



**BrokerCheck Report**

**MCGINN, SMITH & CO., INC.**

CRD# 8453

Report #31837-92085, data current as of Tuesday, July 08, 2014.

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**About BrokerCheck®**

BrokerCheck offers information on all current, and many former, registered securities brokers, and all current and former registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**

BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.

Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

- **Where did this information come from?**

The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:

- information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
- information that regulators report regarding disciplinary actions or allegations against firms or brokers.

- **How current is this information?**

Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.

- **What if I want to check the background of an investment adviser firm or investment adviser representative?**

To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at <http://www.adviserinfo.sec.gov>. In the alternative, you may search the IAPD website directly or contact your state securities regulator at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P455414>.

- **Are there other resources I can use to check the background of investment professionals?**

FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.



Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at

[brokercheck.finra.org](http://brokercheck.finra.org)



For additional information about the contents of this report, please refer to the User Guidance or [www.finra.org/brokercheck](http://www.finra.org/brokercheck). It provides a glossary of terms and a list of frequently asked questions, as well as additional resources.

For more information about FINRA, visit [www.finra.org](http://www.finra.org).

Thank you for using FINRA BrokerCheck.

www.finra.org/brokercheck

User Guidance

**MCGINN, SMITH & CO., INC.**

CRD# 8453

SEC# 8-25374

**Main Office Location**

CAPITAL CENTER  
99 PINE STREET  
ALBANY, NY 12207-3167

**Mailing Address**

CAPITAL CENTER  
99 PINE STREET  
ALBANY, NY 12207-3167

**Business Telephone Number**

518 449-5131

This firm is a brokerage firm and an investment adviser firm. For more information about investment adviser firms, visit the SEC's Investment Adviser Public Disclosure website at:

<http://www.adviserinfo.sec.gov>

**Report Summary for this Firm**

This report summary provides an overview of the brokerage firm. Additional information for this firm can be found in the detailed report.

**Firm Profile**

This firm is classified as a corporation.

This firm was formed in New York on 09/04/1980.

Its fiscal year ends in December.

**Firm History**

Information relating to the brokerage firm's history such as other business names and successions (e.g., mergers, acquisitions) can be found in the detailed report.

**Firm Operations**

This brokerage firm is no longer registered with FINRA or a national securities exchange.

**Disclosure Events**

Brokerage firms are required to disclose certain criminal matters, regulatory actions, civil judicial proceedings and financial matters in which the firm or one of its control affiliates has been involved.

Are there events disclosed about this firm? **Yes**

**The following types of disclosures have been reported:**

Type	Count
Regulatory Event	18
Civil Event	1
Arbitration	5
Bond	1



## Firm Profile

This firm is classified as a corporation.

This firm was formed in New York on 09/04/1980.

Its fiscal year ends in December.

## Firm Names and Locations

This section provides the brokerage firm's full legal name, "Doing Business As" name, business and mailing addresses, telephone number, and any alternate name by which the firm conducts business and where such name is used.

**MCGINN, SMITH & CO., INC.**

Doing business as **MCGINN, SMITH & CO., INC.**

**CRD#** 8453

**SEC#** 8-25374

### Main Office Location

CAPITAL CENTER  
99 PINE STREET  
ALBANY, NY 12207-3167

### Mailing Address

CAPITAL CENTER  
99 PINE STREET  
ALBANY, NY 12207-3167

### Business Telephone Number

518 449-5131

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**Firm Profile**

This section provides information relating to all direct owners and executive officers of the brokerage firm.

**Direct Owners and Executive Officers**

<b>Legal Name &amp; CRD# (if any):</b>	SMITH, DAVID LEE 427284
<b>Is this a domestic or foreign entity or an individual?</b>	Individual
<b>Position</b>	PRESIDENT, SENIOR REGISTERED OPTION PRINCIPAL, COMPLIANCE REGISTERED OPTION PRINCIPAL, CHIEF COMPLIANCE OFFICER
<b>Position Start Date</b>	09/1980
<b>Percentage of Ownership</b>	50% but less than 75%
<b>Does this owner direct the management or policies of the firm?</b>	Yes
<b>Is this a public reporting company?</b>	No

<b>Legal Name &amp; CRD# (if any):</b>	MCGINN, TIMOTHY MICHAEL 813935
<b>Is this a domestic or foreign entity or an individual?</b>	Individual
<b>Position</b>	CHAIRMAN OF THE BOARD
<b>Position Start Date</b>	09/1980
<b>Percentage of Ownership</b>	25% but less than 50%
<b>Does this owner direct the management or policies of the firm?</b>	Yes
<b>Is this a public reporting company?</b>	No

<b>Legal Name &amp; CRD# (if any):</b>	LIVINGSTON, THOMAS EDWARD 864264
<b>Is this a domestic or foreign entity or an individual?</b>	Individual
<b>Position</b>	SENIOR VICE PRESIDENT

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User Guidance

**Firm Profile****Direct Owners and Executive Officers (continued)**

Position Start Date	09/1988
Percentage of Ownership	10% but less than 25%
Does this owner direct the management or policies of the firm?	No
Is this a public reporting company?	No

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Legal Name & CRD# (if any):	SHEA, BRIAN EDWARD 2570872
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Is this a domestic or foreign entity or an individual?	Individual
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Position	CHIEF FINANCIAL OFFICER
Position Start Date	04/2009
Percentage of Ownership	Less than 5%
Does this owner direct the management or policies of the firm?	Yes
Is this a public reporting company?	No

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User Guidance

## Firm Profile

This section provides information relating to any indirect owners of the brokerage firm.



