

10. Admits the allegation in paragraph 31 that MS Advisors is a New York corporation with its principal place of business at 99 Pine Street, Albany, New York, but denies that 20% of that corporation is owned by MS Partners, and does not have knowledge or information sufficient to respond to the date MS Advisors was registered with the Commission, and denies all other allegations in that paragraph.

11. Admits allegations contained in paragraph 32 except denies knowledge and information sufficient to form a belief as to the truth of the allegation set forth as to the indenture trustee for the Funds and the trustee for all the Trusts created between 2006 and 2009.

12. Admits the allegations set forth in paragraph 38 as to the statement that McGinn and Smith founded MS & Co. in 1980 and the firm registered as a broker-dealer in 1981 and McGinn sold 40% of his interest in MS & Co. to Partner 3 but denies knowledge and information as to the year that sale took place. Admits McGinn became the chief executive officer of IASG but returned to MS & Co. in 2006 and denies all other allegations contained in paragraph 38 of the Complaint.

13. Denies the allegation set forth in paragraph 39 as to Smith responsible for the majority of the investment decisions for the Funds and does not have information and knowledge sufficient to respond to the allegation that among other functions, McGinn served as a signatory on behalf of various McGinn Smith Entities that received loans from the Funds, but admits all other allegations and/or statements contained in that paragraph.

14. Admits allegations and/or statements contained in paragraph 40 of the Complaint to

the extent that MS & Co. acted as the placement agent for debt offerings by the Four Funds and MS Capital served as the Trustee and Servicing Agent for each of the Four Funds. Denies all other allegations contained in paragraph 40 of the Complaint.

15. Lacks knowledge and information sufficient to form a belief as to the allegations contained in paragraphs 49, 101, and 119 of the Complaint and respectfully refers the Court to the original emails referenced therein to the extent such email exists. Defendant refers the Court to the document itself and denies all other accusations and characterizations.

16. Lacks information and knowledge sufficient to form a belief as to the allegation in paragraph 68 of the Complaint that MS & Co. acted as a placement agent for the Cruise Charter Venture Trust 08 ("CCV Trust") between 2006 and 2009 but admits all other allegations and/or statements set forth therein.

17. Lacks knowledge and information sufficient to form a belief as to the allegation set forth in paragraph 116 of the Complaint that on October 14, 2002, the 105,000 shares of Charter One Stock were journaled out of the Stock Account and denies all other allegations and/ or statements therein.

18. Admits the allegation contained in paragraph 122 of the Complaint that a house in Vero Beach, Florida was transferred to L. Smith after being previously held in joint ownership. Deny as to the allegation it was without consideration and lacks knowledge and information as to all other allegations and statements set forth in paragraph 122 of the Complaint.

19. Admits the allegations and/or statements set forth in paragraph 127 of the Complaint as to Charter One publicly announced that it was being acquired in an all-cash deal by Citizens Financial Group, which paid \$44.50 per share, with the deal completed on August 31, 2004, but denies knowledge and information as to the date of May 4, 2004.

20. Admits the allegations and/ or statements contained in paragraphs 128 and 129 of the Complaint but deny knowledge and information as to the date of September 1, 2004.

21. Admits the allegation contained in paragraph 130 of the Complaint to the extent it is alleged that the funds were transferred directly from the Smith Trust to L. Smith but denies all other allegations and/or statements.

22. Admits the allegation contained in paragraph 141 of the Complaint to the extent it is alleged that Smith and L. Smith transferred title to a house in Vero Beach, Florida, which had been jointly held to L. Smith but lack knowledge and information as to the year 2009.

23. Admits the allegation contained in paragraph 142 of the Complaint as to Smith and L. Smith caused a joint checking account at a Bank of America to be transferred to L. Smith but lack knowledge and information as to the year 2009.

24. Defendant respectfully refers the Court to the Docket in response to the allegations contained in paragraphs 144, 147, and 154 of the Complaint.

25. Admits the allegation contained in paragraph 169 of the Complaint to the extent the funds were transferred directly from the Smith Trust to L. Smith but deny all other allegations and/or statements.

26. Repeat the above responses with respect to the allegations of paragraphs 176, 180, 183, 190, 194, 198, 203, and 206 of the Complaint as if fully set forth herein.

FIRST AFFIRMATIVE DEFENSE

The action and relief sought is in whole or in part barred by the applicable statute of limitations and/or the equitable doctrine of laches.

SECOND AFFIRMATIVE DEFENSE

The SEC does not have authority to bring claims of violations of the New York Debtor

and Creditor law.

THIRD AFFIRMATIVE DEFENSE

The SEC is barred from pursuing this action by the doctrine of equitable estoppel.

FOURTH AFFIRMATIVE DEFENSE

Due to the complexity of the case and lengthy period of time covered by the Complaint, Defendant cannot fully anticipate all affirmative defenses that may be applicable at this time and, accordingly, reserves the right to assert additional affirmative defenses if and to the extent such affirmative defenses are applicable.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendant demands that his matter be tried before a jury.

WHEREFORE, Defendant demands judgment dismissing the Second Amended Complaint.

DATED: July 29, 2011

DREYER BOYAJIAN LLP

By: 

WILLIAM J. DREYER, ESQ.

Bar Roll No.: 101539

Attorneys for Defendant

75 Columbia Street

Albany, New York 12210

Telephone No.: (518) 463-7784

Facsimile No.: (518) 463-4039

TO: David Stoelting
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
3 World Financial Center, Suite 400
New York, New York 10281-1022

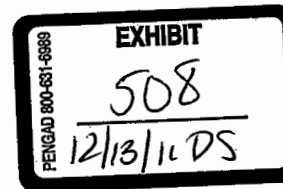
Telephone: (212) 336-0174
Fax: (212) 336-1324
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Nancy McGinn
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Schenectady, NY 12309

William Brown, Esq.
Phillips Lytle LLP
Attorneys for Receiver
3400 HSBC Center
Buffalo, NY 14203



Register Report - All Dates

TDM CABLE

9/1/2006 Through 10/13/2009

No.	Date	Account	Num	Description	Memo	Category	Amount
1	9/1/2006	REDACTED	9507	Opening Balance		REDACTED 9507	\$ -
2	9/15/2006		9507 DEP	DLS		[DT DLS]	\$ 15,000.00
3	9/19/2006		9507	Shutts & Brown	legal fees	[syndication costs]	\$ (15,000.00)
4	9/29/2006		9507 DEP	McGinn, Smith		[DT DLS]	\$ (275,000.00)
5	9/29/2006		9507	McGinn, Smith		Underwriting Fees	\$ (275,000.00)
6	9/29/2006		9507	Mercantile Bank	wire fees	Bank Charge	\$ (40.00)
7	10/2/2006		9507 EFT	DLS		[Loans-Other]	\$ (1,000.00)
8	10/2/2006		9507	TUR		[Loans-Other]	\$ (3,243.50)
9	10/2/2006		9507	ADT		[Loans-Other]	\$ (2,000.00)
10	10/6/2006		9507	ADT		[ADT Note]	\$ (100,000.00)
11	10/6/2006		9507 EFT	PVF- Cutler		[PVF- Cutler]	\$ (629,859.48)
12	10/17/2006		9507 EFT S	DLS		[DT DLS]	\$ (15,000.00)
13						Interest Exp	\$ (173.00)
14	10/18/2006	REDACTED	9507	Shutts & Brown	legal fees	[syndication costs]	\$ (24,241.88)
15	10/24/2006		9507 EFT	PVF- Key Co		[PVF- Key]	\$ (364,800.00)
16	10/25/2006		9507 524040	Carolyn Gracey	pprh help	Misc	\$ (1,000.00)
17	10/25/2006		9507 524044	Spartan Copies	copies of PPM	Misc	\$ (769.77)
18	10/30/2006		9507 EFT	Debit	opening deposit PVF's	Misc	\$ (200.00)
19	10/30/2006		9507	Interest		Interest Inc	\$ 274.41
20	11/1/2006		9507 EFT	Fees		[Loans-Other]	\$ (34,243.50)
21	11/1/2006		9507 EFT	Fees		[Loans-Other]	\$ (19,052.00)
22	11/3/2006		9507	Nyra	magazine ad	Advertising	\$ (2,000.00)
23	11/3/2006		9507	Bank Charge		Bank Charge	\$ (20.00)
24	11/30/2006		9507	Interest		Interest Inc	\$ 278.24
25	12/4/2006		9507	Bank Charge	wire fee	Bank Charge	\$ (20.00)
26	12/4/2006		9507 TXFR	Primevision Communications		[PVF- Cutler]	\$ (60,659.51)
27	12/8/2006		9507 EFT	Fees		[Loans-Other]	\$ (55,000.00)
28	12/21/2006		9507 EFT	DLS	dis	[Loans-Other]	\$ (57,000.00)
29	12/21/2006		9507 EFT	Fees		[Loans-Other]	\$ (35,000.00)
30	12/26/2006		9507 EFT	Legal Fees	couch white & shutts & bowen	[syndication costs]	\$ (5,945.01)
31	12/27/2006		9507 EFT	McGinn, Smith	inv. banking fees	Underwriting Fees	\$ (15,000.00)

Register Report - All Dates

TDM CABLE

9/1/2006 Through 10/13/2009

No.	Date	Account	Num	Description	Memo	Category	Amount
32	12/29/2006	REDACTED	9507	TXFR	To M&T	[M&T Bank Checking]	\$ (15,000.00)
33	12/31/2006	REDACTED	9507		Transfer To Mercantile Checking	REDACTED 9573]	\$ 137,000.00
34	12/31/2006	REDACTED	9507		Interest	Interest Inc	\$ 43.85
35	12/31/2006	REDACTED	9507		Bank Charge	Bank Charge	\$ (112.00)
36	1/2/2007	REDACTED	9507	EFT	Primevision Communications	[PVF- Cutler]	\$ (8,850.47)
37	1/2/2007	REDACTED	9507	EFT S	FIIN	[DT FIIN]	\$ (504,057.68)
38		REDACTED				Interest Exp	\$ (6,381.85)
39	1/2/2007	REDACTED	9507		DEBIT	REDACTED 9573]	\$ 519,000.00
40	1/17/2007	REDACTED	9507	EFT S	FIIN	[DT FIIN]	\$ (68,931.08)
41		REDACTED				Interest Exp	\$ (1,068.92)
42	1/18/2007	REDACTED	9507		DEBIT	Debit-DEBIT MEMO	\$ 70,250.00
43	1/30/2007	REDACTED	9507	DEP	Mr. Cranberry	[DT Mr. Cranberry]	\$ 792,000.00
44	1/30/2007	REDACTED	9507		Verifier	[Verifier.LLC loan]	\$ (1,225,036.07)
45		REDACTED					
46	1/30/2007	REDACTED	9507	DEP	Mr. Cranberry	[DT Mr. Cranberry]	\$ 425,000.00
47		REDACTED					
48		REDACTED					
49		REDACTED					
50	1/30/2007	REDACTED	9507	EFT	McGinn, Smith	Fees	\$ (327,500.00)
51	1/31/2007	REDACTED	9507	TXFR	To M&T	[M&T Bank Checking]	\$ (19,794.10)
52	1/31/2007	REDACTED	9507		Bank Charge	Bank Charge	\$ (246.00)
53	1/31/2007	REDACTED	9507		Interest	Interest Inc	\$ 36.90
54	2/1/2007	REDACTED	9507	EFT	Primevision Communications	[PVF- Cutler]	\$ (11,433.91)
55	2/2/2007	REDACTED	9507		Interest	Interest Inc	\$ 125.25
56	2/28/2007	REDACTED	9507		Bank Charge	Bank Charge	\$ (52.00)
57	2/28/2007	REDACTED	9507		Interest	Interest Inc	\$ 0.61
58	2/28/2007	REDACTED	9507	DEP	Mr. Cranberry	[DT Mr. Cranberry]	\$ 7,000.00
59	3/13/2007	REDACTED	9507	EFT	PVF- Key Co	[PVF- Key]	\$ (10,725.88)
60		REDACTED					
61	3/28/2007	REDACTED	9507	EFT	McGinn, Smith	Underwriting Fees	\$ (400,000.00)
62		REDACTED					
63		REDACTED					

Register Report - All Dates

TDM CABLE

9/1/2006 Through 10/13/2009

No.	Date	Account	Num	Description	Memo	Category	Amount
64	3/28/2007	REDACTED	9507	EFT	Gersten Savage	Legal	\$ (10,000.00)
65	3/28/2007		9507	DEP	Mr. Cranberry	[DT Mr. Cranberry]	\$ 330,000.00
66	3/29/2007		9507	EFT	Luxury Cruise	Fees	\$ (16,208.93)
67	3/31/2007		9507		Bank Charge	Bank Charge	\$ (112.00)
68	3/31/2007		9507	DEP	Interest	Interest Inc	\$ 3.34
69	4/11/2007		9507	DEP	Verifier Trust	[DT Verifier Trust]	\$ 1,200,000.00
70	4/11/2007		9507	EFT	Luxury Cruise	[Luxury Cruise]	\$ (813,813.21)
71	4/11/2007		9507	EFT	Luxury Cruise	[Luxury Cruise]	\$ (387,386.79)
72	4/13/2007		9507	DEP	From TDM Verifier Escrow	[DT Verifier Trust]	\$ 665,000.00
73	4/13/2007		9507	EFT	To Verifier	[Verifier LLC loan]	\$ (650,000.00)
74	4/13/2007	REDACTED	9507	EFT	Fees	Fees	\$ (10,000.00)
75	4/16/2007		9507	DEP	Verifier	Interest Inc	\$ 40,000.00
76	4/30/2007		9507		Interest	Interest Inc	\$ 108.95
77	4/30/2007		9507		Bank Charge	Bank Charge	\$ (80.00)
78	4/30/2007		9507	EFT	Fees	Fees	\$ (62,000.00)
79	4/30/2007		9507	EFT	S Mr. Cranberry	Interest Exp	\$ (34,364.00)
80						[DT Mr. Cranberry]	\$ (74,814.00)
81						[ADT Note]	\$ (53,822.00)
82	4/30/2007		9507	DEP	Verifier	[DT Verifier Trust]	\$ 200,000.00
83	5/11/2007		9507	DEP	Primevision Communications	Other Inc	\$ 9,123.31
84	5/18/2007	REDACTED	9507	DEP	Primevision Communications	Interest Inc	\$ 5,831.48
85	5/31/2007		9507	DEP	Interest	Interest Inc	\$ 134.42
86	5/31/2007		9507	TXFR	M&T Banking Fee	[M&T Bank Checking]	\$ (17,000.00)
87	5/31/2007		9507		Bank Charge	Bank Charge	\$ (20.00)
88	6/29/2007		9507	TXFR	TDM Cable Funding, LLC Trust 06	[M&T Bank Checking]	\$ (19,000.00)
89	6/29/2007		9507	DEP	Luxury Cruise	Interest Inc	\$ 38,613.70
90	6/30/2007		9507	DEP	Interest	Interest Inc	\$ 110.70
91	6/30/2007		9507		Bank Charge	Bank Charge	\$ (40.00)
92	7/10/2007		9507	TXFR	To M&T	[M&T Bank Checking]	\$ (5,600.00)
93	7/12/2007		9507	EFT	S Fees	[Loan- DLS]	\$ (30,000.00)
94						[Loan- Matt R]	\$ (30,000.00)
95						[Loan- TMM]	\$ (30,000.00)

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TDM CABLE

9/1/2006 Through 10/13/2009

No.	Date	Account	Num	Description	Memo	Category	Amount
96	7/12/2007	REDACTED	9507	EFT	McGinn, Smith	luxury cruise u/w	Underwriting Fees \$ (125,000.00)
97	7/12/2007		9507	DEP	Mr. Cranberry	[DT Mr. Cranberry]	\$ 215,000.00
98	7/13/2007		9507	DEP	Verifier	Interest Inc	\$ 76,900.00
99	7/24/2007		9507	DEP	Mr. Cranberry	[DT Mr. Cranberry]	\$ 250,000.00
100	7/24/2007		9507	EFT	Unknown Deposi	change this [Luxury Cruise]	\$ (250,000.00)
101	7/31/2007		9507	TXFR	To M&T	[M&T Bank Checking]	\$ (25,683.42)
102	7/31/2007		9507		Bank Charge	dec svc chgs Bank Charge	\$ (160.00)
103	7/31/2007		9507	DEP	Primevision Communications	Interest Inc	\$ 22,487.58
104	7/31/2007		9507	DEP	Interest	jul interest Interest Inc	\$ 343.99
105	8/2/2007		9507	TXFR	To M&T	jaybel productions [M&T Bank Checking]	\$ (1,500.00)
106	8/6/2007		9507	EFT	DLS	dis [Loan- DLS]	\$ (75,000.00)
107	8/6/2007		9507	EFT	McGinn, Smith	firstline u/w fees? Underwriting Fees	\$ (500,000.00)
108	8/6/2007		9507	EFT	TMM	[Loan- TMM]	\$ (75,000.00)
109	8/7/2007		9507	DEP	TDM Luxury Cruise	from TDM Luxury Cruise [DT Luxury Cruise]	\$ 500,000.00
110	8/7/2007		9507	DEP	TDM Luxury Cruise	from TDM Luxury Cruise [DT Luxury Cruise]	\$ 34,800.00
111	8/28/2007		9507		To Checking	REDACTED 9573]	\$ 94,800.00
112	8/28/2007		9507	DEP	TDM Luxury Cruise	from TDM Luxury Cruise [DT Luxury Cruise]	\$ 1,070,000.00
113	8/28/2007		9507	DEP	Unknown Deposi	[DT Verifier Trust]	\$ 548,000.00
114	8/29/2007		9507	EFT	First Line Trust	cover interest on Firstline [DF Firstline Sr. 07]	\$ (3,310.41)
115	8/31/2007		9507	DEP	Interest	aug interest Interest Inc	\$ 939.91
116	8/31/2007		9507		Bank Charge	aug svc charges Bank Charge	\$ (168.00)
117	9/2/2007		9507	TXFR	TDM Cable Funding, LLC Trust 06	Use for Expenses [M&T Bank Checking]	\$ (26,000.00)
118	9/4/2007		9507	EFT	MS Advisors	Zetek funding [DF MS Advisors]	\$ (1,600,000.00)
119	9/4/2007		9507	EFT	First Line Trust	cover interest on Firstline [Due From Firstline 07 Jr.]	\$ (17,114.17)
120	9/4/2007		9507	EFT	First Line Trust	cover interest on Firstline [DF Firstline Sr. 07]	\$ (12,709.76)
121	9/7/2007		9507	EFT	Luxury Cruise	[DT Luxury Cruise]	\$ (9,681.94)
122	9/27/2007		9507	DEP	Luxury Cruise	Interest Inc	\$ 49,448.58
123	9/28/2007		9507		Bank Charge	sept svc charges Bank Charge	\$ (190.00)
124	9/28/2007		9507	EFT	Luxury Cruise-M&T	[DT Luxury Cruise]	\$ (680.56)
125	9/30/2007		9507	DEP	Interest	sept interest Interest Inc	\$ 824.64
126	10/1/2007		9507	TXFR	To M&T	cover interest [M&T Bank Checking]	\$ (26,000.00)
127	10/10/2007		9507	EFT	TMM	[Loan- TMM]	\$ (50,000.00)