## Indirect Owners

No information reported.

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## Firm History

This section provides information relating to any successions (e.g., mergers, acquisitions) involving the firm.

No information reported.

User Guidance





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User Guidance

**Firm Operations****Registrations**

This section provides information about the regulators (Securities and Exchange Commission (SEC), self-regulatory organizations (SROs), and U.S. states and territories) with which the brokerage firm is currently registered and licensed, the date the license became effective, and certain information about the firm's SEC registration.

**This firm is currently registered with the SEC, 0 SROs and 0 U.S. states and territories.**

<b>Federal Regulator</b>	<b>Status</b>	<b>Date Effective</b>
SEC	Approved	10/30/1980

**SEC Registration Questions**

This firm is registered with the SEC as:

A broker-dealer: Yes

A broker-dealer and government securities broker or dealer: Yes

A government securities broker or dealer only: No

This firm has ceased activity as a government securities broker or dealer: No

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**Firm Operations**

**Registrations (continued)**

User Guidance



## Firm Operations

### Types of Business

This section provides the types of business, including non-securities business, the brokerage firm is engaged in or expects to be engaged in.

**This firm currently conducts 13 types of businesses.**

#### Types of Business

Broker or dealer retailing corporate equity securities over-the-counter

Broker or dealer selling corporate debt securities

Underwriter or selling group participant (corporate securities other than mutual funds)

Mutual fund retailer

U S. government securities broker

Municipal securities broker

Broker or dealer selling variable life insurance or annuities

Put and call broker or dealer or option writer

Investment advisory services

Non-exchange member arranging for transactions in listed securities by exchange member

Trading securities for own account

Private placements of securities

Broker or dealer selling interests in mortgages or other receivables



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## Firm Operations

User Guidance



### Clearing Arrangements

This firm does not hold or maintain funds or securities or provide clearing services for other broker-dealer(s).

### Introducing Arrangements

This firm does refer or introduce customers to other brokers and dealers.

<b>Name:</b>	NATIONAL FINANCIAL SERVICES LLC
<b>CRD #:</b>	13041
<b>Business Address:</b>	200 SEAPORT BOULEVARD BOSTON, MA 02110
<b>Effective Date:</b>	11/30/2005
<b>Description:</b>	MCGINN, SMITH HAS A CLEARING FIRM ARRANGEMENT WITH NATIONAL FINANCIAL SERVICES WHEREBY NATIONA WILL ACT AS CLEARING BROKER, PROVIDE CLIENT PURCHASE AND SALE ADVICES, MONTHLY STATEMENTS AND OTHER REQUIRED DOCUMENTATION.

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**Firm Operations****Industry Arrangements**

**This firm does have books or records maintained by a third party.**

**Name:** NATIONAL FINANCIAL SERVICES LLC  
**CRD #:** 13041  
**Business Address:** 200 SEAPORT BLVD  
 BOSTON, MA 02110  
**Effective Date:** 11/30/2005  
**Description:** MCGINN, SMITH HAS A CLEARING FIRM ARRANGEMENT WITH NATIONAL FINANCIAL SERVICES WHEREBY NATIONA WILL ACT AS CLEARING BROKER, PROVIDE CLIENT PURCHASE AND SALE ADVICES, MONTHLY STATEMENTS AND OTHER REQUIRED DOCUMENTATION.

**This firm does have accounts, funds, or securities maintained by a third party.**

**Name:** NATIONAL FINANCIAL SERVICES LLC  
**CRD #:** 13041  
**Business Address:** 200 SEAPORT BLVD  
 BOSTON, MA 02110  
**Effective Date:** 11/30/2005  
**Description:** MCGINN, SMITH HAS A CLEARING FIRM ARRANGEMENT WITH NATIONAL FINANCIAL SERVICES WHEREBY NATIONA WILL ACT AS CLEARING BROKER, PROVIDE CLIENT PURCHASE AND SALE ADVICES, MONTHLY STATEMENTS AND OTHER REQUIRED DOCUMENTATION.

**This firm does have customer accounts, funds, or securities maintained by a third party.**

**Name:** NATIONAL FINANCIAL SERVICES LLC  
**CRD #:** 13041  
**Business Address:** 200 SEAPORT BLVD  
 BOSTON, MA 02110  
**Effective Date:** 11/30/2005  
**Description:** MCGINN, SMITH HAS A CLEARING FIRM ARRANGEMENT WITH NATIONAL FINANCIAL SERVICES WHEREBY NATIONA WILL ACT AS CLEARING BROKER, PROVIDE CLIENT PURCHASE AND SALE ADVICES, MONTHLY STATEMENTS AND OTHER REQUIRED DOCUMENTATION.

**Control Persons/Financing**

**This firm does not have individuals who control its management or policies through agreement.**

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## **Firm Operations**

### **Industry Arrangements (continued)**

User Guidance



This firm does not have individuals who wholly or partly finance the firm's business.

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## Firm Operations



### Organization Affiliates

This section provides information on control relationships the firm has with other firms in the securities, investment advisory, or banking business.

This firm is, directly or indirectly:

- in control of
- controlled by
- or under common control with

the following partnerships, corporations, or other organizations engaged in the securities or investment advisory business.