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TDM CABLE

9/1/2006 Through 10/13/2009

No.	Date	Account	Num	Description	Memo	Category	Amount
128	10/10/2007	REDACTED	9507	EFT	107th Associates	verify this	[DF 107th Assoc] \$ (15,000.00)
129	10/18/2007	REDACTED	9507	DEP	Verifier	Interest Inc	\$ 79,500.00
130	10/24/2007	REDACTED	9507	EFT	MS Funding	Fees	\$ (82,000.00)
131	10/31/2007	REDACTED	9507	DEP	Interest	oct interest	Interest Inc \$ 127.03
132	10/31/2007	REDACTED	9507		Bank Charge	oct svc chgs	Bank Charge \$ (60.00)
133	11/30/2007	REDACTED	9507		Bank Charge	nov svc chgs	Bank Charge \$ (12.00)
134	12/28/2007	REDACTED	9507	DEP	Luxury Cruise	Interest Inc	\$ 62,960.55
135	12/31/2007	REDACTED	9507	DEP	Interest	dec interest	Interest Inc \$ 27.49
136	12/31/2007	REDACTED	9507		Bank Charge	dec svc chgs	Bank Charge \$ (32.00)
137	1/10/2008	REDACTED	9507	DEP	Verifier	Interest Inc	\$ 94,171.23
138	1/31/2008	REDACTED	9507	DEP	Interest	jan08 int	Interest Inc \$ 457.79
139	1/31/2008	REDACTED	9507		Bank Charge	jan m&t svc chg	Bank Charge \$ (20.00)
140	2/29/2008	REDACTED	9507	DEP	Interest	jan08 int	Interest Inc \$ 431.83
141	3/4/2008	REDACTED	9507	EFT	MS Funding	Loan	[Due From MS Funding] \$ (158,000.00)
142	3/31/2008	REDACTED	9507	DEP	Interest	jan08 int	Interest Inc \$ 41.72
143	3/31/2008	REDACTED	9507		Bank Charge	Bank Charge	\$ (12.00)
144	4/30/2008	REDACTED	9507		Bank Charge	Bank Charge	\$ (12.00)
145	5/31/2008	REDACTED	9507	EFT	Bank Charge	Bank Charge	\$ (12.00)
146	6/30/2008	REDACTED	9507	EFT	Bank Charge	Bank Charge	\$ (12.00)
147	7/14/2008	REDACTED	9507	EFT	Verifier	Interest Inc	\$ 169,500.00
148	7/31/2008	REDACTED	9507	EFT	Unknown Deposi	change this	Auto \$ 35,369.58
149	7/31/2008	REDACTED	9507	DEP	Interest	Account Interest	Interest Inc \$ 228.75
150	7/31/2008	REDACTED	9507	EFT	Bank Charge	Bank Charge	\$ (40.00)
151	7/31/2008	REDACTED	9507	EFT	TDM Cable Funding, LLC Trust 06	Use for Expenses	[M&T Bank Checking] \$ (26,000.00)
152	8/18/2008	REDACTED	9507	EFT	Verifier Trust Op		[Verifier LLC loan] \$ (76,500.00)
153	8/18/2008	REDACTED	9507	EFT	Bank Charge	Bank Charge	\$ (20.00)
154	8/31/2008	REDACTED	9507	DEP	Interest	Account Interest	Interest Inc \$ 332.16
155	9/3/2008	REDACTED	9507	EFT	TDM Cable Trust 06 9.25% Notes	Nov 06 Investments	[M&T Bank Checking] \$ (26,000.00)
156	9/25/2008	REDACTED	9507		Other Income	Closed TDM Cable	Other Inc \$ 111.12
157	9/30/2008	REDACTED	9507		TDM Cable Trust 06 9.25% Notes	Use for Expenses	[M&T Bank Checking] \$ (26,000.00)
158	9/30/2008	REDACTED	9507	DEP	Interest	Account Interest	Interest Inc \$ 154.96
159	9/30/2008	REDACTED	9507	EFT	Bank Charge	Bank Charge	\$ (40.00)

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TDM CABLE

9/1/2006 Through 10/13/2009

REDACTED

No.	Date	Num	Description	Memo	Category	Amount
160	10/30/2008	9507	EFT TDM Cable Funding, LLC Trust 06	Use for Expenses	[M&T Bank Checking]	\$ (18,860.73)
161	10/31/2008	9507	DEP Interest	Account Interest	Interest Inc	\$ 99.36
162	11/18/2008	9507	DEP Verifier Capital		Interest Inc	\$ 169,500.00
163	11/28/2008	9507	EFT MSTF	Loan	[DT MSTF]	\$ (107,000.00)
164	11/30/2008	9507	DEP Interest	Account Interest	Interest Inc	\$ 99.33
165	11/30/2008	9507	EFT Verifier Trust Op	TDMV 08	[Verifier LLC loan]	\$ (78,500.00)
166	11/30/2008	9507	EFT Bank Charge		Bank Charge	\$ (100.00)
167	12/1/2008	9507	TDM Cable Funding, LLC Trust 06	Use for Expenses	[M&T Bank Checking]	\$ (18,000.00)
168	12/11/2008	9507	TXFR TDM Cable Funding, LLC Trust 06	Cover Wire Fees	REDACTED 9573]	\$ (160.00)
169	12/31/2008	9507	EFT Bank Charge		Bank Charge	\$ (12.00)
170	1/2/2009	9507	DEP Verifier Capital		Interest Inc	\$ 169,500.00
171	1/8/2009	9507	EFT TDM VERIFIER TRUST 08	Loan	[DF TDMV 08]	\$ (87,000.00)
172	1/6/2009	9507	EFT First Line Sr Trust 07	Loan	[DF Firstline Sr. 07]	\$ (82,500.00)
173	1/30/2009	9507	TDMM Cable Sr 09	Loan	[DT TDMM Cable Sr 09]	\$ 475,000.00
174	1/30/2009	9507	EFT McGinn, Smith	Loan	[DF McGinn Smith & Co.]	\$ (413,000.00)
175	1/30/2009	9507	EFT Tim McGinn	Loan	[Loan- TMM]	\$ (25,000.00)
176	1/30/2009	9507	TXFR Interest	TDM Luxury Cruise	Interest Inc	\$ 34.79
177	1/30/2009	9507	EFT Bank Charge		Bank Charge	\$ (112.00)
178	2/4/2009	9507	DEP TDMM Cable Sr 09	Loan	[DT TDMM Cable Sr 09]	\$ 100,000.00
179	2/4/2009	9507	EFT Shutts & Bowen LLP		[DF Shutts and Bowen]	\$ (19,379.87)
180	2/4/2009	9507	EFT Matt McGinn		Legal	\$ (7,040.00)
181	2/6/2009	9507	EFT Shutts & Bowen LLP		[DF Shutts and Bowen]	\$ (10,000.00)
182	2/9/2009	9507	EFT TMM		[Loan- TMM]	\$ (20,000.00)
183	2/17/2009	9507	DEP TDMM Cable Sr 09	Loan	[DT TDMM Cable Sr 09]	\$ 40,000.00
184	2/17/2009	9507	EFT McGinn, Smith	Loan	[DF McGinn Smith & Co.]	\$ (100,000.00)
185	2/24/2009	9507	DEP Verifier Capital		Interest Inc	\$ 150,000.00
186	2/26/2009	9507	DEP TDMM Cable Sr 09	Loan	[DT TDMM Cable Sr 09]	\$ 135,000.00
187	2/26/2009	9507	EFT McGinn, Smith	Loan	[DF McGinn Smith & Co.]	\$ (125,000.00)
188	2/28/2009	9507	TXFR Interest	Bank Interest	Interest Inc	\$ 80.48
189	2/28/2009	9507	EFT Bank Charge		Bank Charge	\$ (120.00)
190	3/2/2009	9507	EFT TDM Cable Funding, LLC Trust 06	Cover investor interest	[M&T Bank Checking]	\$ (18,000.00)
191	3/2/2009	9507	TXFR MSTF	Loan	[DT MSTF]	\$ (70,000.00)

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TDM CABLE

9/1/2006 Through 10/13/2009

No.	Date	Account	Num.	Description	Memo	Category	Amount
192	3/13/2009	REDACTED	9507	EFT	Jeffery Few	[DF Jeffrey Few]	\$ (10,000.00)
193	3/13/2009		9507	EFT	Tim McGinn	[Loan- TMM]	\$ (35,000.00)
194	3/19/2009		9507	DEP	TDMM Cable Sr 09	[DT TDMM Cable Sr 09]	\$ 235,000.00
195	3/19/2009		9507	DEP	First Independent Income Notes	[DT FIIN]	\$ 40,000.00
196	3/19/2009		9507	EFT	Shutts & Bowen LLP	[DF Shutts and Bowen]	\$ (260,000.00)
197	3/20/2009		9507	TXFR	MSTF	[DT MSTF]	\$ (10,000.00)
198	3/23/2009		9507	EFT	Mr. Cranberry	[DT Mr. Cranberry]	\$ (33,500.00)
199	3/23/2009		9507	TXFR	MSTF	[DT MSTF]	\$ (11,000.00)
200	3/25/2009		9507	TXFR	MSTF	[DT MSTF]	\$ (6,000.00)
201	3/31/2009		9507	DEP	Interest	Bank Interest	\$ 29.05
202	3/31/2009		9507	EFT	Bank Charge	1st Qtr 09	\$ (100.00)
203	4/1/2009		9507	DEP	Verifier Capital	Interest Inc	\$ 49,767.36
204	4/1/2009		9507	EFT	TDM VERIFIER TRUST 08	[DF TDMV 08]	\$ (50,000.00)
205	4/30/2009		9507	EFT	Bank Charge	1st Qtr 09	\$ (52.00)
206	5/5/2009		9507	DEP	Verifier Capital	Interest Inc	\$ 67,437.50
207	5/5/2009		9507	EFT	First Line Sr Trust 07	[DF Firstline Sr. 07]	\$ (67,000.00)
208	5/30/2009		9507	EFT	Bank Charge	1st Qtr 09	\$ (55.00)
209	6/2/2009		9507	DEP	Verifier Capital	Interest Inc	\$ 67,437.50
210	6/4/2009		9507	TXFR	TDM VERIFIER TRUST 07	Interest Inc	\$ (67,437.50)
211	6/26/2009		9507	EFT	MSTF	[DT MSTF]	\$ (1,200.00)
212	6/30/2009		9507	DEP	Interest	Bank Interest	\$ 4.54
213	6/30/2009		9507	EFT	Bank Charge	1st Qtr 09	\$ (32.00)
214	7/9/2009		9507		Closing Entry	[REDACTED 9573]	\$ 440.01
215							
216							\$ 1,392.55

Dear Tim,



Enclosed please find 26 pages of thoughts, ramblings if you will. I apologize for the length and the handwriting.

The material is sensitive so I could not ask Norma to type. If I tried to type it, you would be on your 3rd day at Beaver Creek when I finished. You will have difficulty reading it, but please take the time.

After reading it (maybe a couple of times), please feel free to comment and criticize. It is meant to be thought-provoking, not the final solution to anything. I would like you to give it substantial thought before we get together. I believe that will be enormously helpful towards a productive end to our meeting. I would like to get together with you to discuss the enclosed before our Wednesday meeting with Brian and Mary Ann. I believe we need to do that away from the office - maybe a meeting room at the FOC.

We have a lot of hard
work ahead of us, and
we need to be rowing
the boat together in order
to successfully complete the
tasks before us. My hope
is that you recognize my
comments for what they are -
well intended, without malice,
necessary to get us working
together again in an
agreed upon direction.

I will be in around
10:00, as I have to
stop by CSDS. I know
we have a meeting with Bill
Spayer at 10:00. After
meeting with Bill we can
get together to determine
the best time for our meeting.

Thanking you in advance
for your ~~patient~~ patience
and understanding.

Sincerely -

MS

Dear Tim,

I have chosen to put my thoughts on paper rather than express them in our planned meeting with Brian and Mary Ann on Wednesday evening for several reasons. First and foremost, the present crisis we are facing is really our crisis, and our discussions should remain confidential. We are the ones responsible for a plan, and any comments or ideas from Brian and Mary Ann will probably be more supplementary than structural. Secondly, I am sensitive to the fact that there may come a time when they may be asked to recount these discussions, and I would not want either of them to be in a position that forces them to choose between testimony harmful to us or privacy.

I am hopeful that you are reading this prior to our meeting on Tuesday. I wanted to get together with just you, to express some things that should be addressed solely between partners; and, after our more personal discussions I am looking forward to

developing a course of action that will stave off our immediate financial crisis and then lead to an ultimate resolution.

The idea that I am communicating to you by this means is outward at best and probably seen as somewhat ridiculous. However, my present state of mind is such that this exercise will hopefully have a therapeutic effect as well as communicative.

We have worked together for over 20 years in a generally benign, ~~prop~~ prosperous, and endearing relationship. We have been through so much together to get where we are. Building and holding together a business for over 20 years is no small feat. There are very, very few who can point to this kind of accomplishment. From very early on it has been very apparent to me that the vast majority of the credit for the success of this business is a result of your efforts. It has been your intellect, your vision, and your good business instincts that have been responsible for us not

only surviving, but succeeding. Every business or enterprise needs a leader, and you have filled that role extremely well. Over the years I have assumed the mantle of caretaker, one that is also necessary, but one that without leadership is merely an appendage. Our functions have meshed well, and for twenty some years I have been the beneficiary of an extremely well balanced and satisfied life. I have enjoyed monetary rewards, but not at the expense of family or leisure. In short, it has been a great life.

However, for the last year, and in particular the last few months, I find myself overwhelmed and in a state recently that is probably bordering on depression. My work, my life at home, and I am sure my personality have all become negatively impacted. It is a result of one thing, and one thing only - the thought that the present situation with C* is about to explode, and with it everything I have ever cherished.

I am sure that you will agree, that if our trusts go into default, everything else will come apart. The business has become addicted to the cash flow from the trust business, and without ~~it~~ ~~we~~ them will have a difficult time surviving. Although, I believe that we are on the verge of being able to develop other investment banking businesses, just as the importance of the brokerage revenues are diminishing. But we need time, and I am not convinced we will be able to acquire that time. The default of the trusts will drastically reduce revenues, cause us to lose brokers and at least their confidence in us, bring on crushing litigation and devastating publicity, and I am convinced prosecution by regulators or worse. The impact on our employees, customers, friends, and family will be devastating. I am just overwhelmed by the thought of the financial losses, the humiliation, the perceived betrayal of trust. I am trying to be strong in face of all

of this, but I can't sleep,
I am convinced I have developed
an ulcer, and I am
being driven to moods of
depression. I am sure that
you are feeling some of these
things as well. I know
Mary Ann is. I have not
shared any of this with you,
I assume because I have
determined that it won't be
helpful.

Apart from the above,
I, unlike you, feel that
we are vulnerable to
criminal prosecution. Aside
from the probable violation
of Reg D as it relates
to accredited investors, I
am not aware of any action
that would be remotely considered
illegal. However, I would
never underestimate the zeal
of local or state or even SEC
prosecutors to make a story
out of our failure. Conviction
of pit cat financiers
is a great stepping stone up
the career ladder.

I believe that we are
at risk for the continued
raising of investment dollars
that are ~~not~~ now clearly
unlikely to be repaid in
full. As we do each

transaction we distribute every
excess dollar back to C² or
McGinn, Smith & Partners. It is
recently, those dollars for the
most part are used to fulfill
the investment promise to earlier
investors. While you have

previously rejected my
characterization of these acts
as similar to a "Ponzi scheme"
because new dollars being raised
are in fact buying new product,
and only "profit dollars" are being
used to cover shortfalls, I
believe that our actions could
be defined otherwise. The reason
for my belief is that we are
now in possession of indisputable
empirical evidence that the
new investments have no chance
of being repaid in full. Whether
less than 100% collections (66%)
is due to normal attrition, fraud,
billing errors, or poor credit
judgment, it really does not
matter. The facts are that
we will never collect 100% or
close to it. Therefore, our
"profits" which we use are not
profits at all, but rather
monies that should be held
in reserve to allow for the
deficit collections for the
protection of the new investors.

For us not to allow for these defects by setting up adequate reserves is, in my judgement, bordering on fraud. Certainly, by not disclosing in the prospectus our poor history of collections, we are not providing the prospective investor an accurate picture of his risk. We both know why we don't make that disclosure - because such disclosure would cause our salesman to cease selling and investors to cease buying. Thus, we are misleading both our own employees and customers.

I fully understand, as well as you, our need to continue raising money, and that a number of the collection defects were isolated incidents of fraud or gross incompetence by some of our dealers. However, those incidents have not impacted the majority of collections. Most of the defects are from poor credit risks. We now know that, and we continue to accept their contracts without adequate reserves, and treat the excess discounted cash flow as certain profit to be distributed as we see fit.

This is wrong. I strongly believe that in civil or criminal litigation we would lose badly on this point. "We knew the poor collection history, and yet continued to raise money as if we were ignorant of our own collection experience."

I am not an Eagle Scout, but I believe that both you and I are violating the high standards of integrity and ethics that have been the historical standard for us. That bothers me very, very much. But what terrifies me is the possibility of being indicted for such conduct, and worse, the prospect of conviction. I cannot emphasize enough how strongly I feel about this point.

I believe, and insist upon, that any plan we initiate to solve our problem must demonstrate our intentions to no longer proceed with "business as usual". We must be able to point to corrective action that was intended to prevent the recurrence of poor credit collections.

I am nearing the end of this personal confession, so I hope that I still have your attention. I apologize for the length.

Before we can realistically hope to overcome this crisis, we need to address how we are going to work together. One of the really great joys of building McGinn, Smith was the close personal style and relationship that we developed together. We became best friends, our families socialized together, and we worked very closely together. Yes, we assumed different responsibilities over the years, but we always did things together. We discussed business plans prior to implementation, consulted on problems and possible solutions, and always shared equally in profits and losses. Partners from beginning to end. While I would always give you the lion's share of the credit for those successes, I do believe there was and is a great benefit from having a partner to draw upon. I feel the last couple of years has seen us move away from that approach.

Your interests in NYRA and Poente have stolen some of the time that you would naturally be devoting to McGinn, Smith. This is a result of the excessive travel that both interests demand. I am not remotely suggesting that these interests have negatively impacted your effort or contribution. Far from it. You accomplish more in two days than most of us do in one. Where it has had an effect is that those times away have left less hours for us to get together and share our thoughts on business developments and personal feelings. When you are in the office, the door is generally closed, I assume to avoid the many interruptions from brokers and staff. While that is understandable, again it has an effect on the time we have to communicate with each other. I don't think we need to start making appointments to see each other or to draw up daily agendas, but I do think that it is critical for us to start meeting more regularly to discuss the implementation of whatever plan we agree upon.

These kind of personal crises
that we are going through
needs a lot of support. Due
to the highly confidential
nature of the crises, we are
kind of stuck with each other.
Besides, you have a great
way of always giving me some
glimmer of hope that all will
end well. It usually does.
I love you like a brother,
and I am in awe of your
many talents and abilities.
I am hopeful that
you see this epistle for
what it is - a call to arms
for both of us. A realization
that we have to do things
radically different and that
we must start immediately.
We must work closely together,
but that we can expect help
and support from both Mary
Ann and Brian. With a
lot of effort and a little luck,
a year from now we can
look back upon this time
as our finest effort together.
We really have no choice but
to make that effort. The
consequences of failure are
absolutely intolerable.

Your everlasting friend
and partner
Dave

Facts to think about

1. C⁴ trusts

year	approximate funding
1994	2,500,000
95	8,575,000
96	10,200,000
97	22,846,000
98	26,000,000
99	35,601,000

Substantial growth in year 97-99
~~and~~ a result of business with
Phase I and Safebank - charter
with poor collection history.
Attrition in future years likely
to accelerate. Deals have
been lengthened maturities in
these years, adding to probable
increased attrition.

Older deals are better deals,
so as they are paid down, the
ongoing requirements and deficits
grow

2. Total debt outstanding at the end of 1999 is 70,000,000. This is a huge number in anybody's world.

Prior to BC, CPD, MTP
total debt was 61,000,000.

Collected monthly cash flow: 1,100,000
 $At\ 3\% \times RMR = Portfolio\ value = 41,830,000$

Debt:	61,000,000	
Portfolio value:	41,800,000	
	19,200,000	Deficit
Albany MS Credit:	2,000,000	
Line		
	\$ 21,200,000	Present value Deficit and liability

3. Structural monthly deficit of 600,000 and growing. Under present plan and approaches, the need is for new spending of 4,000,000 line. Assumes no future deficits. Thus, we need to raise 48,000,000 in 2000, 12,400,000 more than 1999 - a 35% increase. This is not realistic. Brokers are running out of sources. At sales meeting last week, the consensus was they would probably be able to match 1999. Slowness in closing recent deals would confirm this.

4. 1999 game plan called for structural monthly deficit to decrease from \$315,000 to \$247,000. Instead, it has grown to \$600,000. Plan called for a surplus of \$2,414,000 - does not exist.

2000 Plan - Same approach, same business mix, same assumptions

5. even if we assumed that we were able to generate \$800,000/mo, the default will soon reach that if we continue to fund the same credits, leaving nothing for other uses. Once we exceed it - game, set, match. If we stay on this course, I see us with no more than 6 mos. life.
6. We are also paying monthly monitoring costs of \$110,000, including 25,000 for things. This too, will probably continue to grow.
7. All bank credit line no longer secured with separate contracts. Now is unsecured for Tim & Dave. Balance around \$2,00,000 over!
8. Present morale of Brian and Mary Ann is very poor. Both are fearful - Brian for the future of McBurn, Smith, Mary Ann for personal legal liability and loss of license to practice. Plan needs to instill confidence in them.

9. Sepulchre - all of staff
is extremely uncomfortable
with them. They are out-
line people - we should
listen to them. This kind
of business is no different
than Phase I. Result
will be the same. We
must continue to demand
higher standards, give no
exceptions to those standards,
and seek to move away
from this kind of dealer
and this type of business PSAP

10. Distributions to Tom & Dave
going forward should be
eliminated. Not only should
those monies be set up as
reserves for investor protection,
but in future litigation,
those distributions would be
extremely detrimental to us.
Hard to justify investors being
 $\frac{1}{2}$ their money, while we
continue to ~~keep~~ prosper
at compensation levels that
would seem obscene to the
average citizen sitting in
judgment. This is a very
personal issue for us, but
I feel strongly about it. You
have larger financial commitments
than I, and loss of

distributions would be more of an impact. I am in a position to help. Let's talk!