**MCGINN, SMITH HOLDINGS, LLC is under common control with the firm.**

<b>Business Address:</b>	99 PINE STREET ALBANY, NY 12207
<b>Effective Date:</b>	09/17/2009
<b>Foreign Entity:</b>	No
<b>Country:</b>	
<b>Securities Activities:</b>	Yes
<b>Investment Advisory Activities:</b>	Yes
<b>Description:</b>	MCGINN, SMITH HOLDINGS, LLC IS OWNED 50% BY DAVID L. SMITH, 30% BY TIMOTHY M. MCGINN AND 20% BY THOMAS E. LIVINGSTON.

**MCGINN, SMITH ADVISORS is under common control with the firm.**

<b>Business Address:</b>	99 PINE STREET ALBANY, NY 12207
<b>Effective Date:</b>	07/01/2003
<b>Foreign Entity:</b>	No
<b>Country:</b>	
<b>Securities Activities:</b>	Yes
<b>Investment Advisory Activities:</b>	Yes
<b>Description:</b>	MCGINN, SMITH ADVISORS IS OWNED 50% BY DAVID L. SMITH, 30% BY TIMOTHY M. MCGINN AND 20% BY THOMAS E. LIVINGSTON.

**MCGINN, SMITH CAPITAL HOLDINGS is under common control with the firm.**

<b>Business Address:</b>	99 PINE STREET
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**Firm Operations****Organization Affiliates (continued)**

ALBANY, NY 12207

**Effective Date:** 07/01/1989

**Foreign Entity:** No

**Country:**

**Securities Activities:** Yes

**Investment Advisory Activities:** No

**Description:** MCGINN, SMITH CAPITAL HOLDINGS IS OWNED 52% BY MCGINN, SMITH HOLDINGS, LLC, 24% BY DAVID L. SMITH AND 24% BY TIMOTHY M. MCGINN.

**M&S PARTNERS is under common control with the firm.**

**Business Address:** 99 PINE STREET  
ALBANY, NY 12207

**Effective Date:** 09/15/1980

**Foreign Entity:** No

**Country:**

**Securities Activities:** Yes

**Investment Advisory Activities:** No

**Description:** MS PARTNERS IS 50% OWNED BY DAVID L. SMITH AND 50% OWNED BY TIMOTHY M. MCGINN.

**CMS FINANCIAL SERVICES CORP. is under common control with the firm.**

**Business Address:** 99 PINE STREET  
ALBANY, NY 12207

**Effective Date:** 12/01/2006

**Foreign Entity:** No

**Country:**

**Securities Activities:** No

**Investment Advisory Activities:** No

**Description:** APPROXIMATELY 8% OF CMS FINANCIAL SERVICES CORP. IS OWNED BY MCGINN, SMITH CAPITAL HOLDINGS, WHICH IN TURN IS OWNED 52% BY



**Firm Operations****Organization Affiliates (continued)**

MCGINN, SMITH HOLDINGS LLC, 24% BY TIMOTHY M. MCGINN AND 24% BY DAVID L. SMITH.

**PINE STREET CAPITAL PARTNERS, LLC is under common control with the firm.**

**Business Address:** 99 PINE STREET  
ALBANY, NY 12207

**Effective Date:** 07/01/2004

**Foreign Entity:** No

**Country:**

**Securities Activities:** No

**Investment Advisory Activities:** Yes

**Description:** PINE STREET CAPITAL PARTNERS, OOC IS 46% OWNED BY DAVID L. SMITH.

**FIRST ADVISORY INCOME NOTES, LLC is under common control with the firm.**

**Business Address:** 99 PINE STREET  
ALBANY, NY 12207

**Effective Date:** 10/01/2005

**Foreign Entity:** No

**Country:**

**Securities Activities:** No

**Investment Advisory Activities:** Yes

**Description:** 100% OWNED BY MS ADVISORS, WHICH IN TURN IS OWNED 50% BY DAVID L. SMITH, 30% BY TIMOTHY M. MCGINN AND 20% BY THOMAS E. LIVINGSTON.

**THIRD ALBANY INCOME NOTES, LLC is under common control with the firm.**

**Business Address:** 99 PINE STREET  
ALBANY, NY 12207

**Effective Date:** 11/01/2004

**Foreign Entity:** No

**Country:**

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**Firm Operations**

User Guidance

**Organization Affiliates (continued)**

**Securities Activities:** No

**Investment Advisory Activities:** Yes

**Description:** 100% OWNED BY MS ADVISORS, WHICH IN TURN IS OWNED 50% BY DAVID L. SMITH, 30% BY TIMOTHY M. MCGINN AND 20% BY THOMAS E. LIVINGSTON.

**FIRST EXCELSIOR INCOME NOTES, LLC is under common control with the firm.**

**Business Address:** 99 PINE STREET  
ALBANY, NY 12207

**Effective Date:** 01/16/2004

**Foreign Entity:** No

**Country:**

**Securities Activities:** No

**Investment Advisory Activities:** Yes

**Description:** 100% OWNED BY MS ADVISORS, WHICH IN TURN IS OWNED 50% BY DAVID L. SMITH, 30% BY TIMOTHY M. MCGINN AND 20% BY THOMAS E. LIVINGSTON.

**FIRST INDEPENDENT INCOME NOTES, LLC is under common control with the firm.**

**Business Address:** 99 PINE STREET  
ALBANY, NY 12207

**Effective Date:** 09/15/2003

**Foreign Entity:** No

**Country:**

**Securities Activities:** No

**Investment Advisory Activities:** Yes

**Description:** 100% OWNED BY MS ADVISORS, WHICH IN TURN IS OWNED 50% BY DAVID L. SMITH, 30% BY TIMOTHY M. MCGINN AND 20% BY THOMAS E. LIVINGSTON.