11. Is it time to ask ourselves a fundamental question as to the whole business?

Are the business concepts flawed? With industry leaders now giving away the product, it is not surprising that sales are being made to anyone and everyone, as long as a dealer has access to a funnel, such as ourselves, his risk is negligible. The entire approach creates poor credit policy at best and fraud at the worst.

Our problems are hardly unique - Protection One, Monotronics, Demtek - all have the same problems. If we are going to remain in business - we must upgrade the credit quality and find new ways to help ensure payments will be made for the life of the contract.

Plan ideas /ramblings

1. First and foremost - we must stop funding deficit creating business. We can't fix the past problems if we are creating future problems at an equal or faster rate

2. Obviously, we must reduce the present deficit:
a. dramatically increase collections
and/or
b. restructure debt

3. Increase collections:
here we have made a start. We should hire mgt. and staff from Tru Bank. All 3 that we interviewed last week are interested. They believe they can bring staff collectors with them. None can start until April 1st - this is a problem, but we can use them to consult prior to that date.

We need to determine who, how many, where, budgets, and equipment/resource needs

4. We also need to review our legal remedies and approaches. One of the key people we interviewed holds that responsibility of key.

5. While collections are a priority, we need to continue to find ways to improve due diligence and install better credit reviews. Again, let's seek experienced people.

6. The collapse of WFC (Clifton Park) in December might hold some resources and opportunities. This was a fast growing sub-prime lender of mortgages. Bear Stearns was financing. 500 employees. National presence. A number of local financial institutions have already been buying. Let's talk to the principals. See what we can learn. Get possible leads on key people.

44

Next Page - finally something new to think about. I hope that I haven't already lost you.

Heart & Soul of some ideas
to restructure debt and
reduce present financing costs.

1. First, I believe it is
in our interest to bring the
overall debt level down.
If we are forced to deal
with defaults in the future,
it will be easier to restructure
a smaller debt load. Plus,
it is obviously easier to
reduce debt before any defaults
occur.

I had previously suggested
repackaging existing RMR,
selling it, and paying down
Trust debt. Probably this
can only be done where
we have only junior tranche
remaining, otherwise we will
violate Senior tranche cov-
erage. You were calling
Montronics, etc. Can people
like Rory be of help here?
I understand that he is
doing some selling away from
us. If we can get an
acceptable price, this seems
like an idea worth pursuing.
I haven't even tried to
do numbers - that I leave
up to you.

2. Absence the ability to package and sell existing RMR, we should consider reselling those Trusts ^{as Senior debt} where the Senior is paid down.

This amounts to approximately \$9,000,000. These include

LAI, IRES, USO, RTD, AT, STP, FMD, MBM, EB.

This would accomplish saving some interest costs, shifting liability from retail to institutional, putting cash in the hands of retail customers for future reinvestment.

One stumbling block may be the additional coverage required by banks. However, our more accommodative lenders (BSB etc) might be willing to be buyers.

We might get some grumbling from customers and brokers because of loss of higher yield (most are 13 1/2%), but we can probably counter by saying most of the contracts are due to expire and we don't want to take the risk of homeowners ^{not} refinancing.

3. Another idea might be to start to establish ourselves as a Broker. Buy and sell RMR for fees and the spread.

Obviously, we would try to do as ~~reckless~~ transactions. Maybe get brokers working not only to bring us product but to sell product as well. Or better yet, make the purchases and sales ~~with~~, in order to avoid paying brokerage costs and thus adding to our returns.

*** 4. All of the aforementioned might be helpful, but they certainly do not present the opportunity for a final solution. However, there is a more daring and challenging path we can take that I believe can be a tremendous opportunity and eventually absorb a lot of our problems. The plan I speak of is to dramatically grow C⁺ into a major financial company. The business plan would be centered around C⁺ being a financial company that buys credit that is presently in arrears. Bob Wade the head of Key Bank's Collection and Loan Recovery mentioned this during our interview.

Evidently, there is a huge market in purchasing credit that has been deemed uncollectible and has been forced by regulators to be written off. This credit is purchased at 6-12¢/1.00. It can then be packaged and resold or the debt can be turned over to collection people for another attempt at recovery. The concept is that a lot of this debt has never been properly handled by the existing collection departments. Experienced and highly competent recovery groups can do very well. Obviously, what debt is ~~can~~ selected for purchase and at what price is critical to success. I believe that we have the opportunity to acquire Key Bank's unit by hiring individuals and not have to pay for acquiring a complete business.

The attractiveness of this idea is not only that we might be able to develop a business with substantial cash flows to help reduce our present deficits; but it could be an outlet for the Trusts to sell ~~some~~ some of its accounts that are

in arrears and then provide cash to help pay down the Trust debt. Those transactions would have to be a part of the overall business otherwise they would be accurately perceived as a bailout to the trusts. But if they were part of an overall business strategy of buying loans and credit in default, and returns were commensurate with other the returns on other asset purchases, I believe it could be done.

We would need to capitalize the company with substantial equity and ~~and~~ secure bank lines of credit to help finance the asset purchases. Potential equity partners might be:

1. Key Capital
2. GE Capital
3. Banks looking for a strategic partner and who understand the business
4. Venture Capital

I was thinking that your friend John Merriam might have an interest or that he could be helpful in referring some investment sources.

John could certainly be helpful ~~in helping~~ with the structure - he certainly understands leverage. Ponto Financial might have an interest. They would certainly understand the business concept.

The key to getting these people involved would be making them comfortable with who was running the business. If they saw the experienced hands of Key Bank personnel, they might be more inclined to become investors. Just as we see the possibility of recovering dollars for the trusts, banks might see the possibility of recovering some of their own assets that had been charged off. Thus, we would play the strategic partner angle and get a source of business.

The major benefit to us would be the transfer of assets from the various trusts. We would not have to sell only paper or arrears. We could also sell paper that is presently current. At what multiple I do not know, but every asset transferred out of the trusts into a commercial enterprise would

be helpful to us in managing our defaults and thus keeping McGraw, Smith and its customers out of harms way.

Management structure for C⁴ would be critical. We would need a President, one experienced in these affairs. Collection and credit departments would have to be set up or reorganized. Documents would have to be acquired, laws governing credit companies researched, procedure manuals put together, training of employees, etc. A major commitment of our available resources - time, personnel, money, ~~etc~~ would have to be pledged. Your attention and commitment would be critical. Your ability in loan restructuring and deal making would be invaluable.

One of the reasons I like ~~about~~ this approach is that it gives a major deal to focus on. You are at your best when you are out elephant hunting. I don't know how much equity capital would be needed, but I am thinking in the \$50,000,000

range. I am trying to arrange a lunch with Bob Wade this week to get a better understanding of the business - its costs and its opportunities. I want you to join us.

This needs to be done in a big way if it is going to work. Now is the time for us to do this. Money is available. I believe people are at least starting to look for alternatives to a very pricey stockmarket. The challenge can get our motors working again, and we can do it together.

I have obviously not covered all possible approaches or solutions to our problems. Nor has there been an in-depth due diligence ~~done~~ done on the ideas that I did present. However, I think that they present a good starting point. Hopefully, you and I will have an opportunity to examine these in depth and outline the steps to get started. We need to hit the ground running. I am available Tuesday afternoon and night and Wednesday morning. Thanks for your attention.

DKS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

McGINN, SMITH & CO., INC., et al.,

10 Civ. 457 (GLS/DRH)

Defendants.

DAVID SMITH'S RESPONSES TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES

1. Identify each person with knowledge or information relevant to the subject matter of the Action.

RESPONSE: Defendant smith objects to this question on the grounds that the question is overreaching and broad and calls for an answer that is voluminous in scope, and constitutes an attempt to limit defendant smith's testimony at trial. Notwithstanding the objection, defendant Smith states as follows:

- a. Employees of McGinn, Smith & Co.

- 1) Timothy McGinn;
- 2) Thomas Livingston;
- 3) Andrew Guzzetti;
- 4) Joseph Carr;
- 5) Brian Shea;
- 6) Brian Cooper;
- 7) Patricia Sicluna;
- 8) David Rees; and
- 9) Matthew Rogers

- b. Jay Kaplowitz – managing partner of Gersten, Savage LLC
- c. Lynn Smith
- d. Geoffrey Smith
- e. Thomas Urbelis
- f. Timothy Wells
- g. Daniel Blake

2. Identify all documents relevant to the Action, including the custodian, location and general description of such documents.

RESPONSE: Defendant Smith objects to this question on the grounds that the question is overly broad, calls for an answer that is voluminous in scope, and constitutes an attempt to limit defendant Smith's testimony at trial. Notwithstanding the objection, defendant Smith states as follows: The SEC has in its possession all relevant documents that they have received either through subpoena, cooperation with FINRA, or in cooperation with the U.S. Attorney's Office of the Northern District of New York, located in Albany.

3. Identify the \$600 million of retail transactions referred to on page 2 of the 1/14/11 letter.

RESPONSE: The \$600 million of identified transactions include the following:

- a. McGinn Smith brokerage offerings: \$200 million;
- b. IASG IPO: \$225 million;
- c. IASG high-yield bond offering: \$125 million;
- d. Response USA, a publicly traded alarm company; \$25 million;
- e. King Central acquisitions: \$25 million; and
- f. Capital Center Credit Corporation: \$5 to \$10 million.

4. Identify the "non-compete clause" referred to on page 3 of the 1/14/11 letter.

RESPONSE: The non-compete clause can be found in the offering prospectus for the public offering of IASG, July 23, 2003.

5. Identify the "business plan" referred to in the first full paragraph on page 3 of the 1/14/11 letter.

RESPONSE: The business plan referred to was the determination by the officers of McGinn Smith that with the capital raising transactions for the home security alarm business no longer available after July 23, 2003, McGinn Smith would seek to develop more fee-based revenue sources for the firm as opposed to transactional business.

6. Identify the "29 boxes of due diligence files" referred to in footnote 2 of the 1/14/11 letter, including the contents and present location of these boxes.

RESPONSE: The 29 boxes of due diligence contained financial and other due diligence material for most of the loans and investments made by the specialty finance companies known as FIIN, FEIN, TAIN and FAIN. These boxes were in the possession of James Hacker, Esq., an attorney who represented McGinn Smith in several arbitrations. Upon information and belief, Mr. Hacker delivered the boxes to the U.S. Attorney (NDNY) pursuant to a subpoena in the spring of 2010.

7. Identify the bases for the statement on page 5 of the 1/14/11 letter that “MS & Co.s’s legal counsel, Gersten Savage, LLP,...found [the private placement memorandum for the LLC’s] to be accurate and legally sufficient.”

RESPONSE: Defendant Smith drew a conclusion that since Gersten Savage drafted and prepared the PPMs and the LLCs, the law firm found them to be legally sufficient and accurate.

8. Identify the “legal advice” relied upon referred to on page 5 of the 1/14/11 letter.

RESPONSE: The legal advice was provided by our securities law firm, Gersten Savage, who drafted and prepared the PPMs used in the offerings of the four LLCs

9. Identify the bases for the statement on page 6 of the 1/14/11 letter that “at most, 27.6% investments [were] in affiliates.

RESPONSE: The statement “at most 27.6% of investments were in affiliates”, was specifically phrased to include not only affiliates, but also any entities that had some related party relationship to McGinn Smith or its principals. Thus, investments in PSC P, LLC, alsoT, SAI International, and 107th Associates, which are not affiliates in the sense that they are not companies that control, are controlled by, or are under common control with either company, or in the case of 107 Associates which was simply a pass through entity to a non-affiliate, but did have a related party relationship, were included. If these entities were

excluded, the percentage of investments would drop to approximately 12.5%. The 27.6%*, which includes the aforementioned entities, was derived from the following schedule:

FIIN:

107 th Associates	\$ 150,000	
alseT	\$2,268,607	
McGinn, Smith Transaction Funding	\$ 175,000	
Cruise Charter Ventures	\$ 8,000	
Luxury Cruise	\$ 77,000	
TDMM Cable	\$ 74,000	
TDMV	\$ 20,000	
McGinn, Smith Partners (MSP)	\$ 300,000	
McGinn, Smith Capital Holdings (MSCH)	\$ 150,000	
MS Preferred Stock	\$ 340,800	
TDM Cable	\$2,878,179	
FEIN	\$ 117,770	Total: \$6,559,356

FEIN:

107 th Associates	\$ 500,000
Capital Center Credit Corp. (C4)	\$ 500,000
FIIN	\$ 750,000
MS Transaction funding (MSTF)	\$ 150,000
TDMM	\$ 44,000
White Glove	\$ 30,000
C4	\$ 208,091
IAS	\$ 100,000

MSCH	\$ 100,000	
JVA	\$ 95,000	
CSDS	\$ 80,000	
MSP	\$ 725,000	
MGS Acceptance	\$ 100,000	
MS Preferred Stock	\$ 422,800	
Pacific Trust	\$ 329,000	
RTC	\$ 294,596	
TDM	\$ 25,000	
PSCP	\$ 800,000	Total: \$5,254,487

TAIN:

107 th Associates	\$1,200,000
alseT	\$2,585,000
Cruise Charter Venues (CCV)	\$ 20,000
MSCH	\$ 100,000
MSTF	\$ 225,000
TDM	\$ 150,000
FIIN	\$ 75,000
FEIN	\$ 450,000
MCG	\$ 150,000
MS Preferred	\$ 610,733
MS Holdings	\$ 202,000
MS prf.	\$ 180,000
Pacific	\$ 40,000

PSCP	\$1,429,081	
PSCP	\$ 965,231	Total: \$8,382,045

FAIN:

107 th Associates	\$ 300,000	
alseT	\$4,000,000	
FIIN	\$ 180,000	
MSP	\$ 12,635	
MSH	\$ 200,000	
MS prf	\$ 100,000	
MS Licensing	\$ 75,000	
MSCH	\$ 50,300	
PSP	\$ 823,172	
PSCP	\$ 556,975	
RTC	\$ 459,200	
SAI Int.	\$1,010,000	
TDM	\$1,406,415	
Verifier	\$ 771,415	Total: \$9,945,339

Summary:

FIIN	\$6,559,356	
FEIN	\$5,254,487	
FAIN	\$9,945,399	
TAIN	\$8,382,045	Total: \$30,141,337*

$30,141,337 / 106,480,572$ (total investments) = 28.3%

The original calculation used a total of "affiliate" investments of \$29,391,337, resulting in the arrived at percentage of 27.6% ($29,391,337 / 106,480,572$). In reviewing the

figures, Smith realized that he had missed a \$750,000 loan between FEIN and FIIN, which results in the revised 28.3%.

10. Identify the bases for the statement on page 6 of the 1/14/11 letter that “[a]pproximately 22.5% of the total investments made by the Funds were underwritten by top-tier investment banks including UBS, Duetche [sic] bank, and Merrill Lynch.”

RESPONSE: The following investments made by the LLCs were underwritten by major investment banks:

FIIN:

CMET	\$1,800,000	
DeKania Income	\$2,000,000	
Marcay Homes	\$5,000,000	
Sandler Income	\$3,000,000	
Cochise ATM	\$1,700,000	Total: \$13,500,000

FEIN:

Deerfield Capital	\$2,000,000	
GSC Capital	\$ 500,000	
Cherokee ATM	\$1,500,000	Total: \$4,000,000

TAIN:

Deerfield Capital	\$5,000,000	
GSC Capital	\$1,500,000	Total: \$6,500,000

Total: $\$24,000,000 / 106,480,572 = 22.54\%$

In addition, there were investments in Lehman offerings of \$90,000 for each of FEIN and TAIN, and \$80,200 in offerings of Morgan Stanley by TAIN. Also, \$1,950,000 characterized as “other” on the balance sheet of FIIN, which to the best of defendant’s recollection were syndicated offerings of major investment banks in public utility preferred stocks. If the aforementioned are added to the total, the amount would be \$26,235,000 or 24.64%.

11. Identify the bases for the statement on page 6 of the 1/14/11 letter that “[t]he Funds invested approximately \$10.3 million in public securities.”

RESPONSE: The LLCs investments of approximately \$10.3 million in public companies is represented as follows:

Exchange Blvd. common stock:

FAIN: \$1,160,000

FIIN: \$ 560,000

TAIN: \$ 480,000

Total: \$2,200,000

Exchange Blvd. loans:

FAIN: \$ 150,000

TAIN: \$ 500,000

Total: \$ 650,000

Exchange Blvd. Royalties:

FAIN: \$ 50,000

FIIN: \$ 115,000

Total: \$ 165,000

Lehman offerings:

FEIN: \$ 90,000

TAIN: \$ 90,000

Total: \$ 180,000

Morgan, Stanley offerings:

TAIN: \$ 80,200

Deerfield Capital:

TAIN: \$5,000,000

FEIN: \$2,000,000

Total: \$7,000,000

\$10,275,200

In addition, to the best of defendant’s recollection, there was \$1,975,000 invested through FIIN in public utility preferred stocks that are carried on the balance sheet as “other.”

These investments were not included due to Smith's inability to review and verify the Bear Stearns account statements for FIIN.

12. Identify the bases for the statement on page 6 of the 1/14/11 letter that "[t]he LLC's...could thus be characterized as a blind pool."

RESPONSE: Defendant states that a blind pool is an investment entity that doesn't specify what investment opportunities the managing partner plans to undertake. While the four specialty finance companies stated a broad array of investment objectives and the forms of investment, specific loans and investments were essentially unknown at the time of the capital raise. Thus, investors were relying on the managing partner to select loans and investments after the capital raise. Also, the LLCs were no different than other finance companies that raise capital to later deploy as future loan and investment opportunities are presented. Because investors are making their investment on the strength of the manager, as opposed to a specific loan or investment, the LLCs could be characterized as a "blind pool".

13. Identify the bases for the statement on page 6 of the 1/14/11 letter that "[t]he LLC's were not required to register under the Investment Company Act of 1940."

RESPONSE: The bases for the statement that the LLCs were not required to register under the Investment Company Act of 1940 was the legal advice that the LLCs' security counsel, Gersten Savage, rendered at the time of formation. Further, the rest of the paragraph on page 6 and continued on page 7 is self-explanatory. Finally, the SEC is in possession of the opinion letter offered by Gersten Savage dated July 1, 2008 that supports this position.

14. Identify the bases for the statement on page 6 of the 1/14/11 letter that "MS & Co. relied on the advice of its securities counsel, Gersten, Savage LLP."

RESPONSE: to the best of defendant's recollection, in the late spring of 2003, McGinn Smith engaged Gersten Savage to represent it and affiliate entities, to advise on the

formation and securities offering to be named a specialty finance company that would engage in providing financing, principally in the form of loans, to private businesses. The first such offering was in September 2003 and sought to raise capital for a newly formed LLC known as First independent Income Notes, LLC. McGinn Smith and Company and other affiliates continued to seek the advice of Gersten Savage for questions concerning security law, subsequent formation of other LLCs in similar businesses, and for advice concerning litigation for some of the LLC's portfolio companies.

15. Identify the bases for the statement on page 7 of the 1/14/11 letter that "MS & Co. attempted to benefit the LLC's and their investors by making loans to available affiliates which were collateralized by the fees owed, rather than taking its fees directly."

RESPONSE: In many instances where affiliates of McGinn Smith were seeking capital, the LLCs through contractual agreement owed McGinn Smith and its affiliates, MS Advisors and McGinn Smith Capital Holdings, fees for service. Since the LLCs were benefited by having their capital invested as opposed to residing in cash to await future investment opportunity or to lose any investment return as result of paying their contractual liability to McGinn Smith, in some instances it was determined to be in the best interest of the LLC's to lend the money to the affiliates, using current and future fees as collateral, and deferring payment of the fees until the obligation was satisfied.

16. Identify the bases for the statement on page 7 of the 1/14/11 letter that "David and Lynn Smith's contribution of capital on three occasions during....2008-2009....speaks to the fact that the fees had already been allocated for other purposes.

RESPONSE: During the financial downturn and recession of 2008-2009 McGinn Smith found itself in the need of capital for both working capital purposes and regulatory purposes. At the same time, the LLCs owed a substantial amount of fees to McGinn Smith and its

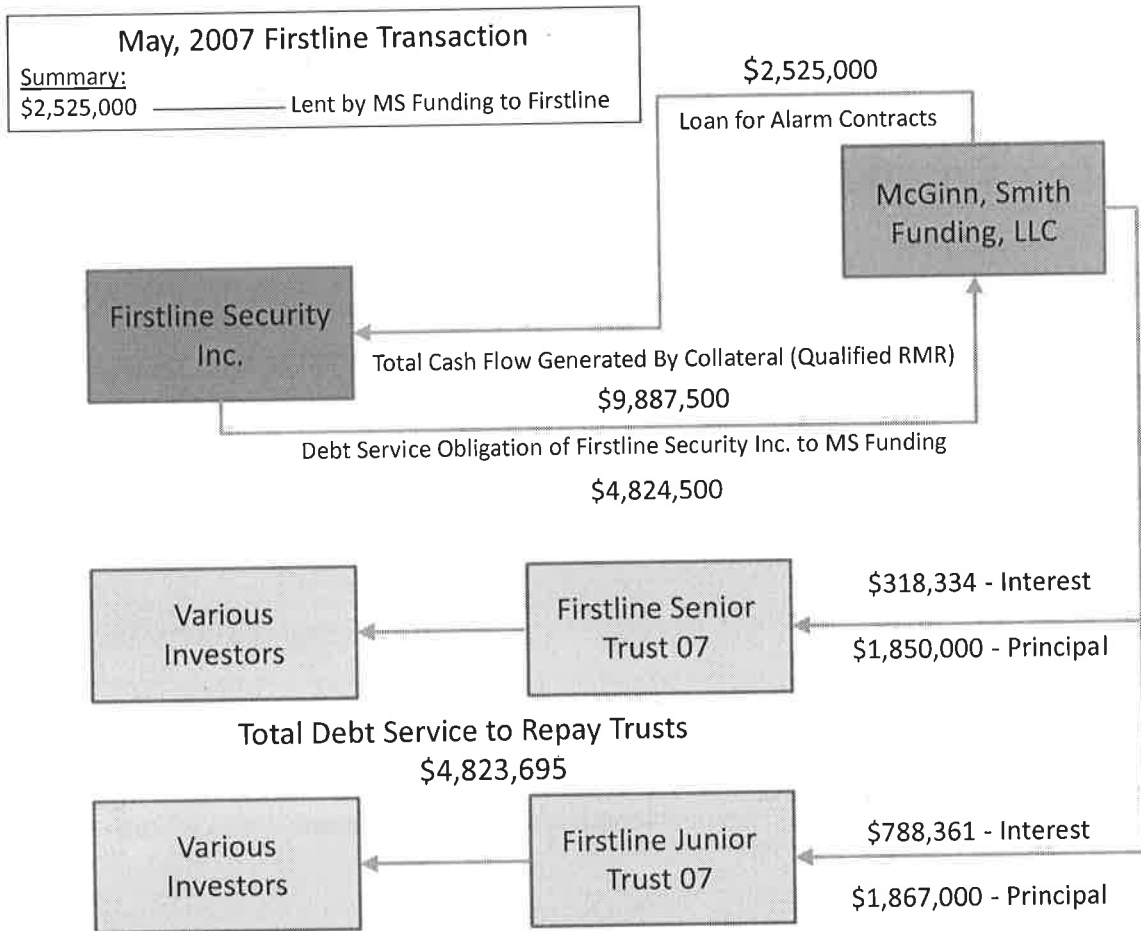
affiliates, including \$2,591,516 at year-end 2007 and \$3,111,283 at year-end 2008. A draft of an analysis of the fees earned and paid analysis was sent to FINRA, upon its request, on January 5, 2010 by Brian Shea, to the best of defendant's knowledge. McGinn Smith had represented in a letter to investors that from January 2008 it would no longer be taking future fees except for legal liabilities related to the LLCs until the LLCs had regained their ability to be current on their liabilities. The four LLCs in the aggregate owed McGinn Smith and its affiliates in excess of \$2.5 million dollars at the end of 2007, which was available. However because those fees were previously pledged as collateral McGinn Smith did not seek payment of all or part of those fees, although payment would have in turn eliminated any capital problems the firm was undergoing at the time. Therefore, David and Lynn Smith contributed their own capital resources, to the best of defendant's recollection, on three different occasions. Defendant's best recollection is that his wife and he lent to MS Holding \$150,000 in July of 2007 that was to be repaid as soon as possible, but no later than one year from the loan date. Financial circumstances at McGinn Smith prevented that schedule from being fulfilled, with \$50,000 being paid through October 2008 and the balance of \$100,000 remaining outstanding. Also, sometime during that period, defendant recalls his wife purchased \$75,000 of McGinn Smith preferred stock to inject working capital into the firm. Finally, to the best of defendant's recollection, in late April or early May of 2009 the Smiths lent an additional \$100,000 to MS Holdings. As stated in the letter of 1/14/11, is that if the millions of dollars owed to the firm and its affiliates were not already pledged there would have been no need for the capital contributions of Mr. and Mrs. Smith.

17. Identify the bases for the statement on page 10 of the 1/14/11 letter that "[i]n every transaction, the Trust purchased all of the assets outlined in the prospectus and those assets provided the cash flow necessary to return the investor's money plus interest as contracted."

RESPONSE: The financial models that demonstrated the cash flow available to repay investor loans plus interest were reviewed by defendant at the time of the offerings, and were prepared by Mr. McGinn. Defendant states that the assets were purchased because there is a record of the cash flow from those assets being received by the proper entity. The SEC is in possession of the financial records showing receipt of the cash flow derived from the assets purchased as outlined in the PPMs.

18. Identify the bases for the statement on page 10 of the 1/14/11 letter that “[r]eturns from the contracts generally were 22-24%.”

RESPONSE: The returns generated in the McGinn Smith alarm financing model for alarm dealers were generally in the 22-24% area. Mr. McGinn, who had developed the model, has provided as an example the May 2007 Firstline Transaction. The following tables demonstrate the return. The first table shows the flow of funds between all of the parties, including the \$2,525,000 debt obligation of Firstline Security, Inc. (the borrower) to MS Funding (the lender). The second table shows the amortization of the \$2,525,000 over 60 months, for total payments of \$4,824,500, which results in the IRR of 24.64%.



Global Flow of Funds for Firstline May, 2007 Transaction

Month	Payment Date		Pledged RMR	Monthly Debt Service
1	June	2007	\$ -	\$ (2,525,000.00)
2	July	2007	\$ 50,000.00	\$ -
3	August	2007	\$ 87,500.00	\$ -
4	September	2007	\$ 125,000.00	\$ -
5	October	2007	\$ 175,000.00	\$ 70,000.00
6	November	2007	\$ 175,000.00	\$ 70,000.00
7	December	2007	\$ 175,000.00	\$ 60,000.00
8	January	2008	\$ 175,000.00	\$ 52,000.00
9	February	2008	\$ 175,000.00	\$ 45,000.00
10	March	2008	\$ 175,000.00	\$ 43,750.00
11	April	2008	\$ 175,000.00	\$ 43,750.00
12	May	2008	\$ 175,000.00	\$ 42,500.00
13	June	2008	\$ 175,000.00	\$ 42,500.00
14	July	2008	\$ 175,000.00	\$ 43,750.00
15	August	2008	\$ 175,000.00	\$ 55,000.00
16	September	2008	\$ 175,000.00	\$ 68,750.00
17	October	2008	\$ 175,000.00	\$ 87,500.00
18	November	2008	\$ 175,000.00	\$ 86,250.00
19	December	2008	\$ 175,000.00	\$ 85,000.00
20	January	2009	\$ 175,000.00	\$ 83,750.00
21	February	2009	\$ 175,000.00	\$ 82,500.00
22	March	2009	\$ 175,000.00	\$ 81,250.00
23	April	2009	\$ 175,000.00	\$ 80,000.00
24	May	2009	\$ 175,000.00	\$ 78,750.00
25	June	2009	\$ 175,000.00	\$ 77,500.00
26	July	2009	\$ 175,000.00	\$ 76,250.00
27	August	2009	\$ 175,000.00	\$ 87,500.00
28	September	2009	\$ 175,000.00	\$ 100,000.00
29	October	2009	\$ 175,000.00	\$ 106,250.00
30	November	2009	\$ 175,000.00	\$ 103,750.00
31	December	2009	\$ 175,000.00	\$ 102,500.00
32	January	2010	\$ 175,000.00	\$ 101,250.00
33	February	2010	\$ 175,000.00	\$ 100,000.00
34	March	2010	\$ 175,000.00	\$ 98,750.00
35	April	2010	\$ 175,000.00	\$ 97,500.00
36	May	2010	\$ 175,000.00	\$ 97,500.00
37	June	2010	\$ 175,000.00	\$ 96,250.00
38	July	2010	\$ 175,000.00	\$ 93,750.00
39	August	2010	\$ 175,000.00	\$ 93,750.00
40	September	2010	\$ 175,000.00	\$ 93,750.00
41	October	2010	\$ 175,000.00	\$ 93,750.00
42	November	2010	\$ 175,000.00	\$ 115,000.00
43	December	2010	\$ 175,000.00	\$ 113,750.00
44	January	2011	\$ 175,000.00	\$ 111,250.00
45	February	2011	\$ 175,000.00	\$ 110,000.00
46	March	2011	\$ 175,000.00	\$ 108,750.00
47	April	2011	\$ 175,000.00	\$ 106,250.00
48	May	2011	\$ 175,000.00	\$ 105,000.00
49	June	2011	\$ 175,000.00	\$ 103,750.00
50	July	2011	\$ 175,000.00	\$ 101,250.00
51	August	2011	\$ 175,000.00	\$ 100,000.00
52	September	2011	\$ 175,000.00	\$ 98,750.00
53	October	2011	\$ 175,000.00	\$ 97,500.00
54	November	2011	\$ 175,000.00	\$ 96,250.00
55	December	2011	\$ 175,000.00	\$ 95,000.00
56	January	2012	\$ 175,000.00	\$ 93,750.00
57	February	2012	\$ 175,000.00	\$ 91,250.00
58	March	2012	\$ 175,000.00	\$ 90,000.00
59	April	2012	\$ 175,000.00	\$ 88,750.00
60	May	2012	\$ 175,000.00	\$ 76,250.00

Total Debt Service: \$ **4,824,500.00**

IRR: **24.64%**

19. Identify the lenders, borrowers, and amounts loaned in connection with the statement on page 11 of the 1/14/11 letter that "all of the affiliate loans were paid off with fees".

RESPONSE: The analysis that follows has been completed without the ability to access the full and complete financial records of the LLCs or the entities that were the borrowers. Defendant has used his best recollection and the balance sheets for 2008 and 2009 that are in draft form, and were completed in April of 2010, awaiting review by the accountants, Piaker & Lyons.

The statement that "all of the affiliate loans were paid off with fees" referred not to the totality of the original amounts of all the affiliate loans, but rather to the balances of those loans. A large number of the loans had been paid off through the cash flow or the cash available of the entity that had borrowed the money. Examples include the FIIN loan to TDM Cable Funding of \$2,878,179, the FAIN loan to TDM Cable Funding of \$1,406,415, and the FAIN loan to Verifier of \$771,415. These were bridge loans that were repaid without the use of the collateralized fees. Other loans had received cash payments not related to the fees over the course of the loan. The following tables list the loans that were either considered an affiliate or that MS Advisors considered to have a related party issue and therefore received a pledge of the McGinn Smith fees as collateral. The only loans of the aforementioned list that were not paid as of the end of 2009 were the RTC loan to FEIN with the balance of \$66,195, the FIIN loan to Cruise Charter Ventures, with a balance of \$8000, for total balances outstanding of \$74,195. Two other items from the affiliate list remained open, a \$75,000 equity investment in MS Licensing by FAIN and the intraparty loan between LLCs of \$323,850 that was owed to FEIN by FIIN. Loans between the LLCs offered no benefit to McGinn Smith or its principals, the asset and liability of each netting out, and thus fees were not pledged as collateral.

FIIN Balance Sheet as of 12/31/09 (draft)

Original loan	Entity	Balance
\$8000	Cruise Charter Ventures	\$8000
\$175,000	MSTF	0
\$77,000	Luxury Cruise	0
\$74,000	TDMM	0
\$20,000	TDMM	0
\$117,770	FEIN	0
\$300,000	MSP	0
\$150,000	MSCH	0
\$340,000	MS preferred	0
\$2,878,179	TDM Cable Funding	0
<hr/>		
\$4,140,749		\$8000

FEIN Balance Sheet as of 12/31/2009 (draft)

\$500,000	Capital Center Credit Corp (C 4)	0
\$750,000	FIIN	\$323,850
\$150,000	MSTF	0
\$45,000	TDM Cable Funding	0
\$30,000	White Glove	0
\$208091	C 4	0
\$100,000	IAS 5yr	0
\$100,000	MSCH	0
\$95,000	JVA	0

\$80,000	CSDS	0
\$725,000	MSP	0
\$100,000	MGS Acceptance	0
\$422,800	MS preferred	0
\$32,900	Pacific	0
\$294,596	RTC	\$66,195
\$25,000	TDM	0
<hr/>		
\$3,954,487		\$390,045

TAIN Balance Sheet 12/31/2009 (draft)

\$20,000	Cruise Charter Ventures	0
\$100,000	MSCH	0
\$225,000	MSTF	0
\$150,000	TDM	0
\$75,000	FIIN	0
\$450,000	FEIN	0
\$150,000	MGS Acceptance	0
\$610,733	MS preferred	0
\$202,000	MS Holdings	0
\$180,000	MS preferred	0
\$40,000	Pacific	0
<hr/>		
\$2,202,733		0

FAIN Balance Sheet 12/31/2009 (draft)

\$12,635	MSP	0
\$200,000	MSCH	0
\$100,000	MS preferred	0
\$75,000	MS Licensing (equity investment)	\$75,000
\$50,300	MSCH	0
\$459,200	RTC	0
\$1,010,000	SAI	0
\$1,406,415	TDM	0
\$771,415	Verifier	0
\$180,000	FIIN	0
<hr/>		
\$4,264,965		\$75,000

Thus, at the end of 2009, \$12,915,164 of loans to affiliates or related parties had been repaid either through cash sources or by the allocation of McGinn Smith fees with the exception of \$74,195. To the best of defendant's recollection, those two remaining loans were paid in 2010, although defendant currently does not have access to financial records to verify that belief. Included are two draft exhibits that were provided to FINRA in January 2010 that demonstrate both the fee earnings from 2004 to 2010 and the allocation of fees to repay affiliate loans through that time. It is defendant's recollection that additional fees were allocated after January 2010 and are reflected on the 2009 balance sheets for the LLCs. Exhibit 1 shows loan principal of \$5,340,250 and accrued interest of \$276,690 being paid to

various related party loans. Exhibit 2 shows the fees earned and paid from 2004 to 2010. Starting in 2008, McGinn Smith did not receive any cash fees to their businesses with the exception, to the best of defendant's recollection is that of approximately \$600-\$700,000 in either late 2009 or early 2010 for legal fees that had accrued relating to the litigation involving the LLCs. Additionally, there remained a balance of \$325,644 of fees owing of which a potential of \$310,000 was a brokers commission liability. Thus, if one adds the \$2,591,516 of accrued fees at the end of 2007, the \$2,764,905 of fees earned in 2008, the \$1,319,245 of fees earned in 2009, and the \$490,004 of fees earned in 2010, the total fees available is \$7,165,670. If one deducts from that amount the related party loans plus accrued interest shown on Exhibit 1 of \$5,616,940, the approximate \$650,000 in legal fees taken, the \$74,195 believed paid in 2010 and the balance of accrued fees due of \$325,644, there remains an additional \$498,891 that was most likely allocated to the related party loans between the time of the Exhibit 1 schedule provided to FINRA in January 2010 and April 2010 when the balance sheets for the four LLCs were completed, for a total allocation of \$6,115,831.

20. Identify the bases for the statement on page 1 of the 2/4/11 letter that "[a]ll of these fees were standard and customary in the securities industry."

RESPONSE: The bases for that statement is the 38 years defendant spent in the securities industry, having devoted a great deal of that time selling private placements issued by other security firms and structuring private placements for sale by McGinn Smith and Company. Since the entire letter of 2/04/11 deals with the fees and discusses each of the fees in depth, we would simply be redundant to cover those areas already covered in the letter. Suffice it to say, the fees are competitive within the industry.

21. Identify the bases for the statement on page 3 of the 2/4/11 letter that the PPMs "were


drafted and approved upon the advice of counsel.”

RESPONSE: The bases for the statement that the PPMs "were drafted and approved upon the advice of counsel" refers to the PPMs of the four LLCs in question, FIIN, FEIN, TAIN, and FAIN. Securities counsel for McGinn Smith met with officers of McGinn Smith, including David Smith, in the spring and summer of 2003 to discuss the business concept, the capital formation, and the applicable regulatory considerations for the LLCs'. Security counsel, Gersten Savage, was engaged by McGinn Smith to advise us on the offerings and draft a memorandum. Gersten Savage in fact provided those services and was compensated for them.

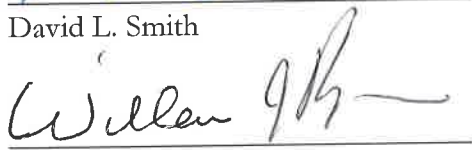
22. Identify the bases for the statement on page 5 of the 2/4/11 letter that the fees were “well within the accepted and customary fees for private placement investment banking transactions.”

RESPONSE: See RESPONSE to 20, above. The total fees of the transactions in question, which totaled 11.86% of the capital raised, is on the low end of the cost of similar transactions in defendant’s experience. Selling commissions for retail private placement transactions for sourcing, financing, and structuring the transaction, are similarly priced in defendant’s experience.

Dated: December 7, 2011


David L. Smith

Dated: December 7, 2011


William J. Dreyer, Esq.
DREYER BOYAJIAN LLP
Attorneys for Defendant Smith
75 Columbia Street
Albany, New York 12210
(518) 463-7784 [phone]

Ex h. b. 1 /

The LLC's
(FEIN, FIIN, TAIN & FAIN)
Schedule of Related Party Loans
Pledged with Fees Earned

DRAFT

Outstanding Related Loans	Loan Principal	Accrued Interest	
Capital Center Credit Corp	\$653,404	\$133,519	Settled YE 2008
Centrury Same Day Surgery	\$112,904	\$55,137	Settled YE 2008
JV Associates	\$95,000	\$2,850	Settled YE 2009
M&S Partners	\$604,050	\$67,989	Settled YE 2008
McGinn Smith Preferred Stock	\$857,800	\$0	Settled YE 2009
McGinn Smith Holdings	\$81,373	\$1,520	Settled YE 2009
McGinn Smith Capital Holdings	\$333,132	\$5,458	Settled YE 2009
McGinn Smith Transaction Funding	\$550,000	\$0	Settled YE 2009
Pacific	\$152,526	\$3,926	Settled YE 2008
RTC	\$612,055	\$0	Settled YE 2009
SAI	\$863,393	\$0	Settled YE 2009
Seton Hall	\$8,613	\$258	Settled YE 2008
TDM Cable Funding	\$40,000	\$850	Settled YE 2009
TDM Luxury Cruise	\$77,000	\$578	Settled YE 2009
TDM Verifier 07	\$150,000	\$3,563	Settled YE 2009
TDMM Funding	\$45,000	\$225	Settled YE 2009
TDMM Sr Trust	\$74,000	\$555	Settled YE 2009
White Glove	\$30,000	\$263	Settled YE 2009
	\$5,340,250	\$276,690	

The LLC's
(FEIN, FIIN, TAIN & FAIN)
Fees Earned & Paid Analysis

DRAFT

Tranche	Total Raised	DRAFT							
Jr	40,218,000								
Sr Sub	22,406,000								
Sr	22,450,000								
Total	85,074,000								
		ACCRUALS (all as of 12/31)							
Fees Earned	2004	2005	2006	2007	2008	2009	2010		
U/w .02	865,510	1,367,860	1,701,480	1,701,480	1,701,480	835,970	333,620		
MGMT .01	512,683	725,633	850,740	850,740	850,740	386,620	125,108		
Admin 0.0025	128,171	181,408	212,685	212,685	212,685	96,655	31,277		
	1,506,363	2,274,901	2,764,905	2,764,905	2,764,905	1,319,245	490,004		
Fees Paid	PAID							Through 2/25	
U/w .02	885,020	1,135,290	1,575,627	1,270,403	1,224,889	1,300,310	485,000		
MGMT .01	349,974	688,675	630,639	183,929	1,020,250	2,190,530	240,000		
Admin 0.0025	-	-	-	-	-	351,776	27,272		
	1,234,994	1,823,965	2,206,266	1,454,332	2,245,139	3,842,617	752,272		
Cummulative Net									
Fees Payable	271,369	722,305	1,280,943	2,591,516	3,111,283	587,911	325,644		
					Brokers Commission Liability				
						Accrual Balance	(310,000)		
							15,644		

Exh. b. 1 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

McGINN, SMITH & CO., INC., et al.,

10 Civ. 457 (GLS/DRH)

Defendants.