**This firm is not directly or indirectly, controlled by the following:**

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## Firm Operations

### Organization Affiliates (continued)

- bank holding company
- national bank
- state member bank of the Federal Reserve System
- state non-member bank
- savings bank or association
- credit union
- or foreign bank

User Guidance



## Disclosure Events



All firms registered to sell securities or provide investment advice are required to disclose regulatory actions, criminal or civil judicial proceedings, and certain financial matters in which the firm or one of its control affiliates has been involved. For your convenience, below is a matrix of the number and status of disclosure events involving this brokerage firm or one of its control affiliates. Further information regarding these events can be found in the subsequent pages of this report.

	Pending	Final	On Appeal
Regulatory Event	0	18	0
Civil Event	1	0	0
Arbitration	N/A	5	N/A
Bond	N/A	1	N/A



## Disclosure Event Details

What you should know about reported disclosure events:

1. **BrokerCheck provides details for any disclosure event that was reported in CRD. It also includes summary information regarding FINRA arbitration awards in cases where the brokerage firm was named as a respondent.**
2. **Certain thresholds must be met before an event is reported to CRD, for example:**
  - A law enforcement agency must file formal charges before a brokerage firm is required to disclose a particular criminal event.
3. **Disclosure events in BrokerCheck reports come from different sources:**
  - Disclosure events for this brokerage firm were reported by the firm and/or regulators. When the firm and a regulator report information for the same event, both versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.
4. **There are different statuses and dispositions for disclosure events:**
  - A disclosure event may have a status of *pending*, *on appeal*, or *final*.
    - A "pending" event involves allegations that have not been proven or formally adjudicated.
    - An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
    - A "final" event has been concluded and its resolution is not subject to change.
  - A final event generally has a disposition of *adjudicated*, *settled* or *otherwise resolved*.
    - An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
    - A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that firms may choose to settle customer disputes or regulatory matters for business or other reasons.
    - A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.
5. **You may wish to contact the brokerage firm to obtain further information regarding any of the disclosure events contained in this BrokerCheck report.**

### Regulatory - Final

This type of disclosure event involves (1) a final, formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulator such as the U.S. Securities and Exchange Commission, foreign financial regulatory body) for a violation of investment-related rules or regulations; or (2) a revocation or suspension of the authority of a brokerage firm or its control affiliate to act as an attorney, accountant or federal contractor.

#### Disclosure 1 of 18

**Reporting Source:** Regulator

**Current Status:** Final



**Allegations:** MCGINN, SMITH & CO., INC. FAILED TO FILE ITS MAY 2010 FOCUS REPORT WITHIN 21 DAYS AFTER SERVICE OF THE NOTICE OF POSSIBLE SUSPENSION.

**Initiated By:** FINRA

**Date Initiated:** 07/13/2010

**Docket/Case Number:** N/A

**Principal Product Type:** No Product

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:** Other

**Other Sanction(s)/Relief Sought:** N/A

**Resolution:** Other

**Resolution Date:** 08/04/2010

**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** No

**Sanctions Ordered:** Suspension

**Other Sanctions Ordered:**

**Sanction Details:** PURSUANT TO FINRA RULE 9552, MCGINN, SMITH & CO., INC.'S FINRA MEMBERSHIP IS SUSPENDED AS OF THE CLOSE OF BUSINESS AUGUST 4, 2010. IF THE FIRM FAILS TO REQUEST TERMINATION OF SUSPENSION WITHIN THREE MONTHS, IT WILL BE AUTOMATICALLY EXPELLED.

**Disclosure 2 of 18****Reporting Source:** Regulator**Current Status:** Final

**Allegations:** MCGINN, SMITH & CO., INC. FAILED TO FILE ITS MARCH 2010 FOCUS REPORT WITHIN 21 DAYS AFTER SERVICE OF THE NOTICE OF POSSIBLE SUSPENSION.

**Initiated By:** FINRA**Date Initiated:** 05/13/2010



**Docket/Case Number:** N/A  
**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:** Other  
**Other Sanction(s)/Relief Sought:** N/A  
**Resolution:** Other  
**Resolution Date:** 08/13/2010  
**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** No  
**Sanctions Ordered:** Revocation/Expulsion/Denial  
**Other Sanctions Ordered:**  
**Sanction Details:** MCGINN, SMITH & CO., INC. IS EXPELLED FROM FINRA MEMBERSHIP ON AUGUST 13, 2010 FOR FAILING TO REQUEST TERMINATION OF SUSPENSION WITHIN THREE MONTHS OF RECEIVING NOTICE OF SUSPENSION.  
**Regulator Statement** MCGINN, SMITH & CO., INC.'S FINRA MEMBERSHIP WAS SUSPENDED ON JUNE 4, 2010 FOR FAILING TO FILE ITS MARCH 2010 FOCUS REPORT PURSUANT TO FINRA RULE 9552. THE FIRM FAILED TO REQUEST TERMINATION OF SUSPENSION WITHIN THREE MONTHS; THEREFORE IT IS AUTOMATICALLY EXPELLED.