DEFENDANT DAVID SMITH'S RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS

1. Admits the genuineness of all documents listed in Attachment A, but reserves the right to object to any such document on other grounds.
2. Admits, except states that ownership of MS & Co., and MS Advisors was in Timothy McGinn, David Smith and Thomas Livingston and MS Advisors was owned through the interest that McGinn, Smith, Livingston held in MS Holdings.
3. Admits, except McGinn's holdings in MS Advisors were held through MS Holdings which owned 100% of MS Advisors.
4. Admits, except states that Smith was the Chief Compliance Officer until 2007 where upon Steven Smith took over the position of Chief Compliance Officer.
5. Admits, except states that Smith's holdings in MS Holdings were held through MS Holdings which owned 100% of MS Advisors.
6. Denies MS Capital was owned by MS Holdings LLC, McGinn and Smith. MS Capital was owned entirely by MS Holdings.
7. Admits that between September 2003 and October 2005, MS Advisors formed FAIN, FEIN, FIIN and TAIN.
8. Admits that MS Advisors held 100% of the membership interest in each Fund and was each

Fund's sole managing member.

9. Denies. MS Advisors remained the investment advisor to the Funds.
10. Admits that David Smith was responsible for the majority of the investment decisions for the Funds.
11. Admits that Timothy McGinn signed documents on behalf of entities that received loans from the Funds.
12. Admits that the Funds did not register as investment companies.
13. Admits that the Funds' private placement memoranda (the "PPMs") were prepared at David Smith's direction and were reviewed by him for accuracy prior to commencement of each offering.
14. Denies, and states that the Funds' PPMs authorized investments in affiliates.
15. Denies. See No. 14 above.
16. Denies, and states that the Funds' PPMs authorized merger to entities MS & Co., MS Advisors, Timothy McGinn or David Smith, and, therefore, transfer.
17. Denies. See Nos.: 14, 15, and 16 above.
18. Admits, but denies the word "increasingly".
19. Admits, except that the exact number is unknown and the \$10 million referred to in this paragraph is believed to include accrued interest.
20. Admits that AlseT never repaid any of the loans received from the Funds.
21. Denies that by 2006, Timothy McGinn and David Smith knew that the funds could not redeem investor notes when they became due.
22. Denies that by as early as 2007, MS & Co, Timothy McGinn and David Smith generally refused to honor investors' requests for the return of principal at the maturity of the notes, unless the customer's broker was able to find a new investor to replace the outgoing investor.


23. Admits so much of request no. 23 as it applies to 2008, and denies the request with respect to 2009. Also, upon information and belief there were other qualifications to sales and rollovers which Defendant Smith does not now recall without seeing applicable records.
24. Admits that MS & Co. acted as placement agent for the Trusts.
25. Admits, but reserves further response on the issue of exact payments.
26. See answer of Timothy McGinn set forth in his Response to Admissions.
27. Denies and refers the SEC to Lynn Smith's testimony at a hearing held in July 2011 before the Honorable David R. Homer.
28. Denies. See No. 27 above.
29. Admits that Lynn Smith maintained a brokerage account at MS & Co. which in 2010 was transferred to NFS/RMR Capital Management (the "Stock Account").
30. Denies. David Smith had discretionary investment authority in the account during a period of time not now known to him.
31. Admits that Lynn Smith allowed David Smith to use the Stock Account to further his personal and professional interests.
32. Admits that in early 1990's, the Stock Account acquired 40,000 shares of a predecessor to Charter One Financial, Inc. ("Charter One") at a cost of \$10 per share.
33. Neither admits nor denies without reference to a statement, except admits that the account had value.
34. See No. 33 above.
35. Admits, upon information and belief that the Charter One stock also continued to appreciate during this time.
36. Admits upon information and belief.
37. Neither admits nor denies without reference to a statement.
38. Admits, except states that the shares were deposited as loan into an account KC Acquisition

Corp.

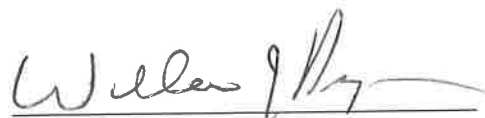
39. Admits, except states that the shares were journaled back as repayment of loan.
40. Admits that David Smith authorized the repayment but states that he does not recall the letter of authorization.
41. Admits that \$326,304 was deposited into an account as a reversal of a QTIP Trust and neither admits nor denies the remaining statements in No. 41 without reference to documents.
42. Admits, that transfers were made pursuant to estate planning.
43. Denies that the transfers from the Smiths' joint checking account to Lynn Smith's checking account were without consideration. The monies belonged to Lynn Smith.
44. Denies that all other transfers from David Smith to Lynn Smith's checking account were without consideration.
45. Denies that in 2009, a house in Vero Beach, Florida was transferred to Lynn Smith without consideration after being previously held in joint ownership by David Smith and Lynn Smith.
46. See Timothy McGinn's response to No. 46 in his response to Request for Admissions.
47. Admits that David Smith and Lynn Smith created the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04 (the "Smith Trust") pursuant to a Declaration of Trust dated August 4, 2004.
48. Admits that the Smith Trust had no assets when it was created, but states that the Trust was funded immediately after it was created.
49. Admits that on or about August 31, 2004, David Smith and Lynn Smith entered into a "Private Annuity Agreement" with the Smith Trust.

50. Denies that said stock was "sold" to the Trust and states that the stock was deposited in the Trust account.
51. Admits that both David Smith and Lynn Smith signed the Private Annuity Agreement with the Smith Trust.
52. Neither denies, nor admits. In 2011 the parties to this action stipulated that the Private Annuity Agreement was effective as of 2004 as if Thomas Urbelis had signed the Private Annuity Agreement on behalf of the Smith Trust.
53. Admits that the Private Annuity Agreement is a valid and enforceable agreement.
54. Admits that on May 4, 2004, Charter One publicly announced that it was being acquired in an all-cash deal by Citizens Financial Group, which paid \$44.50 per share and that the deal was completed on August 31, 2004.
55. Admits, upon information and belief, that said shares were transferred pursuant to the Irrevocable Trust Agreement and not the Private Annuity Agreement.
56. Admits that on the same day that the 100,000 shares of Charter One stock were transferred from the Stock Account to the Smith Trust account, September 1, 2004, a cash merger occurred, resulting in the Smith Trust account being credited with \$4,450,000 in cash.
57. Denies. The amount in questions was not a distribution to Geoffrey Smith but constituted a reimbursement of taxes previously paid by David Smith.
58. See Timothy McGinn's response to No. 58 in his response to Request for Admissions as and for David Smith's answer.
59. See Timothy McGinn's response to No. 59 in his response to Request for Admissions as and for David Smith's answer.

Dated: December 7, 2011


David L. Smith

Dated: December 7, 2011

A handwritten signature in dark ink, appearing to read "William J. Dreyer", is written over a horizontal line.

William J. Dreyer, Esq.
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Attorneys for Defendant Smith
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(518) 463-7784 [phone]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457(GLS/DRH)

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

Defendants,

LYNN A. SMITH, and
NANCY MCGINN,

Relief Defendants, and

DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.

DECLARATION OF DAVID STOELTING

I, David Stoelting, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney in the Enforcement Division of the New York Regional
Office of the Securities and Exchange Commission ("SEC"). I have been employed

with the SEC since February 2004. I make this declaration in support of the SEC's motion for an order to show cause and for emergency relief.

Background

2. On April 20, 2010, in order to halt an ongoing fraud, maintain the status quo and preserve assets for injured investors, the SEC filed its Complaint and request for certain emergency relief. On the same day, the Court issued an Order to Show Cause, Temporary Restraining Order and Order Freezing Assets and Granting Other Relief (the "April 20 Order") granting the SEC's application for emergency relief, including a freeze over the Defendants' and Relief Defendant's assets, the appointment of a receiver over the McGinn Smith entity defendants, expedited discovery and verified accountings. The asset freeze included a brokerage account that was the sole asset of the Trust.

3. On June 1, 2010, the Court granted the Trust's motion to intervene, and after a three-day hearing on June 9 to 11, the Court issued an order on July 7, 2010 continuing the freeze on the assets of the Defendants' and Relief Defendant, but not on the assets of the Trust.

Discovery of Undisclosed Annuity Agreement between the Smiths and the Trust

4. In order to obtain the freeze over the assets of the Defendants and Relief Defendant Lynn Smith, the SEC made diligent efforts to obtain all documents and evidence relevant to the assets of David and Lynn Smith and the Trust. Despite these diligent efforts, the SEC did not learn of the existence of a private annuity agreement (the "Annuity Agreement") between the Smiths and the Trust until July 22, 2010, when the Trust's attorney, Jill Dunn, made a passing reference to it during a telephone call

with the SEC's attorneys. The SEC did not obtain a copy of the Annuity Agreement until July 27, 2010, when it was produced by Thomas Urbelis, the Trust's prior trustee, in response to a direct request by the SEC that he search through his files again for any such document.

The Annuity Agreement

5. The Annuity Agreement, a copy of which is attached hereto as Exhibit 1, discloses, for the first time, that David and Lynn Smith sold the Charter One stock to the Trust in return for the right to jointly receive annuity payments of \$489,932 a year beginning in 2015 from the Trust and continuing until the death of the last to die.

6. The Annuity Agreement provides, in relevant part, that:

The Transferors [previously defined as David and Lynn Smith] are the owners of 100,000 shares of stock (the "Property") of Charter One Financial, Inc. and the Transferors desire to sell the property to the Transferee to be relieved of the burden and risk associated with owning and managing the Property in order to receive investment income and a portion of the principal on a regular basis.

(Exhibit 1 at 1, Recital A).

7. The Annuity Agreement further provides, *inter alia*, that in return for the Transferors selling, assigning and conveying to the Transferee all right, title and interest in the Property, the Transferee agrees to pay or cause to be paid to the Transferees the sum of \$489,932 per year, commencing on September 26, 2015 and continuing on the 26th day of each September thereafter for and during the full term of the natural life of the last to die of the Transferors. (Exhibit 1, ¶¶ 1 and 2).

8. A separate one-page document entitled "Private Annuity" also provided to the Commission by Mr. Urbelis on July 27, 2010, references the ages of the annuitants as 58 and 59 (Lynn and David Smith's ages, respectively, in August 2004),

and sets forth a joint life expectancy of 31 years from August 2004. (This document is attached as Exhibit 2.) The Smiths therefore have a joint life expectancy of 20 years from the date the payment obligations are scheduled to begin in 2015. The annual payment of \$489,932, if paid out over the twenty-year joint life expectancy, would therefore entitle David and/or Lynn Smith to receive payments of approximately \$9,798,640 from the Trust.

Lynn Smith and the Trust Did Not Disclose the Annuity Agreement Despite the Commission's Diligent Efforts

9. The Annuity Agreement directly contradicts the numerous sworn statements, document productions and testimony prior to and during the preliminary injunction hearing held on June 9 to 11, 2010. Throughout these proceedings, Lynn Smith, her attorney, the Trustee, the Trust's attorney, and numerous witnesses called on behalf of Ms. Smith and the Trust, claimed that the Smiths had no continuing interest in the assets of the Trust and that the Smiths had transferred approximately \$4,450,000 of Charter One stock to the Trust solely for the benefit of their two children.

Lynn Smith Statement of Net Assets

10. On May 5, 2010, Relief Defendant Lynn Smith filed a Verified Statement of Net Assets as of March 31, 2010 (Docket Entry ("DE") 19). The Verified Statement contained a sworn "Verification" by Lynn Smith that she had provided information to the accountant who had prepared it, and that she "personally reviewed the document and believe[s] that it fairly represents [her] own personal assets, liabilities and general financial condition as of March 31, 2010." The L. Smith Verified Statement did not contain any reference to her joint right, together with her husband, to receive almost \$10 million in annuity payments from the Trust.

11. David Smith asserted his constitutional right not to incriminate himself and declined to provide a verified accounting of his assets. (DE 22). He filed a list of accounts that did not include any reference to the Annuity Agreement. (DE 17).

The SEC's Document Request to Lynn Smith

12. On May 10, 2010, the SEC served Plaintiff's First Request For Production Of Documents To Relief Defendant Lynn A. Smith, attached hereto as Exhibit 3. The Annuity Agreement would have been responsive to each of the following requests:

Request 9:

Documents sufficient to show all assets and liabilities held, or purchased and/or sold since January 1, 2000, directly or indirectly, by or for the benefit of Lynn A. Smith, including without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit and real and personal property wherever situated.

Request 10:

Documents sufficient to show all assets and liabilities jointly held, or purchased and/or sold since January 1, 2000, directly or indirectly, by or for the benefit of Lynn A. Smith and Smith, including, without limitation, bank accounts, brokerage accounts, investments, business interest, loans, lines of credit and real and personal property wherever situated.

Request 11:

Documents sufficient to identify all bailees, debtors, and other persons and entities that currently are holding any of your assets, funds or property (including, but not limited to, any property owned jointly with Smith).

Request 17:

All documents concerning any transfer of assets, since January 1, 2003, to any member of your immediate family.

13. On May 21, 2010, Lynn Smith submitted Relief Defendant's Response To Plaintiff's First Request For Production Of Documents together with certain documents responsive to the Plaintiff's First Request, attached hereto as Exhibit 4. Neither the Annuity Agreement nor any documents referencing such an agreement were produced. In response to Request 9, Lynn Smith affirmatively stated: "A description of the assets and liabilities of Relief Defendant Lynn A. Smith has previously been provided to the Plaintiff herein. Other than the documents enclosed herewith and those in the possession of the Plaintiff, FINRA, or the United States Department of Justice, Relief Defendant Lynn A. Smith has no additional documents responsive to this demand."

14. Lynn Smith stated that she did not have any documents responsive to Requests 10, 11 and 17 but she affirmatively stated, in response to Request 10, that she did have a joint checking account during a portion of the relevant time period. See Exhibit 4, Responses 10, 11 and 17.

The SEC's Document Subpoena to the Former Trustee

15. On May 28, 2010, the SEC served a Subpoena upon Thomas Urbelis, the Trustee of the Trust from the date of its creation until his resignation on April 22, 2010 (which became effective on May 27, 2010). The subpoena required him to appear to be deposed on June 1, 2010 and further required him to produce certain documents described in the Subpoena Attachment. The Subpoena and Subpoena Attachment are attached hereto as Exhibit 5.

16. The subpoena contained numerous requests seeking all documents relating to David Smith, Lynn Smith, the beneficiaries of the Trust, the Trust itself, and

the duties and responsibilities of the Trustee, among other documents. (Exhibit 5, ¶¶ 1-8).

17. Mr. Urbelis produced documents in response to this subpoena on May 29, 2010. He did not produce the Annuity Agreement or any other document that disclosed the existence of any such agreement.

18. The Commission also reviewed documents related to Lynn and David Smith and the Trust that were made available to the SEC by the United States Attorney's Office for the Northern District of New York. The Annuity Agreement was not contained in those documents.

Sworn Statements and Pre-hearing Testimony of Lynn Smith

19. Lynn Smith has made numerous statements under oath regarding the circumstances surrounding the creation and operation of the Trust, the assets transferred to it and the assets of David Smith and herself. At no time did she make any reference to the material fact that the 100,000 Shares of Charter One stock were sold to the Trust pursuant to the Annuity Agreement.

20. On May 21, 2010, Lynn Smith filed a sworn affidavit in opposition to the SEC's Order to Show Cause (DE 23). In the affidavit, she stated:

In August 2004, to provide security for my children's future apart from my stock account, my husband and I created the David L. Smith and Lynn A. Smith Irrevocable Trust. My children were adults, had completed college, and could begin making financial decisions on their own. I alone personally funded this irrevocable trust by transferring 100,000 shares of Charter One Financial Inc. stock from my stock account to the trust's account. This irrevocable trust had been managed since its inception by Tom Urbelis, a longtime friend. (DE 23, ¶ 23)

21. Also on May 21, 2010, Lynn Smith signed a sworn affidavit (DE 34), in support of the motion to intervene filed by the Trustee of the Trust. In that affidavit, she stated, *inter alia*:

. . . . I decided to take advantage of available estate planning laws to fund a trust for my children, from which they could benefit during my lifetime, instead of having these assets sit in a brokerage account until my death. (DE 34, ¶ 4).

. . . . On September 1, 2004, I transferred 100,000 shares of Charter One stock, then valued at \$44.50 per share, to the trust. . . . To the best of my knowledge, there have not been any other contributions into the trust since its creation. (DE 34, ¶ 5).

From the time the trust was created in August 2004, my husband and I have had no interest in or expectation of an interest in the David L. and Lynn A. Smith Irrevocable Trust. It exists solely, exclusively and permanently for the benefit of our children. (DE 34, ¶ 6).

22. Lynn Smith also was deposed on May 27, 2010. Ms. Smith was asked numerous questions designed to identify all assets of herself and David Smith. She was also asked numerous questions concerning the circumstances relating to the creation of the Trust and concerning any interest she and David Smith had with respect to the assets transferred to the Trust. At no time during that deposition did she provide any testimony referencing the existence of the Annuity Agreement that was entered into in connection with the transfer of Charter One stock to the Trust nor did she ever reference the existence of any right she and David Smith had to collect millions of dollars from the Trust. (The complete transcript is at DE 46, Ex. 2.)

23. For example, she provided the following testimony:

Q Okay. Let me just ask you, what is your understanding of the purpose of the trust?

A The trust, the purpose of the trust was our children are 27 and 30 years old. Presently, we started this about four years ago,

this particular trust and I wanted them to be able to have an opportunity to if they wanted to start a business, own a home, I wanted them to have the rewards, reap the rewards of my husband's business and so we both agreed on putting that in the trust. (DE 46, Ex.2 at 39-40).

Q So, the trust was created, you would agree, for your children not for you and your husband?

A Exactly. (DE 46, Ex.2 at 40).

Q Do you understand that you have the ability to take money out of the trust if you want to?

[objection to form]

A We cannot take money out of the trust. (DE 46, Ex.2 at 41).

Q We've talked about the irrevocable trust. Was that something you thought of as an asset under your control?

[objection to form]

A Specifically, under my control?

Q Yes.

A No.

Q Or your joining with your husband?

A No.

Q Why not?

A I thought that the trustee and my two children would have control of the trust fund. (DE 46, Ex. 2 at 79).

24. Ms. Smith was also asked why the Trust was listed as an asset on the document entitled David L. Smith, Lynn A. Smith Financial Statement and dated August 2008 (attached at DE 46, Ex. 6). She was also asked why the Smith's Statement of Financial Condition dated August 31, 2008 and prepared by their accountants also appeared to include the Trust's assets (attached at DE 46, Ex. 7) In response to all such questions, Ms. Smith responded that she did not know. She never disclosed the existence of the Annuity Agreement as an explanation for the inclusion of the Trust's assets on the Smith financial statement. (DE 46, Ex. 2 at 79-87). (*See also* L. Smith's responses to similar questions at preliminary hearing; PI at 303-311).

Testimony of Former Trustee

25. On June 1, 2010, Mr. Urbelis was deposed. He was asked numerous questions concerning the Trust and concerning any interest Lynn and David Smith had with respect to the assets transferred to the Trust. At no time during that deposition did he refer to the existence of the Annuity Agreement nor did he reference the existence of any right that Lynn and David Smith had to collect money from the Trust. (The complete transcript is at DE 46, Ex. 11).

26. For example, Mr. Urbelis provided the following testimony:

Q As a trustee for this trust, what did you do?

A Well, I -- let me tell you what I took as my duties as I saw them. My very first duty obviously was to make sure the kids were okay. Jeff and Lauren, I've known them since they were born. And I think that's -- I don't know if I'm speculating -- that might be one of the reasons besides knowing me, they might have wanted someone who knew the kids and what their personalities were and needs and things like that; so I've known Jeff and Lauren ever since they were born. So, my first duty as I saw it was if they needed money or some kind of assistance was to provide it.

Another consideration for me was I wanted to make sure in a situation like this that the taxes got paid, so I wanted an assurance that I was not going to be responsible for preparing tax returns, and I make no bones about it, I have an accountant that does mine and I don't understand it. So I have an accountant that does that, and I wanted the same professional expertise to deal with the tax returns. I wanted to make sure I had an assurance that they were going to get done on a timely basis and they were going to get paid.

With regard to the investments and the trust, I did not see my duties as making the trust double, triple, quadruple over time. I wanted the money to be fairly secure for, if and when the kids needed it. And I looked to Dave to provide advice to me with regard to the prudent investment or appropriate investments to make in the trust. (DE 46, Ex. 11 at 11-13).

Q You said that your first goal in being the trustee was to make sure the children were okay.

A Right.

Q How did you do that?

A Well, I knew what the kids were up to. I mean, my wife and I are very good friends with Dave and Lynn. And again, we have

kids that are fairly close to the same ages of Jeff and Lauren, and my wife and Lynn raised a couple of teenagers at the same time. So we had a lot of conversations about what the kids are up to and which kid is doing what, and just that I knew about what they were doing and whether they needed money. So, I mean, obviously if I knew one of them was in a tough spot, I would have stepped in, but that was never brought to my attention or I never became aware of it. (DE 46, Ex. 11 at 15)

27. At no time did Mr. Urbelis disclose the material fact that one of his responsibilities was ensuring that there were sufficient assets in the Trust to enable it to fulfill its obligation to make millions of dollars of payments to David and Lynn Smith beginning in 2015 and continuing until their deaths.