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**Disclosure 3 of 18**  
**Reporting Source:** Regulator  
**Current Status:** Final  
**Allegations:** MCGINN, SMITH & CO, INC. FAILED TO FILE ITS QUARTERLY FOCUS REPORT WITHIN 21 DAYS AFTER SERVICE OF THE NOTICE OF POSSIBLE SUSPENSION.  
**Initiated By:** FINRA  
**Date Initiated:** 06/10/2010  
**Docket/Case Number:** N/A





**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:** Other  
**Other Sanction(s)/Relief Sought:** N/A  
**Resolution:** Other  
**Resolution Date:** 07/02/2010  
**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** No  
**Sanctions Ordered:** Suspension  
**Other Sanctions Ordered:**  
**Sanction Details:** PURSUANT TO FINRA RULE 9552, MCGINN, SMITH & CO, INC.'S FINRA MEMBERSHIP IS SUSPENDED AS OF THE CLOSE OF BUSINESS JULY 2, 2010. IF THE FIRM FAILS TO REQUEST TERMINATION OF SUSPENSION WITHIN THREE MONTHS, IT WILL BE AUTOMATICALLY EXPELLED.

#### Disclosure 4 of 18

**Reporting Source:** Regulator  
**Current Status:** Final  
**Allegations:** MCGINN, SMITH & CO., INC. FAILED TO FILE ITS 2009 ANNUAL AUDIT REPORT WITHIN 21 DAYS AFTER SERVICE OF THE NOTICE OF SUSPENSION DATED MAY 13, 2010.  
**Initiated By:** FINRA  
**Date Initiated:** 05/13/2010  
**Docket/Case Number:** N/A  
**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:** Other





**Other Sanction(s)/Relief Sought:** N/A

**Resolution:** Other

**Resolution Date:** 08/13/2010

**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** No

**Sanctions Ordered:** Revocation/Expulsion/Denial

**Other Sanctions Ordered:**

**Sanction Details:** PURSUANT TO FINRA RULE 9552, MCGINN, SMITH & CO., INC. IS EXPELLED FROM FINRA MEMBERSHIP ON AUGUST 13, 2010.

**Regulator Statement** MCGINN, SMITH & CO., INC.'S FINRA MEMBERSHIP WAS SUSPENDED ON JUNE 4, 2010 FOR FAILING TO FILE ITS ANNUAL AUDIT REPORT. THE FIRM FAILED TO REQUEST TERMINATION OF SUSPENSION WITHIN THREE MONTHS; THEREFORE IT IS AUTOMATICALLY EXPELLED.

**Disclosure 5 of 18**

**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:** SECTION 5 OF THE SECURITIES ACT OF 1933, SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 10B-5 THEREUNDER, FINRA RULES 2010, 8210, NASD RULES 2110, 2120, 2330, 3010, INTERPRETATIVE MATERIAL 2310-2: MCGINN, SMITH & CO, INC., ACTING THROUGH AN INDIVIDUAL, SOLD INCOME NOTES THROUGH PRIVATE OFFERINGS. THE NOTES WERE ISSUED BY LIMITED LIABILITY COMPANIES MANAGED AND CONTROLLED BY THE INDIVIDUAL. IN OFFERING THE NOTES, THE FIRM OSTENSIBLY RELIED UPON THE EXEMPTION PROVIDED BY REGULATION D. AT NO TIME WAS THERE A REGISTRATION STATEMENT IN EFFECT FOR THE INCOME NOTES. FURTHERMORE, THESE NOTES WERE NOT ELIGIBLE FOR EXEMPTION FROM REGISTRATION. ALL OF THE NOTE OFFERINGS HAD THE SAME STRUCTURE AND WERE SOLD PURSUANT TO A CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM (PPM) THAT CONTAINED VIRTUALLY IDENTICAL DISCLOSURES, TERMS AND INFORMATION. THE PPMs THAT THE FIRM DISTRIBUTED TO PURCHASERS OF THE NOTES PROMISED INVESTORS THAT THEIR FUNDS WOULD BE EARMARKED FOR A BROAD ARRAY OF PUBLIC AND PRIVATE



INVESTMENTS. INSTEAD, AN INDIVIDUAL, ACTING ON BEHALF OF AN INVESTMENT ADVISOR, MISUSED THE MAJORITY OF OFFERING PROCEEDS FOR HIS OWN NEEDS AND TO BENEFIT RELATED ENTITIES. THE FIRM RECEIVED FINANCIAL BENEFITS FROM THE TRANSACTIONS INVOLVING THE RELATED ENTITIES. THE FIRM FAILED TO DISCLOSE MATERIAL FACTS IN CONNECTION WITH THE INCOME NOTE OFFERINGS. THE FIRM, ACTING THROUGH AN INDIVIDUAL, KNEW, OR WAS RECKLESS IN NOT KNOWING, THAT THE PPMS AND SUBSCRIPTION AGREEMENTS CONTAINED MISREPRESENTATIONS. NEVERTHELESS, THE FIRM SOLD THE INCOME NOTES WITHOUT CORRECTIVE DISCLOSURE TO POTENTIAL INVESTORS. THE FIRM, ACTING THROUGH AN INDIVIDUAL, FAILED TO ESTABLISH AND MAINTAIN A SUPERVISORY SYSTEM AND FAILED TO ESTABLISH, MAINTAIN AND ENFORCE WRITTEN SUPERVISORY PROCEDURES, THAT WERE REASONABLY DESIGNED TO ACHIEVE COMPLIANCE WITH THE APPLICABLE SECURITIES LAWS AND REGULATIONS AND FINRA RULES APPLICABLE TO PRIVATE SECURITIES OFFERINGS AND RELATED SUITABILITY, DISCLOSURE, VERIFICATION OF INVESTOR ACCREDITATION STATUS AND OTHER SALES PRACTICE-RELATED ISSUES WITH RESPECT TO THE NOTE OFFERINGS. THE FIRM SUBMITTED FALSE DOCUMENTS TO FINRA. THE FIRM, ACTING THROUGH INDIVIDUALS, PROVIDED PROMISSORY NOTES TO FINRA STAFF KNOWING THAT THE DATES REFLECTED THEREON WERE FALSE. NEVERTHELESS, THE FIRM DID NOT ADVISE FINRA STAFF THAT THE COPIES OF PROMISSORY NOTES PROVIDED HAD BEEN BACKDATED.