Hearing Testimony of Lynn Smith

28. Lynn Smith testified at the preliminary hearing on June 10, 2010. At no time during her testimony did she make any reference to the existence of the private annuity agreement, despite many questions to which the existence of the agreement was responsive. She provided the following testimony:

Q And do you know if the trust agreement allows you and David to take money out of the trust account?

A It does not allow us to take money out.

Q. Who are the beneficiaries of the trust?

A Jeffrey Ryan Smith and Lauren Tate Smith, my two children. (PI at 320).

Q You testified that you created the David and Lynn Smith Irrevocable trust in approximately August 2004, is that correct?

A Yes.

Q What was the reason you created that trust?

A We had the profits from the Albank stock in my account. Since I had -- both of my parents had passed away at 50 years old each, I wanted to have something for my two kids so that if they wanted to start a business or buy a home or do something, that I could actually see them reaping benefits during my lifetime. (PI at 388).

Q Can you describe what that document is [Plaintiff's Exhibit 126]?

A It's the transfer of a hundred thousand shares of Charter One Financial into the irrevocable trust.

Q And is that your signature on that document?

A Yes.

Q And do you recall signing the document?

A Yes

Q What did you intend to do when you signed this

A I -- what did I intend to do?

Q What did you intend the effect of this document to accomplish?

A It was -- I intended it -- to put the \$4 million into an irrevocable trust for Jeffrey and Lauren Smith.

Q And when you transferred that stock into the irrevocable trust for Jeffrey and Lauren, what was your understanding as to what your interest in that stock would be after that date of transfer?

A After that date of transfer, that was no longer -- belong to me anymore. It belonged to --

Q And -- I'm sorry?

A It belonged to Jeffrey and Lauren.

Q Did you believe any time after September 1, 2004, when that you transferred this stock, at any time did you believe the money in that irrevocable trust account was yours?

A No. (PI at 391-92).

29. Ms. Smith further testified that her daughter had lost her job and was unemployed for a year (PI at 375), that she provided 12 months' rent and paid a tuition bill for a six-month course for her daughter (PI at 399), a Trust beneficiary, out of her funds, and that he hid the extent of the payments from her husband, who she said might consider the payments too generous. (PI at 405). When asked by the Trustee's attorney:

Q Is there a reason why you didn't tell Lauren to go off and talk to Tom Urbelis and ask him for the money?

A I never considered it. I had --

Q Did you --

A I had money to give her. And I didn't, I didn't want her to go and -- to the fund for something frivolous, or in my estimation frivolous. (PI at 399).

Testimony of Geoffrey Smith

30. The Smiths' son Geoffrey Smith also did not disclose the existence of the Annuity Agreement when he described what his father told him about the Trust:

Q You testified that to the best of your memory, it was sometime in around Thanksgiving of 2004, correct?

A Yes.

Q And you testified that your father told you about the trust?

A Yes.

Q Was your mother present for that conversation?

A No.

Q Was it an in-person conversation?

A It was.

Q And tell me again to the best of your memory what you remember your father telling you in as much detail as you can.

A He said he wanted to talk to me about something. He -- we sat in his office. He said that he and my mother had opened a -- or created a trust account on behalf of my sister and I. And to the best of my recollection, he told me the, the approximate value of the trust.

Q And what did he tell you the approximate value was?

A Approximately \$4 million. (PI at 525).

Q And is it your testimony that this sort of came as a surprise to you, that you had not had any advance warning that your mother and father were creating this trust before this conversation in Thanksgiving?

A It was a pleasant surprise that put me at ease. (PI at 527).

Q You thought that Mr. Urbelis would not ask you any questions if you told him to give you money to help pay your parents' taxes?

A At the time it didn't cross my mind.

Q I mean you understood that this irrevocable trust meant that your parents were giving you the money and that they would no longer have any right to it; that's the theory behind that trust, correct?

A Correct. (PI at 538).

Affidavit and Testimony of the Trustee and the Accounting Expert

31. In his Affidavit dated May 25, 2010 (DE 32), David Wojeski, the newly appointed Trustee of the Trust, did not disclose the existence of the Annuity Agreement and stated that the Smiths had no interest in the Trust or its income or assets:

By the terms of the Declaration of Trust, the Donors, David L. Smith and Lynn A. Smith, have no control over the trust or its assets, other than to appoint a successor trustee. Similarly, they have no interest, whether present, future or reversionary, in the trust, its income or its assets, as it is irrevocable by its own terms and pursuant to provisions of the New York Estates, Powers & Trusts Law. (DE 32, ¶ 5).

32. Mr. Wojeski also did not disclose the existence of the Annuity Agreement when questioned regarding the Trust at trial. (*See, e.g.*, PI at 544-568). Indeed, he affirmatively testified that he had the right to liquidate the Trust immediately and issue two million dollar checks to each of the two beneficiaries. (PI at 562).

33. Mr. D'Aleo, an accountant retained to conduct an analysis of Ms. Smith's assets and the Trust's assets and liabilities also did not disclose the existence of the Annuity Agreement. (*See, e.g.*, PI at 445-454). Indeed, both Mr. Wojeski and Mr. D'Aleo testified at length to the due diligence each undertook to learn as much as they could about the Trust; yet neither of them was apparently informed of or discovered the existence of the Annuity Agreement (or, if they were aware of it, they did not disclose it).

Summation of Trust Attorney

34. The attorney for the Trustee also never referenced the Annuity Agreement. Indeed, to the contrary, she argued to the Court that Lynn Smith had no interest whatsoever in the Trust:

The money that Mrs. Smith used to invest in this trust was her rightful money. She testified that she -- and it's never been contradicted, that she believes at all times that when she transferred that stock into the trust account, she relinquished *all title, ownership, control, beneficial, equitable, actual, or legal any interest whatsoever in that stock was gone from her hands the moment she transferred it*. She identified the letter of authorization by which the transfer was effectuated. We saw that

she testified that it was created for estate planning purposes. David Smith -- there's not one piece of evidence that David Smith has ever transferred a single penny into this trust. Never. There was no evidence whatsoever that he owned the Charter One shares. (PI at 625) (emphasis added).

Discovery of the Annuity Agreement

35. On July 22, 2010, Kevin McGrath and I participated in a conference call with the Court, and Ms. Dunn, the attorney for the Trust, concerning the SEC's emergency oral application for a temporary restraining order freezing the assets of the Trust. The Court denied the oral motion without prejudice to filing a written motion.

36. Immediately following that conference call, Mr. McGrath and I called Ms. Dunn back. During the course of a brief conversation, Ms. Dunn disclosed the existence of a private annuity agreement involving the Smiths and the Trust. This was the first time any person, attorney or agent associated with David or Lynn Smith or the Trust disclosed the existence of a private annuity agreement involving the Trust to the SEC.

37. On the following morning of Friday, July 23, 2010, I placed a call to Mr. Urbelis. I advised him of Ms. Dunn's reference to a private annuity agreement and asked him if he was aware of any such agreement between the Trust and David and/or Lynn Smith. He stated that vaguely recalled something about an annuity but he was not sure. He agreed that if any agreement existed it would be responsive to the Subpoena previously served upon him. He then told us that he was looking at a file that he had at his office and he stated that it did not contain any such agreement. He agreed to look further and get back to us.

38. On Monday, July 26, 2010, I called Mr. Urbelis and left a message for him to call me. He called me back later that day and told me that he had found the private annuity agreement. He said he would mail it to me by overnight mail.

39. On Tuesday, July 27, 2010, I received the Annuity Agreement from Mr. Urbelis, along with the one-page document (Exhibits 1 and 2). Later that day, together with Mr. McGrath and Ms. Mehraban, I called Mr. Urbelis and asked him why he had not produced this document in response to the Subpoena previously served upon him. He stated that he did not realize that he had the document, that the document had not been in his office file and that he had found it at home. We then asked him whether he had any other documents related to the Trust that would be responsive to the Subpoena. He confirmed that he did not.

40. Mr. Urbelis further stated that he did not have a copy of the Agreement signed by him and he did not recall whether he signed it. He also stated that he had no reason to believe the agreement was altered at any time during his Trusteeship. When asked what obligations he understood the agreement to place on the Trust, he said that his concern was the beneficiaries and he knew he did not have to pay the annuity for years. When asked what he would have done if the beneficiaries requested distributions that impaired the Trust's ability to honor its obligations under the Annuity Agreement, he said he would have consulted with a trust attorney. When asked if he had discussed the private annuity agreement with the beneficiaries, he said he did not recall. When asked did he not think it would be important to share with the beneficiaries the fact that the stock transferred to the Trust was encumbered by an

obligation to pay the Smiths a sizeable annual annuity, he declined to answer the question and ended the call.

L. Smith's Use of Charter One Stock to Facilitate Smith's Business Interests

41. Attached as Exhibit 6, is a certified copy of a civil complaint filed by Ian Meyer in December 2003 against various defendants including David Smith, Lynn Smith, Timothy McGinn, Mary Ann McGinn. McGinn Smith & Co. and others, and seeking \$3,000,000 in damages arising out of the defendants actions in connection with the operation of various businesses including Integrated Alarm Services Group, Inc., ("IASG), Integrated Alarm Services, Inc. ("IASI"); KC Acquisitions, and First Integrated Capital Corp. The complaint alleges, inter alia, that sometime after October 2002, Lynn Smith loaned \$ 3 million to KC Acquisition and \$3 million to IASI to help facilitate the IASG initial public offering.

42. Attached as Exhibit 7 is an excerpt from the IASG offering statement, attached as Exhibit E to Ian Meyer's complaint, referenced above. It states, in relevant part, that part of the proceeds of the offering will be used to repay L. Smith for \$3 million that she loaned to KC Acquisitions and \$3 million that she loaned to IASI prior to its acquisition in January 2003.

43. Upon information and belief, the suit was settled in the spring of 2004 with the payment of \$200,000 to Mr. Meyer and a letter from him stating that certain unspecified allegations, and certain causes of action against the law firm and accountant defendants, were unfounded.

44. Attached as Exhibit 8 is a summary chart prepared at my direction, compiled from a review of L. Smith's brokerage statements. It sets forth the number of

shares of Charter One stock, their market price per share and total value each month for the period August 27, 1999 through September 30, 2004. The chart reveals that for the period October 25, 2002 through July 26, 2003, no shares of Charter One stock were contained in L. Smith's brokerage account. On July 29, 2003, the Charter One shares were journaled back in to the Stock Account. The chart also shows that the Smiths sold a total of over 29,000 shares of Charter One stock during the period of August 1999 to September 2004 for total gross proceeds of over \$1 million, and they also transferred over 2,500 shares out of the Stock Account. Finally, the chart shows the significant growth in the value of the Charter One stock, particularly in the months after the cash merger was announced.

45. Attached as Exhibit 9 is a copy of a brokerage statement for L. Smith for the period September 28, 2002 through October 25, 2002, which shows that 105,000 Charter One shares were journaled from her account on October 14, 2002. This resulted in a reduction in the value of her equities holdings from \$3,552,199 to \$426,227.

46. Attached as Exhibit 10 is a letter of authorization dated October 14, 2003, signed by Lynn Smith, authorizing the transfer of 105,000 shares of Charter One stock to the account of KC Acquisition Corp.

47. Attached as Exhibit 11 is a copy of a brokerage statement for L. Smith for the period January 1, 2003 through January 31, 2003, which shows that \$3,000,000 was wired to Charter Bank on January 14, 2003 "to purchase Integrated Alarm Systems (2 Yr); thereby reducing the total value of her brokerage account to \$20,573, from a total of \$6,835,095 as of September 27, 2003.

48. Attached as Exhibit 12 is a copy of a brokerage statement for L. Smith for the period July 26, 2003 through August 29, 2003, which shows the return of 105,000 shares of Charter One stock, with a market value of \$3,255,000 to the account on July 29, 2003.

49. Attached as Exhibit 13 is a copy of a letter of authorization signed by David Smith, Treasurer, KC Acquisition Corp., and dated July 29, 2003, directing McGinn, Smith to journal \$399.09 and 105,000 shares of Capital One stock from the KC Acquisition account to Lynn Smith's account.

50. L. Smith also admitted in her testimony at the preliminary hearing that she loaned \$6 million in order to allow the public offering of IASG to go forward and that the \$6 million came from her stock account. (PI at 346).

Additional Documents

51. Attached hereto as Exhibit 14, are 28 pages of handwritten notes addressed to "Tim" and signed by "DLS" and "Dave". Upon information and belief, the notes were found in David Smith's desk pursuant to a search warrant executed on April 20, 2010. The notes were subsequently provided to the SEC by the U.S. Attorney's Office.

52. Attached as Exhibit 15 is a copy of a letter dated February 26, 2004, from Steven Vitulano, Branch Chief of the SEC's Broker-Dealer Inspection Program, addressed to David Smith, President, McGinn, Smith, informing him that the SEC's inspection had found various violations of the rules and regulations promulgated under the Securities Exchange Act of 1934 and by the National Association of Securities Dealers.

53. Attached as Exhibit 16 is a press release filed with the SEC on August 31, 2004 by Citizen's Financial Group announcing its acquisition of Charter One on that date pursuant to its purchase of the common shares of Charter One at a price of \$44.50 cash per share. The press release notes that the proposed acquisition was announced on August 4, 2004.


54. Attached as Exhibit 17 is a copy of an email received from Glenn Grossman, from the Dinosaur Group, stating that the Trustee has caused four transfers from the Trust account totaling \$474,574.40 between July 12, 2010 and July 16, 2010.

55. In addition, upon information and belief, on July 22, 2010, Mr. Grossman contacted Mr. McGrath and advised him that the Trustee had directed the transfer of an additional \$2 million to an account at another financial institution in the name of the Trust.

56. In the telephonic conference call among myself, the Court and counsel for the Trust on July 22, 2010, I presented certain evidence to the Court and requested an emergency asset freeze over the Trust assets. The Court denied my request without prejudice, and I stated that the SEC intended to seek such relief promptly. However, the discovery of the existence of the Annuity Agreement after the July 22 call and its production on July 27, 2010, *see infra* ¶¶ 35-37, caused the SEC to revise its factual and legal analyses to account for the newly discovered evidence, which prevented an earlier filing. The emergency relief sought in this application is appropriate because of evidence set forth above of the defendants' fraudulent conduct, including fraudulent conveyances, the risk of dissipation of assets and the evidence that funds are being withdrawn from the Trust account. *See supra* ¶¶ 54-55.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
August 3, 2010


David Stoelting

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Clarke American 0292

Union National Bank

Checks and other items are received
for deposit subject to the provisions
of the Uniform Commercial Code or
any applicable collection agreement.

Member FDIC

Receipt

Reference	Amount	Date
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FORM 40150

**BEAR
STEARNS**

Bear, Stearns Securities Corp.
2 Broadway
New York, New York 10004

**FULL TRADING AUTHORIZATION
WITH PRIVILEGE TO WITHDRAW
MONEY AND SECURITIES**

REDACTED

Account Title: Lynn A. SmithAccount Number(s): 1-700

The undersigned hereby authorizes David L. Smith as the undersigned's agent
(Print Name of Agent and Attorney-in-Fact)

and attorney-in-fact (the "Agent") with full power and authority on the undersigned's behalf to buy, sell (including short sales) and trade in stocks, bonds, options (including uncovered option writing), and any other securities and commodities, and contracts relating to the same (including foreign futures and foreign options contracts), on margin or otherwise, and to enter into securities repurchase and securities reverse repurchase transactions in accordance with your terms and conditions, and to direct deliveries of securities and payment of monies to the Agent or others, for the undersigned's account(s) and risk, and in the undersigned's name or number on the books of Bear, Stearns Securities Corp. ("Bear Stearns Securities") a subsidiary of Bear, Stearns & Co. Inc. ("Bear Stearns"). If more than one Agent is designated, the undersigned authorizes each Agent to act severally; that is, each Agent alone shall be able to exercise the powers conferred hereby.

In all such purchases, sales or transactions, or deliveries of securities or payment of monies, Bear Stearns Securities and whenever applicable, Bear Stearns (hereinafter sometimes referred to collectively as the "Brokers") are authorized to follow the instructions of the Agent in every respect concerning the undersigned's account(s) with Bear Stearns Securities. The Agent is authorized to act for the undersigned and in the undersigned's behalf, in the same manner and with the same force and effect as the undersigned, with respect to such purchases, sales or transactions in the account(s).

The undersigned hereby agrees to indemnify and hold each of the Brokers, their successors and assigns (the "Indemnified Parties") harmless from, and to pay the Indemnified Parties promptly on demand, any and all losses, costs or expenses incurred in connection with the use of this trading authorization, including any debit balance in the undersigned's account(s). This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which any of the Indemnified Parties may have under any other agreement(s) between the undersigned and any of the Indemnified Parties.

This authorization and indemnity is a continuing one which shall not be affected by the subsequent disability or incompetence of the undersigned, and shall remain in full force and effect until revoked by the undersigned by a written notice received at the Bear Stearns Securities office at 2 Broadway, New York, New York 10004, or until Bear Stearns Securities receives actual notice of the death of the undersigned (or two customers sign, the death of either one), and shall enure to the benefit of each of the Brokers and any of each of their respective successor firm or firms.

Because Bear Stearns is acting as clearing agent for a correspondent broker-dealer, and/or commodities Introducing Broker or Futures Commission Merchant (hereinafter referred to as "IB" and "FCM", respectively), this authorization and indemnity shall enure likewise to the benefit of the undersigned's broker-dealer, and/or IB or FCM, their successors and assigns, and all references herein to the Brokers shall be deemed references to both the Brokers and the undersigned's broker-dealer, IB and FCM. The foregoing notwithstanding, the undersigned acknowledges and agrees that if the Agent designated herein is an employee or agent of a correspondent broker-dealer, IB, or FCM, such Agent is neither an agent of nor under the control of the Brokers and the Brokers shall bear no liability for any transactions effected pursuant to the authority granted herein. The terms of this authorization shall be governed by the laws of the State of New York.

Dated: 11/27/91

Lynn A. Smith
(Customer's Signature)

Lynn A. Smith

(Print Customer's Name)

(Joint Party's Signature)

(Print Joint Party's Name)

THIS QUESTION MUST BE ANSWERED: Is the Agent a person associated with any member, allied member or member organization of any securities or commodities exchange or a person associated with any broker-dealer or financial institution?

Yes

McGinn, Smith & Co., Inc.

(Name of Firm)

Authorization Accepted:

David L. Smith
(Agent's Signature)

STATE OF _____, COUNTY OF _____

On November 25 1991 before me personally cameLYNN A. SMITH AND DAVID L. SMITH

to me known, and known to be the individual(s) described herein, and who as a customer(s) of (name of correspondent broker-dealer and/or commodities Introducing Broker and/or Futures Commission Merchant, executed the foregoing FULL TRADING AUTHORIZATION, and duly acknowledged to me that he executed the same.

Notary Public State of New York

No. 4318381

Qualified in Albany County

Commission Expires March 30 1994

May Ann McQueen
Notary Public

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DOCUMENT DEPARTMENT USE ONLY — DO NOT WRITE IN THIS AREA

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**BEAR
STEARNS**

Bear, Stearns Securities Corp.
2 Broadway
New York, New York 10004

**FULL TRADING AUTHORIZATION
WITH PRIVILEGE TO WITHDRAW
MONEY AND SECURITIES**

REDACTED

Account Title: Lynn A. Smith

Account Number(s): -1-700

The undersigned hereby authorizes David L. Smith as the undersigned's agent
(Print Name of Agent and Attorney-in-Fact)

and attorney-in-fact (the "Agent") with full power and authority on the undersigned's behalf to buy, sell (including short sales) and trade in stocks, bonds, options (including uncovered option writing), and any other securities and commodities, and contracts relating to the same (including foreign futures and foreign options contracts), on margin or otherwise, and to enter into securities repurchase and securities reverse repurchase transactions in accordance with your terms and conditions, and to direct deliveries of securities and payment of monies to the Agent or others, for the undersigned's account(s) and risk, and in the undersigned's name or number on the books of Bear, Stearns Securities Corp. ("Bear Stearns Securities") a subsidiary of Bear, Stearns & Co. Inc. ("Bear Stearns"). If more than one Agent is designated, the undersigned authorizes each Agent to act severally; that is, each Agent alone shall be able to exercise the powers conferred hereby.

In all such purchases, sales or transactions, or deliveries of securities or payment of monies, Bear Stearns Securities and whenever applicable, Bear Stearns (hereinafter sometimes referred to collectively as the "Brokers") are authorized to follow the instructions of the Agent in every respect concerning the undersigned's account(s) with Bear Stearns Securities. The Agent is authorized to act for the undersigned and in the undersigned's behalf, in the same manner and with the same force and effect as the undersigned, with respect to such purchases, sales or transactions in the account(s).