<b>Initiated By:</b>	FINRA
<b>Date Initiated:</b>	04/06/2010
<b>Docket/Case Number:</b>	<u>2009017984501</u>
<b>Principal Product Type:</b>	Other
<b>Other Product Type(s):</b>	INCOME NOTES
<b>Principal Sanction(s)/Relief Sought:</b>	Other
<b>Other Sanction(s)/Relief Sought:</b>	N/A
<b>Resolution:</b>	Dismissed
<b>Resolution Date:</b>	11/25/2011



Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

No

Sanctions Ordered:

Other Sanctions Ordered:

Sanction Details:

ON NOVEMBER 25, 2011, THE OFFICE OF HEARING OFFICERS GRANTED THE DEPARTMENT OF ENFORCEMENT'S MOTION FOR LEAVE TO WITHDRAW THE COMPLAINT AGAINST THE FIRM. THE FIRM WAS EXPELLED FROM FINRA MEMBERSHIP IN AUGUST 2010 FOR FAILING TO PAY FEES. ACCORDINGLY, THE PROCEEDING IS DISMISSED WITHOUT PREJUDICE.

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#### Disclosure 6 of 18

Reporting Source:

Regulator

Current Status:

Final

Allegations:

MCGINN, SMITH & CO., INC. FAILED TO PAY ARBITRATION FEES THAT WERE ASSESSED IN FINRA ARBITRATION CASE 09-06026.

Initiated By:

FINRA

Date Initiated:

03/01/2010

Docket/Case Number:

09-06026

Principal Product Type:

No Product

Other Product Type(s):

Principal Sanction(s)/Relief Sought:

Other Sanction(s)/Relief Sought:

Resolution:

Other

Resolution Date:

03/22/2010

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Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

No

Sanctions Ordered:

Suspension

Other Sanctions Ordered:

Sanction Details:

PURSUANT TO FINRA RULE 9553, MCGINN, SMITH & CO.'S MEMBERSHIP WITH FINRA IS SUSPENDED AS OF MARCH 22, 2010 FOR FAILURE TO PAY ARBITRATION FEES.

#### Disclosure 7 of 18

Reporting Source:

Regulator

Current Status:

Final

Allegations:

MCGINN, SMITH & CO., INC. FAILED TO PAY ARBITRATION FEES ASSESSED IN FINRA ARBITRATION CASE 09-00008.

Initiated By:

FINRA

Date Initiated:

03/01/2010

Docket/Case Number:

09-00008

Principal Product Type:

No Product

Other Product Type(s):

Principal Sanction(s)/Relief Sought:

Other Sanction(s)/Relief Sought:

Resolution:

Other

Resolution Date:

03/22/2010

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

No

Sanctions Ordered:

Suspension

**Other Sanctions Ordered:****Sanction Details:**

PURSUANT TO FINRA RULE 9553, MCGINN, SMITH & CO.'S MEMBERSHIP WITH FINRA IS SUSPENDED AS OF MARCH 22, 2010 FOR FAILURE TO PAY ARBITRATION FEES.

**Disclosure 8 of 18****Reporting Source:**

Regulator

**Current Status:**

Final

**Allegations:**

RESPONDENT MCGINN, SMITH & CO., INC. FAILED TO PAY ARBITRATION FEES ASSESSED IN FINRA ARBITRATION CASE NO. 09-04224.

**Initiated By:**

FINRA

**Date Initiated:**

03/22/2010

**Docket/Case Number:**

09-04224

**Principal Product Type:**

No Product

**Other Product Type(s):****Principal Sanction(s)/Relief Sought:****Other Sanction(s)/Relief Sought:**

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**Resolution:**

Other

**Resolution Date:**

03/22/2010

**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?**

No

**Sanctions Ordered:**

Suspension

**Other Sanctions Ordered:****Sanction Details:**

PURSUANT TO FINRA RULE 9553, MCGINN, SMITH & CO., INC.'S MEMBERSHIP WITH FINRA IS SUSPENDED AS OF MARCH 22, 2010 FOR FAILURE TO PAY ARBITRATION FEES.

**Disclosure 9 of 18**



**Reporting Source:** Regulator  
**Current Status:** Final  
**Allegations:** RESPONDENT MCGINN, SMITH & CO., INC. FAILED TO PAY ARBITRATION FEES ASSESSED IN FINRA ARBITRATION CASE NO. 09-04227.  
**Initiated By:** FINRA  
**Date Initiated:** 03/22/2010  
**Docket/Case Number:** 09-04227  
**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:**  
**Other Sanction(s)/Relief Sought:**  
**Resolution:** Other  
**Resolution Date:** 03/22/2010  
**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** No  
**Sanctions Ordered:** Suspension  
**Other Sanctions Ordered:**  
**Sanction Details:** PURSUANT TO FINRA RULE 9553, MCGINN, SMITH & CO., INC.'S MEMBERSHIP WITH FINRA IS SUSPENDED AS OF MARCH 22, 2010 FOR FAILURE TO PAY ARBITRATION FEES.