The undersigned hereby agrees to indemnify and hold each of the Brokers, their successors and assigns (the "Indemnified Parties") harmless from, and to pay the Indemnified Parties promptly on demand, any and all losses, costs or expenses incurred in connection with the use of this trading authorization, including any debit balance in the undersigned's account(s). This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which any of the Indemnified Parties may have under any other agreement(s) between the undersigned and any of the Indemnified Parties.

This authorization and indemnity is a continuing one which shall not be affected by the subsequent disability or incompetence of the undersigned, and shall remain in full force and effect until revoked by the undersigned by a written notice received at the Bear Stearns Securities office at 2 Broadway, New York, New York 10004, or until Bear Stearns Securities receives actual notice of the death of the undersigned (or two customers sign, the death of either one), and shall enure to the benefit of each of the Brokers and any of each of their respective successor firm or firms.

Because Bear Stearns is acting as clearing agent for a correspondent broker-dealer, and/or commodities Introducing Broker or Futures Commission Merchant (hereinafter referred to as "IB" and "FCM", respectively), this authorization and indemnity shall enure likewise to the benefit of the undersigned's broker-dealer, and/or IB or FCM, their successors and assigns, and all references herein to the Brokers shall be deemed references to both the Brokers and the undersigned's broker-dealer, IB and FCM. The foregoing notwithstanding, the undersigned acknowledges and agrees that if the Agent designated herein is an employee or agent of a correspondent broker-dealer, IB, or FCM, such Agent is neither an agent of nor under the control of the Brokers and the Brokers shall bear no liability for any transactions effected pursuant to the authority granted herein. The terms of this authorization shall be governed by the laws of the State of New York.

Dated: 11/27/91

Lynn A. Smith
(Customer's Signature)

(Joint Party's Signature)

Lynn A. Smith

(Print Customer's Name)

(Print Joint Party's Name)

THIS QUESTION MUST BE ANSWERED: Is the Agent a person associated with any member, allied member or member organization of any securities or commodities exchange or a person associated with any broker-dealer or financial institution?

Yes

McGinn, Smith & Co., Inc.

(Name of Firm)

Authorization Accepted:

David L. Smith
(Agent's Signature)

STATE OF NEW YORK

COUNTY OF ALBANY

On DECEMBER 3 19 91 before me personally came LYNN A. SMITH

to me known, and known to be the individual(s) described herein, and who as a customer(s) of (name of correspondent broker-dealer and/or commodities Introducing Broker and/or Futures Commission Merchant, executed the foregoing FULL TRADING AUTHORIZATION, and duly acknowledged to me that he executed the same.

Notary Public, State of New York
No. 4818361

Qualified in Albany County

Commission Expires March 30 1992

May Ann Cady
Notary Public

J-107B (Full Authorization) (7/91)

COMMODITY CLIENTS ALSO MUST COMPLETE REVERSE SIDE

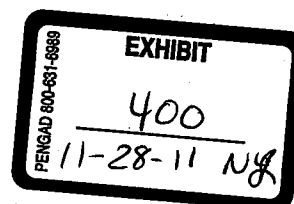
MGS DOJ 000226

From: McGinn, Timothy <tmcmginn@mcginnsmith.com>
Sent: Tuesday, October 13, 2009 2:53 PM (GMT)
To: Nancy McGinn <nemcginn@yahoo.com>
Subject:

Lex is very poor witness. We have important points to make. David & I will do so Thurs & Friday. I hate the retail business.

Love you.

Sent from my iPhone



MS-E-2118194



Bank of America

REDACTE

Capture Date: 04/03/2007 Sequence #^D 5161

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARATOGA SPRINGS, NY 12866

Date 3/27/07

4071

1-32/210 NY
26646

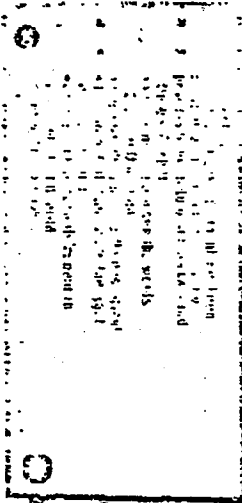
PAY to the order of Lauren T. Smith \$ 1,000.00
One thousand + 00/100 Dollars

Bank of America

ACH R/T 021000322

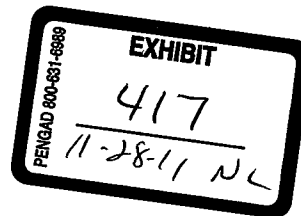
For REDACTED

Lynn A. Smith
4071



Lauren T. Smith

No Electronic Endorsements Found
No Payee Endorsements Found





Capture Date: 04/27/2007 Sequence #^{REDACTED} 2634

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARATOGA SPRINGS, NY 12866

Date 4/23/07 4111
1-32/210 NY
26646

PAY to the order of Lauren T. Smith \$1,000.00
One thousand + 00/100 — Dollars

Bank of America

ACH FWT 021000322

For REDACTED

Lynn A. Smith
4111

CO-OPAL CLASS 00

Lauren T. Smith

No Electronic Endorsements Found
No Payee Endorsements Found



Capture Date: 05/30/2007 Sequence # REDACTED ED 0842

DAVID L. SMITH LYNN A. SMITH REDACTED SAKATOGA SPRINGS, NY 12866		Date <u>5/25/07</u>	4170 1-32/218 NY 26848
PAY to the order of <u>Lauren Smith</u>		\$ <u>1,000.00</u>	
<u>One Thousand & 00/100</u>		Dollars	
Bank of America			
ACH PVT 021000322			
For <u>rent</u>	<u>Lynn A. Smith</u>		
REDACTED	4170		

No Electronic Endorsements Found
No Payee Endorsements Found



Capture Date: 07/03/2007 Sequence #: REDACTED 3316

DAVID L. SMITH LYNN A. SMITH REDACTED SARATOGA SPRINGS, NY 12866		Date <u>6/29/07</u>	4231 1-32/210 NY 26646
COLONIAL CLASSIC	PAY to the order of <u>Lauren Smith</u>		\$ <u>1,300.00</u>
	<u>One thousand three hundred & no/100</u>		Dollars
	Bank of America		
ACH R/T 021000322			
For <u>rent, gar, dad</u>		<u>Lynn A. Smith</u>	
REDACTED		4231	

Handwritten signature/initials

No Electronic Endorsements Found
No Payee Endorsements Found



Capture Date: 07/31/2007 Sequence #: REDACTED 1253

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARATOGA SPRINGS, NY 12866

Date 7/29/07

4277

1-32/218 NY
25846

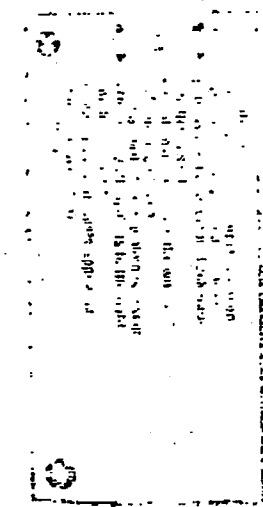
PAY to the order of Lauren Smith \$ 1,000.00
One Thousand + 00/100 Dollars

Bank of America

ACH R/T 021000222

For REDACTED

Lynn A. Smith
4277



Lauren Smith

No Electronic Endorsements Found
No Payee Endorsements Found



Bank of America

Capture Date: 09/05/2007 Sequence #: REDACTED 3741

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARASOTA SPRINGS, IN 1 12866

Date 8/31/07 1-32/210 NY 26646

PAY to the order of Lauren Smith \$ 1,000.00
One thousand & 00/100 Dollars

Bank of America

ACH FRT 021000322

For Lauren C. Smith
REDACTED 4347

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No Electronic Endorsements Found
No Payee Endorsements Found

Lauren T. Smith

1. Discontent
 For once of his treatment he began
 to deal with a different segment
 of the world in order to find it out.
 He did not
 2. He did not but saw the words
 of discontent, the word
 of the young man, yellow in sweat
 on his forehead, in the light
 of the night. The light appear in
 the night of the world from
 the star of the night.

No Electronic Endorsements Found
No Payee Endorsements Found

Capture Date: 11/07/2007 Sequence #: **3674** REDACTED

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARATOGA SPRINGS, NY 12866

4454

Date 11/3/07

1-32/210 NY
26846

PAY to the
order of James T. Smith

One thousand & 00/100

\$ 1000.00
Dollars

Bank of America

ACH R/T 021000322

For REDACTED

James T. Smith

4454

[illegible]

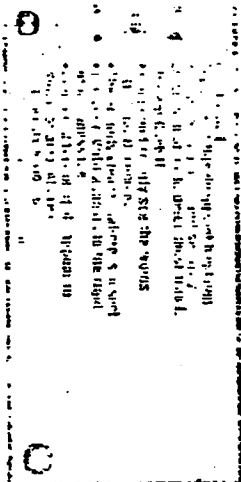
No Electronic Endorsements Found
No Payee Endorsements Found

Just D



Capture Date: 11/27/2007 Sequence # ^{REDACT}ED 3185

DAVID L. SMITH LYNN A. SMITH REDACTED SARATOGA SPRINGS, NY 12866		Date <u>11/27/07</u>	4494 1-32/210 NY 28646
COLONIAL CLASSIC	PAY to the order of <u>Lynne T. Smith</u>		\$ <u>1000.00</u>
	<u>One Thousand & 00/100</u>		Dollars
	Bank of America		
ACH R/T 621000322			
For <u>REDACTED</u>		<u>Lynn A. Smith</u> 4494	



Smith

No Electronic Endorsements Found
No Payee Endorsements Found

Bank of America



Capture Date: 12/31/2007 Sequence # ^{REDACT}ED 0976

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARATOGA SPRINGS, NY 12866

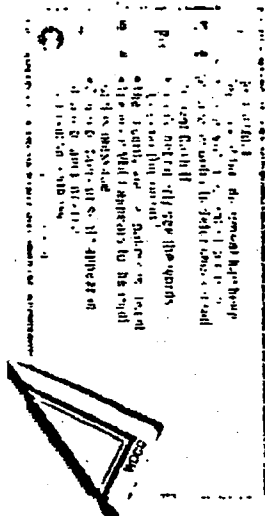
Date 12/14/07 4540
1-32/210 NY
25646

PAY to the order of Lauren T. Smith \$ 1,000.00
One thousand & 00/100 Dollars

Bank of America

ACH RPT 021000322
Merry Xmas
For Mom + Dad Lauren T. Smith
REDACTED 4540

CODING CLASS 02



No Electronic Endorsements Found
No Payee Endorsements Found

New York



Capture Date: 01/08/2008 Sequence # ^{REDACT}ED 3521

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARATOGA SPRINGS, NY 12866

Date 12/28/07 4558
1-32/210 NY
25848

PAY to the order of Lauren T. Smith \$ 1,000.00
One thousand & 00/100 Dollars

Bank of America

ACH R/T 621000322
rent
REDACTED

Lynn A. Smith
4558 REDACTED

No Electronic Endorsements Found
No Payee Endorsements Found



Capture Date: 02/29/2008 Sequence #: REDACTED 1588

DAVID L. SMITH LYNN A. SMITH REDACTED SARATOGA SPRINGS, NY 12866		4635 1-32/210 NY 25646
Date <u>2/25/08</u>		
PAY to the order of <u>Lamar T. Smith</u> \$ <u>1500.00</u>		
<u>One thousand five hundred & no</u> Dollars		
Bank of America		
ACH R/T 021000322		
For <u>rent & Col.</u>		
REDACTED		
<u>Lynn A. Smith</u>		
4635		

Do not cash or
deposit this check if you have
been notified by the bank or
the police that the check is
lost, stolen, or otherwise
invalid. If you cash or
deposit this check, you
may be liable for the full
amount of the check.
If you are notified by the
bank or the police, you
must stop cashing or
depositing the check.
If you do not stop, you
may be liable for the full
amount of the check.
If you are notified by the
bank or the police, you
must stop cashing or
depositing the check.
If you do not stop, you
may be liable for the full
amount of the check.

huth

No Electronic Endorsements Found
No Payee Endorsements Found



Capture Date: 03/24/2008 Sequence # 5486

REDACTED
ED
D

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARATOGA SPRINGS, NY 12866

Date 3/23/08

4675
1-32/210 NY
25646

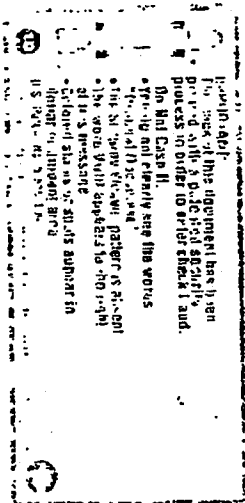
PAY to the
Order of Lauren T. Smith \$ 1,000.00
One thousand & 00/100 Dollars

Bank of America

ACH R/T 621000322

For REDACTED

Lynn A. Smith
4675



Lauren T. Smith

No Electronic Endorsements Found
No Payee Endorsements Found



Charles Anderson

29

100

TRAN 00042 - 04/29/2008 15:24
Entity NMA CE-0091320 TLR 00007
Automatic REDACTED 0815
R-002 2400384 03.68 01 P03
Cash Check 44724/02 \$1,100.00
REDACTED 02/12

Page 104 of 132

Print Req:#20100506001280

Fri May 07 03:55:54 PDT 2010

BOA 000685

REDACTED
D

Capture Date: 06/04/2008 Sequence #:

2213

DAVID L. SMITH
LYNN A. SMITH
REDACTED
SARATOGA SPRINGS, NY 12866

4767

Date 5/29/08 1-32/210 NY
26546

PAY to the order of Lauren Smith \$ 1,000.00
One thousand & 00/100 Dollars

Bank of America

ACH R/T 021000322


For REDACTED

Lynn A. Smith
4767

No Electronic Endorsements Found
No Payee Endorsements Found

REDACTED

Capture Date: 06/30/2008 Sequence # 3793

DAVID L. SMITH LYNN A. SMITH REDACTED SARATOGA SPRINGS, NY 12866		4817	
Date <u>6/29/08</u>		1-32/218 NY 26648	
PAY to the Order of <u>Lauren Smith</u>		\$ <u>1,000.00</u>	
<u>One thousand dollars and 00/100</u>		Dollars	
Bank of America			
ACH R/T 021000322			
For <u>rent</u> REDACTED		<u>Lauren Smith</u> 4817	

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QUESTIONS

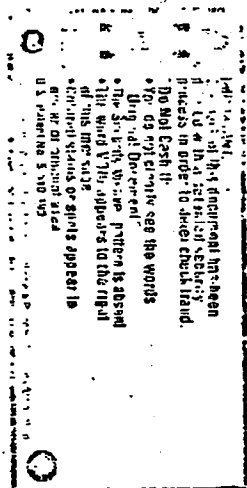
Electronic Endorsements

Date	Sequence	Bank #	BOFD	TRN	BankName	
06/30/2008	REDACTE	3793	REDACT	Y	Y	BANK OF AMERICA, NA
No Payee Endorsements Found						



Capture Date: 12/16/2008 Sequence #: REDACTED 1546

DAVID L. SMITH LYNN A. SMITH REDACTED SAKATOGA SPRINGS, NY 12866		Date <u>12/15/08</u>	5119 1-32/210 NY 25646
PAY to the Order of <u>Lynn Smith</u>		\$ <u>1,000.00</u>	
<u>One thousand & 00/100</u>		Dollars	
Bank of America			
ACH R/T 021000322			
For REDACTED		<u>Lynn P. Smith</u> 5119	



No Electronic Endorsements Found
No Payee Endorsements Found



Capture Date: 03/26/2009 Sequence # ^{REDACT}_{RD} 5945

DAVID L. SMITH LYNN A. SMITH REDACTED SARATOGA SPRINGS, NY 12866		5279
Date <u>3/23/09</u>		1-32/210 NY 26646
PAY to the Order of <u>Lauren Smith</u>		\$ <u>2000.00</u>
<u>Two Thousand and 00/100</u>		Dollars
Bank of America		
ACH R/T 021000222		
For REDACTED		<u>David Smith</u> 5279

Auth

Electronic Endorsements

Date	Sequence	Bank #	BOFD	TRN	BankName
03/26/2009	REDACTED 945	REDAC	Y	Y	BANK OF AMERICA, NA

No Payee Endorsements Found



Capture Date: 06/01/2009 Sequence #: REDACTED 0691

DAVID L. SMITH LYNN A. SMITH REDACTED SARATOGA SPRINGS, NY 12866		5319
Date <u>5/27/09</u>		1-32/210 NY 26648
PAY to the Order of <u>Lauren Smith</u>	\$ <u>2200.00</u>	
<u>Two thousand two hundred & no/100</u>		Dollars
Bank of America		
ACH NY 021000322		
For REDACTED	<u>Lynn A. Smith</u>	5319

Just the

Electronic Endorsements

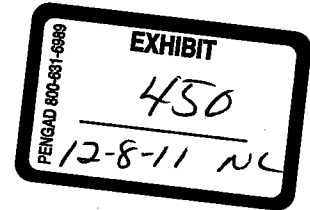
Date	Sequence	Bank #	BOFI	TRN	BankName
06/01/2009	REDACTED 691	REDACT	Y	Y	BANK OF AMERICA, NA

No Payee Endorsements Found

450

22,000,000 SHARES OF COMMON STOCK

I A S G
Integrated Alarm Services Group, Inc



We are selling 22,000,000 shares of our common stock. We have granted the underwriters an option to purchase up to an additional 3,300,000 shares of our common stock at the public offering price to cover over-allotments, if any.

This is the initial public offering of our common stock. Our common stock has been approved for quotation on the NASDAQ National Market under the symbol "IASG."

Investing in our common stock involves risks. Please see "Risk Factors" beginning on page 6.

	Per Share	Total
Public offering price	\$ 9.25	\$203,500,000
Underwriting discounts and commissions	\$0.6475	\$ 14,245,000
Proceeds, before expenses, to us(1)	\$8.6025	\$189,255,000

(1) Before deduction of our other expenses related to this offering, estimated at \$1,600,000.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

Concurrently with this offering, 792,793 shares of common stock have been registered under the Securities Act of 1933, as amended, on behalf of certain holders of convertible promissory notes, pursuant to a selling shareholder prospectus included within the Registration Statement of which this prospectus forms a part. The selling shareholders' shares are not part of this underwritten offering. The selling shareholders' shares may not be sold prior to 270 days from the effective date of the Registration Statement, without the prior written consent of Friedman, Billings, Ramsey & Co., Inc. The selling shareholders' shares are issuable upon conversion of an aggregate of \$5.5 million of our promissory notes.

The underwriters expect to deliver the shares to purchasers on or about July 29, 2003.

FRIEDMAN BILLINGS RAMSEY

STIFEL, NICOLAUS & COMPANY
Incorporated

WELLS FARGO SECURITIES, LLC

The date of this Prospectus is July 23, 2003.

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The trademark or trade names referred to in this prospectus are the property of their respective owners.

II Until August 17, 2003 (25 days after commencement of this offering), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to unsold allotments or subscriptions.

USE OF PROCEEDS

We expect that we will receive net proceeds from this offering of approximately \$187.7 million, or approximately \$216.0 million if the underwriters exercise their over-allotment option in full. Such estimates are based on an initial public offering price of \$9.25 per share. The amounts listed below include balances as of July 2, 2003 and take into account prepayment fees.

We intend to use the net proceeds of this offering as follows:

- Repayment of promissory notes issued upon exchange of trust certificates of seven trusts, due in June and July 2005, bearing interest at 12% per annum. The seven trusts were originally controlled by affiliates of ours. The trusts were formed for the purpose of acquiring monitoring contracts. The note holders are comprised of non-affiliated investors. All of such indebtedness was incurred by IASI. \$ 25.2 million
- Repayment of bank debt, due through May 1, 2005, bearing interest at various rates from 8.0% to 12.5% per annum. The debt is due to Key Bank, N.A. and was incurred for the purpose of acquiring central stations, wholesale monitoring contracts, and for working capital. All of such indebtedness was incurred by KC Acquisition. \$ 24.7 million
- Repayment of subordinated debt, due on dates ranging from April 1, 2005 to April 1, 2007, bearing interest at rates ranging from 10.10% to 12.50% per annum. The subordinated debt is from a collection of investment trusts created for the purchase of monitoring contracts, and were originally controlled by affiliates of ours. The debt is payable to non-affiliated investors. All of such indebtedness was incurred by IASI. \$ 9.2 million
- Repayment of subordinated debt, due on June 1, 2006, bearing interest at 12.5% per annum. This debt is from an investment trust controlled by an affiliate of ours. The trust was formed for the purpose of acquiring monitoring contracts. The debt is payable to non-affiliated accredited investors. All of such indebtedness was incurred by IASI. \$ 6.2 million
- Repayment of promissory notes to Lynn A. Smith, the wife of one of our directors, bearing interest at 6.25% and 12% per annum, and due in March 2004 and January 2004, respectively. One of the notes (\$3.0 million) is debt incurred by KC Acquisition, and the other (\$3.0 million) is debt incurred by IASI prior to its acquisition in January. A portion (\$2.0 million) of the proceeds of the \$3.0 million indebtedness incurred by IASI was loaned by IASI to KC Acquisition. \$ 6.0 million
- Repayment of debt, due on December 1, 2005, bearing interest at a variable interest rate, which is currently 6.75%. This debt is due to Security Leasing Partners, L.P., an unaffiliated third-party, and was created for the purpose of acquiring monitoring contracts. This indebtedness was incurred by IASI. \$ 3.7 million
- Repayment of debt to various lenders, due on dates ranging from May 1, 2003 to April 1, 2006, bearing interest at rates ranging from 8.0% to 12.0% per annum. The debt is due to Key Bank, N.A., BSB Bancorp, and 15 investment trusts not exchanged for promissory notes of IASI. In the aggregate 38% of the 41 trusts' certificates were not exchanged for promissory notes. The investment trusts were created for the purchase of monitoring contracts, and were originally controlled by affiliates of ours. The debt is payable to non-affiliated investors. All of such indebtedness was incurred by IASI. \$ 3.6 million
- Repayment of debt to M&S Partners, an entity controlled by Messrs. Smith and McGinn. This indebtedness was assumed from M&S Partners by IASI. \$ 0.9 million

- Repayment of debt to Royal Thoughts, LLC, due in January, 2004, bearing interest of 9.0% per annum. Curt Quady, an Executive Vice President and his family own a majority of Royal Thoughts. This indebtedness was incurred by KC Acquisition in connection with the acquisition of the 5.3% interest in Royal Thoughts.

\$ 0.6 million

Total repayment of debt:

\$ 80.1 million

Proceeds intended for purchases of alarm monitoring contracts. This represents the estimated cash portion of the net proceeds that management believes it will expend to acquire additional alarm monitoring contracts. The cost of the alarm monitoring contracts to be acquired will be determined by arms length negotiations between management and the owners of such contracts. None of such contracts is owned by any of our affiliates.

\$104.6 million

Working capital and general corporate purposes

\$ 3.0 million

Total Uses:

\$187.7 million

All of the debt to be repaid from the proceeds of this offering is related to the purchase of alarm monitoring contracts, central stations, Dealer relationships or was utilized for working capital. Other than Royal Thoughts, Lynn A. Smith, and M&S Partners, none of the holders of our debt to be repaid from the proceeds of this offering is an affiliate of ours or related to one of our affiliates. In total, 64.7% of the debt to be repaid with this offering was incurred by entities that were affiliated with us prior to their acquisition in January. Management will have broad discretion in the application of the net proceeds allocated to working capital and other general corporate purposes.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

In addition to their executive positions with us, Mr. McGinn, Mr. Few and Mr. Smith are also considered our promoters. All transactions with the promoters are set forth below.

In connection with the acquisition of Monital, \$1.4 million of long-term debt and \$1.9 million of retail end-user alarm monitoring contracts were transferred to an entity owned by Messrs. McGinn, Smith and Few, Sr. This resulted in a dividend distribution of \$0.3 million to that related party and a compensation charge of \$2 million by us.

In January 1998, as part of the reorganization of King Central, Mr. Few, Sr. loaned \$715,633 to KC Acquisition. The loan did not bear interest and was payable upon demand. As of December 31, 2002, the loan had a balance of \$138,115. Since 1999, Morlyn loaned Mr. Few, Sr. an aggregate of \$107,000 in non-interest bearing loans. As a result of our acquisition of Morlyn, the loans were offset and the balance of \$31,115 was repaid to Mr. Few, Sr.

In January 2003, we acquired all of the capital stock of IASI in exchange for an aggregate of 772,192 shares of our common stock. IASI was owned by Messrs. McGinn, Smith and Few. Minority interests (Messrs. McGinn and Smith) were issued 483,052 shares that were valued at \$10,627,144, based on a price of \$22 per share. The 289,140 shares issued to Mr. Few have a value of \$6,361,080, based on a price of \$22 per share.

In January 2003, we acquired all of the membership interests of Morlyn Financial Group, LLC. in exchange for 17,000 shares of our common stock. Morlyn was owned by Messrs. McGinn, Smith and Few. Minority interests (Messrs. McGinn and Smith) were issued 3,400 shares that were valued at \$74,800, based on a price of \$22 per share. The 13,600 shares issued to Mr. Few have a value of \$299,200, based on a price of \$22 per share.

Palisades, an entity owned by TJF Enterprises, LLC and First Integrated Capital Corporation, was the owner of approximately 38% of the alarm monitoring contracts underlying the trusts. In January 2003, Palisades exchanged all of its ownership interests for 25,000 shares of our stock, became a wholly-owned subsidiary of ours and distributed such stock to its shareholders, TJF Enterprises, LLC, an entity owned by Mr. Few and First Integrated Capital Corporation, an entity majority owned by Messrs. McGinn and Smith. A minority interest (First Integrated Capital Corporation) was issued 12,500 shares that were valued at \$275,000, based on a price of \$22 per share. The 12,500 shares issued to TJF have a value of \$275,000, based on a price of \$22 per share.

In January 2003, Payne Security LLC and Guardian Group LLC, two limited liability companies originally formed to acquire alarm monitoring contracts, were acquired by us and became our wholly-owned subsidiaries. In connection with the acquisition of Payne and Guardian, we issued an aggregate of 50,250 and 16,750 shares of our common stock, respectively. Payne and Guardian were owned by TJF Enterprises, LLC and First Integrated Capital Corporation. The minority interest (First Integrated Capital Corporation) was issued 22,425 and 7,475 shares, respectively in the Payne and Guardian acquisitions that were valued at \$493,350 and \$164,450, respectively, based on a price of \$22 per share. The 27,825 shares issued to TJF in the Payne acquisition and the 9,275 shares issued to TJF in connection with the Guardian acquisition have values of \$612,150 and \$204,050 respectively, based on a price of \$22 per share.

Pointe Bank, for which Mr. McGinn serves as chairman of the board of directors and R. Carl Palmer Jr. serves as CEO, loaned us an aggregate of \$2.6 million. The loan bore interest at an annual rate of 9.75% per annum. This loan was repaid by us utilizing a portion of the proceeds of the \$5.5 million Convertible Note offering in September 2002.

We lease our executive offices in Albany, New York from Pine Street Associates LLC, an entity equally owned by Timothy M. McGinn and David L. Smith. The lease is for a period of five years, at an annual rental of \$0.1 million. We believe that the rental rate is at market and that the other terms are at least as favorable as could be obtained from a third party.

For the period January 1, 2000 to January 31, 2003, McGinn, Smith & Co., Inc. acted as either a placement agent or an investment banker in connection with financings, as well as an investment banker in connection with certain of our acquisitions. Mr. McGinn is non-executive Chairman and a director of McGinn, Smith & Co., Inc. McGinn, Smith & Co., Inc., an NASD registered broker dealer, received

aggregate commissions and/or investment banking fees of \$4.5 million for acting in such capacity. McGinn, Smith & Co., Inc., is acting as an underwriter in this offering and may act as an investment banker to procure debt or senior additional capital in the future. McGinn, Smith & Co., Inc. is owned equally by Mr. Smith and Mr. McGinn.

In September 2002, IASG (successor to KC Acquisition), acquired all of the capital stock of Criticom in a merger transaction in consideration for the issuance of 155,911 shares of our common stock, \$1.0 million in cash and a contingent payment of 68,182 shares of our common stock tied to Criticom's financial performance. Curtis Quady, an Executive Vice President was the President of Criticom. Mr. Quady and certain members of his family who owned approximately 72% of Criticom received 112,836 shares of our common stock pursuant to the KC Acquisition Merger Agreement. The shares were valued at \$1,241,196, based on a price of \$11 per share.

In connection with the acquisition of Criticom, we acquired a 5.03% interest in Royal Thoughts, LLC. The purchase price was approximately \$3.5 million net of cash acquired of \$0.6 million as well as a note for \$0.7 million. In connection with our purchase, we received a right of first refusal to provide any monitoring services for new technology developed by Royal Thoughts. Mr. Quady is also the Chief Manager of Royal Thoughts, LLC. Mr. Quady and his immediate family members owned 53.7% of Royal Thoughts, LLC. We intend to pay off the remaining balance of approximately \$0.6 million of indebtedness incurred in connection with this acquisition out of the net proceeds of this offering. See "Use of Proceeds."

In October 2002, Lynn A. Smith, the wife of David L. Smith, one of our Directors, loaned us \$3 million. The loan, which is being utilized by us for working capital, bears interest at a rate equal to the preferred broker call rate charged by Bear Stearns Securities Corp. to its corresponding broker dealers, plus 2.5% per annum, which rate was initially 6.25%. The principal of the loan is repayable on March 15, 2004. In March 2003, Mrs. Smith extended the maturity date of the loan to April 30, 2004. Interest is payable monthly. In January 2003, IASI borrowed \$3 million from Mrs. Smith. The interest rate is 12%. The entire principal and interest is due on January 15, 2004. In March 2003, Mrs. Smith extended the maturity date of the loan to April 30, 2004. IASI loaned \$2 million of such amount to IASG on the same terms. In March 2003, IASI extended the maturity date of the loan to IASG to June 15, 2005. Following the offering, we intend to repay those loans out of the net proceeds of this offering.

In January 2002, IASG borrowed an aggregate of \$5.8 million from RTC Trust. RTC Trust is controlled by Mr. McGinn and Mr. Smith, although they are not the beneficial owners of the RTC Trust. A related entity owned by Messrs. McGinn and Smith procured the debt and received a placement fee of \$175,000 in connection with this placement. The current balance of \$5.4 million bears interest at 14.31% and is collateralized by certain alarm monitoring contracts. It is repayable in monthly installments of approximately \$0.1 million. This loan is being repaid out of the proceeds of the offering. See "Use of Proceeds."

Mary Ann McGinn, the wife of Timothy M. McGinn, is our Senior Vice President, Legal Affairs. She has served IASI since its inception in April 2002. Mrs. McGinn has received approximately \$3,000 compensation for her services.

Suzanne Sweeney, the daughter of Mr. Few, is President of Morlyn, and has received aggregate compensation of approximately \$108,000, \$106,000 and \$54,000 for the last three fiscal years.

Jeffrey Few, the son of Mr. Few, is Vice President of Sales for Morlyn, and has received aggregate compensation of approximately \$104,000, \$60,000 and \$94,000 for the last three fiscal years.

While IASI and IASG were separate entities, IASI often provided financing to IASG which was used to purchase portfolios of accounts and Dealer relationships. These transactions were memorialized in two series of promissory notes. One series of notes totaled \$1.7 million, with maturity dates from February 2001 to August 2005. Fixed interest rates ranged from 23% to 31% and were collateralized by accounts receivables. The other series of notes totaled \$2.3 million, with maturity dates ranging from August 2005 to April 2006. Fixed interest rates ranged from 12.5% to 17.3% and were collateralized by financed receivables.

During the year ended December 31, 2002, IASI assumed approximately \$3.9 million of debt from Capital Center Credit Corporation (an entity controlled by Messrs. Smith and McGinn) (of which \$0.9 million is due to M&S partners, an entity controlled by Messrs. Smith and McGinn, and approximately \$3.0 million is due to a non-related party), which resulted in a return of capital in a corresponding amount. The \$0.9 million will be repaid to M&S out of the net proceeds of this offering. In January and February 2003,

we made net distributions aggregating approximately \$2.1 million to Capital Center Credit Corp., after taking into account the issuance of \$0.7 million of one-year, 9% notes to Capital Center Credit Corp., due April 2004 and a \$0.3 million cash contribution. Capital Center Credit has previously contributed capital in excess of the amount of these distributions to us.

In August 2001, IASI loaned Criticom an aggregate of \$2.0 million. Criticom utilized such amounts for working capital. Upon our merger with IASI, this indebtedness was extinguished.

In March and April 2003, IASI assumed \$1.6 million and \$0.2 million, respectively of debt from Capital Center Credit Corp. This consisted of a non-cash transaction through which debt of Capital Center Credit Corp., consisting of \$0.5 million of one year notes and \$1.3 million of two year notes, was transferred to IASI. Capital Center Credit Corp. performed tasks including billing, collections, service and other administrative services relative to the Trusts and formation of IASI and thus incurred various debts relative to executing these functions. Consequently, the Company agreed to enter into these transactions to discharge the debt of Capital Center Credit Corp. The Company has no further liability to Capital Center Credit Corp. and will not have any further business dealings with Capital Center Credit Corp. Capital Center Credit Corp. is an affiliate of McGinn, Smith & Co. Inc. and M&S Partners. Capital Center Credit Corp. is an entity controlled and managed by Timothy M. McGinn and David L. Smith.

In addition, prior to IASG's wholly-owned subsidiary's acquisition of IASI, IASG provided alarm monitoring services to accounts owned by related parties. Revenues earned from these alarm monitoring services were \$0.5 million and \$1.6 million, for the years ended December 31, 2001 and 2002, respectively. Of such amounts, \$0.4 million and \$1.4 million were from IASI. In connection with a dispute regarding such alarm monitoring services, IASG granted IASI concessions on monitoring expenses of \$993,000 and \$35,000 for the years ended December 31, 2001 and 2002, respectively. IASI is now a wholly-owned subsidiary of ours.

In February 2003, the Company borrowed \$600,000 at a 9% per annum interest rate from an investment fund which is managed by McGinn, Smith and Co., Inc. Principal is due at maturity (April 2004) with quarterly interest payments commencing 2003.

During 2000 and 2001, IASI purchased alarm monitoring contracts from entities controlled by Messrs. McGinn and Smith, for an aggregate purchase price of \$12.7 million and \$0.2 million, respectively. These purchased alarm monitoring contracts were combined with notes receivable purchased from related parties during 2000 and 2001 totaling \$3.3 million and \$7.1 million, respectively, and were placed in various trusts. These amounts were identical to the amounts paid by affiliated entities to unrelated third parties for both the alarm monitoring contracts and notes receivable. In connection with such transactions, McGinn and Smith affiliates obtained rights to the alarm monitoring contracts and notes receivable and after a very short duration, sold the assets to the trusts. In the year 2001, \$32 million of alarm monitoring contracts were purchased directly from independent third parties by Payne and Guardian, our wholly owned subsidiaries.

In connection with the structuring of eleven trusts in 2000 and six trusts in 2001, which included both alarm monitoring contracts and notes receivable, we paid an aggregate of \$814,860 and \$1,027,420, respectively, to entities controlled by Messrs. McGinn and Smith, as placement fees for the procurement of the financing necessary to purchase the alarm monitoring contracts and notes receivable. We did not purchase any alarm monitoring contracts from affiliated entities in 2002.

During 2001 and 2002, Morlyn performed advisory services for IASI and charged IASI \$1.0 million and \$1.2 million, respectively. Morlyn LLC, an affiliate of IASG provides IASI with customer care services and other advisory services, including due diligence on contract acquisitions. From September 2001 through January 2003, Morlyn charged the Company a weekly fee of \$25,000 for customer care and certain advisory services. During 2002, M&S Partners assumed a note receivable owned by IASI which resulted in a distribution of capital to M&S Partners of approximately \$0.8 million.

Four trusts, for which M&S Partners acts as a trustee (Security Participation Trust, Security Participation Trust II, Security Participation Trust III, and Security Participation Trust IV) receive monitoring services from us at a discounted rate of approximately \$3.00 per account, per month, and billing and collection services from us, at no cost. These trusts purchase alarm monitoring contracts on a monthly basis, with the final trust maturing on December 1, 2004. Messrs. McGinn and Smith serve as trustees of these trusts. Neither Messrs. McGinn or Smith, nor M&S Partners has any beneficial ownership in such trusts.

Concurrent with the offering, Messrs. McGinn, Few, Sr., Smith, Quady and the former shareholders of Criticom, will be issued, in the aggregate, options to purchase 1,900,000 shares of the Company's common stock (the "Shareholder Options"). The options will vest as follows: (i) 30% will vest and be immediately exercisable on the first anniversary of the offering; (ii) 30% will vest and be immediately exercisable on the second anniversary of the offering; and (iii) 40% will vest and become immediately exercisable on the third anniversary of the offering. The exercise price of the options will be equal to the per share offering price and thus have no intrinsic value.

Prior to our acquisition of the affiliated entities, their ownership was as follows:

Integrated Alarm Services, Inc.		Criticom International Corporation	
M&S Partners LLC (1)	62.5%	Curtis Quady	52.4%
TJF Enterprises LLC (2)	37.5%	Duane Plowman	14.4%
Morlyn Financial Group		Jill Quady (4)	10.0%
Thomas S. Few Sr.	80%	Lisa Fischer (4)	9.9%
Timothy M. McGinn	10%	Raymond Menad	7.3%
David L. Smith	10%	David Speed	5.0%
		Vincent Erickson	*
Payne Security Group, LLC		Palisades Group LLC	
First Integrated Capital Corporation (3)	50%	First Integrated Capital Corporation (3)	50%
TJF Enterprises LLC (2)	50%	TJF Enterprises LLC (2)	50%
		Guardian Group, LLC	
		First Integrated Capital Corporation (3)	50%
		TJF Enterprises LLC (2)	50%

(*) Less than one percent

(1) M&S Partners LLC is owned by Messrs. McGinn and Smith.

(2) TJF Enterprises LLC is owned by Thomas J. Few, Sr.

(3) First Integrated Capital Corporation is majority owned by Messrs. McGinn and Smith.

(4) Jill Quady and Lisa Fischer are the daughters of Curtis Quady, an Executive Vice President.

Policy Regarding Transactions With Affiliates

Although we believe the foregoing transactions were fair and in our best interests we did not have any formal policy in place. Our Board of Directors adopted a policy in May 2003, that any future transactions with affiliates, including without limitation, our officers, Directors, and principal stockholders, will be on terms no less favorable to us than we could have obtained from unaffiliated third parties. Any such transactions will be approved by a majority of our Board of Directors, including a majority of the independent and disinterested members, or, if required by law, a majority of our disinterested stockholders.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock as of April 30, 2003, by the following individuals or groups:

- each person known by us to beneficially own more than 5% of the outstanding shares of our common stock;
- each of our directors;
- each of the executive officers named in the summary compensation table contained in this prospectus; and
- all of our directors and executive officers as a group.

Percentage of shares owned is based on 1,590,911 shares of common stock outstanding as of the date of this prospectus and 23,590,911 shares outstanding after this offering, assuming that the underwriters' over-allotment option is not exercised.

Names and Address of Beneficial Owner (1)	Shares Beneficially Owned	Percent Beneficially Owned	
		Before the Offering	After the Offering
Thomas J. Few, Sr.(2)	795,550	50.01%	3.37%
Timothy M. McGinn(3)(8)	340,925	21.43%	1.45%
Curtis Quady(4)(5)	81,644(5)	5.13%	0.35%
David L. Smith(6)(8)	340,925	21.43%	1.45%
Brian E. Shea	—	—	—
Robert B. Heintz	—	—	—
Michael Moscinski	—	—	—
Mary Ann McGinn(7)	340,925(7)	21.43%	1.45%
John W. Meriwether	—	—	—
Clint Allen	—	—	—
R. Carl Palmer, Jr.	—	—	—
Timothy J. Tully	—	—	—
Ralph S. Michael, III	—	—	—
John Mabry	—	—	—
All directors and officers as a group (13 persons)	1,516,644	95.33%	6.43%

- (1) Except as set forth above, the address of each individual is c/o Integrated Alarm Services Group, Inc., One Capital Center, 99 Pine Street, 3rd Floor, Albany, New York 12207.
- (2) Includes 49,600 shares of common stock owned by TJF Enterprises, LLC, which is owned by Mr. Few, Sr. Does not include up to 942,400 shares issuable upon the exercise of the Shareholder Options, see "Certain Relationships and Related Transactions."
- (3) Does not include 385,700 shares issuable upon the exercise of the Shareholder Options, see "Certain Relationships and Related Transactions."
- (4) Does not include 97,494 shares issuable upon the exercise of the Shareholder Options, see "Certain Relationships and Related Transactions."
- (5) Does not include up to 35,700 additional shares that may be issued to Mr. Quady upon the achievement of certain performance criteria based on 2003 results.
- (6) Does not include 385,700 Shareholder Options, see "Certain Relationships and Related Transactions."
- (7) Represents shares of common stock beneficially owned by Timothy M. McGinn, Mary Ann McGinn's husband.
- (8) Includes an aggregate of 42,400 shares owned by First Integrated Capital Corporation, which is majority owned and controlled by Messrs. McGinn and Smith.