## Disclosure 10 of 18

**Reporting Source:** Regulator  
**Current Status:** Final  
**Allegations:** MCGINN, SMITH & CO., INC. FAILED TO PAY ARBITRATION FEES ASSESSED IN FINRA ARBITRATION CASE 09-05765.  
**Initiated By:** FINRA  
**Date Initiated:** 03/01/2010





**Docket/Case Number:** 09-05765  
**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:**  
**Other Sanction(s)/Relief Sought:**  
**Resolution:** Order  
**Resolution Date:** 03/01/2010  
**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** No  
**Sanctions Ordered:** Suspension  
**Other Sanctions Ordered:**  
**Sanction Details:** PURSUANT TO FINRA RULE 9553, MCGINN, SMITH & CO., INC.'S MEMBERSHIP WITH FINRA IS SUSPENDED AS OF MARCH 22, 2010 FOR FAILURE TO PAY ARBITRATION FEES.

#### Disclosure 11 of 18

**Reporting Source:** Regulator  
**Current Status:** Final  
**Allegations:** MCGINN, SMITH & CO., INC. FAILED TO PAY ARBITRATION FEES ASSESSED IN FINRA ARBITRATION CASE 09-03284.  
**Initiated By:** FINRA  
**Date Initiated:** 03/01/2010  
**Docket/Case Number:** 09-03284  
**Principal Product Type:** No Product  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:**


**Other Sanction(s)/Relief Sought:**
**Resolution:** Other

**Resolution Date:** 03/01/2010

**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?** No

**Sanctions Ordered:** Suspension

**Other Sanctions Ordered:**
**Sanction Details:** PURSUANT TO FINRA RULE 9553, MCGINN, SMITH & CO., INC.'S MEMBERSHIP WITH FINRA IS SUSPENDED AS OF MARCH 22, 2010 FOR FAILURE TO PAY ARBITRATION FEES.

**Disclosure 12 of 18**
**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:** MCGINN, SMITH & CO., INC. FAILED TO PAY ARBITRATION FEES ASSESSED IN FINRA ARBITRATION CASE 09-06051.

**Initiated By:** FINRA

**Date Initiated:** 03/01/2010

**Docket/Case Number:** 09-06051

**Principal Product Type:** No Product

**Other Product Type(s):**
**Principal Sanction(s)/Relief Sought:**
**Other Sanction(s)/Relief Sought:**
**Resolution:** Other

**Resolution Date:** 03/01/2010





**Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?**

No

**Sanctions Ordered:**

Suspension

**Other Sanctions Ordered:**

**Sanction Details:**

PURSUANT TO FINRA RULE 9553, MCGINN, SMITH & CO., INC.'S MEMBERSHIP WITH FINRA IS SUSPENDED AS OF MARCH 22, 2010 FOR FAILURE TO PAY ARBITRATION FEES.

#### Disclosure 13 of 18

**Reporting Source:**

Regulator

**Current Status:**

Final

**Allegations:**

ACTING AS UNLICENSED BROKER-DEALER

**Initiated By:**

UTAH DIVISION OF SECURITIES

**Date Initiated:**

11/04/2004

**Docket/Case Number:**

SD-04-0036

**Principal Product Type:**

Other

**Other Product Type(s):**

RULE 506 OFFERING

**Principal Sanction(s)/Relief Sought:**

Bar

**Other Sanction(s)/Relief Sought:**

CEASE & DESIST, RESCISSION OFFERING, FINE

**Resolution:**

Stipulation and Consent

**Resolution Date:**

06/08/2005

**Sanctions Ordered:**

Monetary/Fine \$5,000.00

**Other Sanctions Ordered:**

**Sanction Details:**

\$5000.00 FINE

**Regulator Statement**

SOLD SECURITIES TO TWO UTAH INVESTORS WHILE NOT LICENSED AS A BROKER-DEALER. FOR MORE INFORMATION, PLEASE VISIT THE DIVISION'S WEB SITE AT:  
[HTTP://WWW.SECURITIES.UTAH.GOV/ACTIONSDETAIL.PHP?ID=SD-04-0036](http://www.securities.utah.gov/actionsdetail.php?id=SD-04-0036)



**Reporting Source:** Firm  
**Current Status:** Final  
**Allegations:** IT WAS DETERMINED THAT MCGINN, SMITH WAS NOT LICENSED TO SELL SECURITIES IN UTAH. COUNSEL HAD ADVISED MCGINN SMITH THAT REGISTRATION WAS NOT NECESSARY FOR THIS TRANSACTION AS THE BUYERS WERE INSIDERS OF THE COMPANY AND ALREADY SHAREHOLDERS. RATHER THAN INSISTING UPON A FULL HEARING MCGINN SMITH AGREED TO SIGN THE STIPULATION AND CONSENT ORDER AND PAY A FINE IN THE AMOUNT OF \$5,000.  
**Initiated By:** DIVISION OF SECURITIES - UTAH DEPARTMENT OF COMMERCE  
**Date Initiated:** 11/08/2004  
**Docket/Case Number:** DOCKET # SD-04-0036  
**Principal Product Type:** Debt - Corporate  
**Other Product Type(s):**  
**Principal Sanction(s)/Relief Sought:** Civil and Administrative Penalt(ies) /Fine(s)  
**Other Sanction(s)/Relief Sought:**  
**Resolution:** Consent  
**Resolution Date:** 06/08/2005  
**Sanctions Ordered:** Monetary/Fine \$5,000.00  
**Other Sanctions Ordered:**  
**Sanction Details:** FINE IN THE AMOUNT OF \$5,000 CONSENTED TO AND PAID.

#### Disclosure 14 of 18

**Reporting Source:** Firm  
**Current Status:** Final  
**Appealed To and Date Appeal Filed:** NOT APPLICABLE  
**Allegations:** VIOLATED RULE 15B3-1(B) BY NOT FILING SCHEDULE E OF FORM BD, REVEALING THE EXISTENCE OF A FULLY-DISCLOSED CLEARING ARRANGEMENT WITH A.G. BECKER INC.  
 VIOLATED RULE 17A-3(A)(11): INCORRECT COMPUTATION OF NET CAPITAL



ON 3/31/83, A CONCENTRATION HAIRCUT WAS NOT APPROPRIATE ON THE FIRMS INVENTORY POSITION, PURSUANT TO RULE 15C3-1.

**Initiated By:** UNITED STATES SECURITIES AND EXCHANGE COMMISSION

**Date Initiated:** 07/25/1983

**Docket/Case Number:** NONE

**Principal Product Type:** No Product

**Other Product Type(s):** NONE

**Principal Sanction(s)/Relief Sought:** Other

**Other Sanction(s)/Relief Sought:** NO SANCTIONS WERE PLACED AGAINST THE APPLICANT OR CONTROL AFFILIATES.

**Resolution:** Settled

**Resolution Date:** 08/03/1983

**Sanctions Ordered:**

**Other Sanctions Ordered:** NONE

**Sanction Details:** NOT APPLICABLE

**Firm Statement** TO CORRECT THE VIOLATION OF RULE 15B3-1(B, SCHEDULE E OF FORM BD WAS FILED WITH THE SEC & NASD INDICATING THE CLEARING AGREEMENT WITH A.G.BECKER, COPY OF AGREEMENT WAS ENCLOSED. RULE 17A-3(A)(11): EACH OF THE TWO PRINCIPALS, DAVID L. SMITH & TIMOTHY M. MCGINN, WILL SEPARATELY CALCULATE THE HAIRCUTS WHILE COMPUTING THE APPLICANT'S NET CAPITAL POSITION. THE LETTER WAS SENT 8/3/83.

**Disclosure 15 of 18**

**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:**

**Initiated By:** NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

**Date Initiated:** 12/09/1996

**Docket/Case Number:** C11960043

**Principal Product Type:**

**Other Product Type(s):**



**Principal Sanction(s)/Relief Sought:**

**Other Sanction(s)/Relief Sought:**

**Resolution:** Acceptance, Waiver & Consent(AWC)

**Resolution Date:** 12/09/1996

**Sanctions Ordered:** Censure  
Monetary/Fine \$7,500.00

**Other Sanctions Ordered:**

**Sanction Details:**

**Regulator Statement**

ON DECEMBER 9, 1996, DISTRICT NO. 11 NOTIFIED MCGINN, SMITH & CO., INC. AND DAVID L. SMITH THAT THE LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. C11960043 WAS ACCEPTED; THEREFORE, THEY ARE CENSURED AND FINED \$7,500, JOINTLY AND SEVERALLY - (NASD RULE 2110 - RESPONDENT MEMBER, ACTING THROUGH RESPONDENT SMITH, IN CONNECTION WITH THREE PRIVATE SECURITIES OFFERINGS WHICH WERE REPRESENTED AS ALL-OR-NONE OR MINIMUM/MAXIMUM, CAUSED FUNDS TO BE RELEASED TO THE ISSUERS WHEN REQUIRED AMOUNTS HAD NOT BEEN RECEIVED BY THE DATES STATED IN THE RESPECTIVE OFFERING CIRCULARS IN CONTRAVENTION OF SEC RULE 10b-9).

\*\*\*\$7,500.00 PAID J&S ON 1/3/97, INVOICE #96-11-927\*\*\*

**Reporting Source:** Firm

**Current Status:** Final

**Allegations:** IN CONNECTION WITH 3 PRIVATE PLACEMENT OFFERINGS REPRESENTED AS MINIMUM/MAXIMUM, CAUSED FUNDS TO BE RELEASED TO ISSUER WHEN REQUIRED AMOUNTS WERE NOT RECEIVED BY DATES STATED IN OFFERING MEMORANDUM, AGAINST SEC RULE 10B-9 AND NASD CONDUCT RULE 2110.

**Initiated By:** NASD REGULATION, INC.

**Date Initiated:** 08/14/1996

**Docket/Case Number:** C11960043

**Principal Product Type:** Other



**Other Product Type(s):** PRIVATE PLACEMENT OFFERING(S)

**Principal Sanction(s)/Relief Sought:** Civil and Administrative Penalt(ies) /Fine(s)

**Other Sanction(s)/Relief Sought:** CENSURE

**Resolution:** Acceptance, Waiver & Consent(AWC)

**Resolution Date:** 12/27/1996

**Sanctions Ordered:** Censure  
Monetary/Fine \$7,500.00

**Other Sanctions Ordered:**

**Sanction Details:** CENSURED; FINED \$7500 JOINTLY AND SEVERALLY; PAID ON 01/03/1997, NOTHING WAIVERED.

**Firm Statement** VIOLATIONS OF SEC RULE 10B-9 AND NASD RULE 2110; CENSURED AND FINED \$7500.

**Disclosure 16 of 18**

**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:**

**Initiated By:** NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

**Date Initiated:** 12/05/1994

**Docket/Case Number:** C11940056

**Principal Product Type:**

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:**

**Other Sanction(s)/Relief Sought:**

**Resolution:** Acceptance, Waiver & Consent(AWC)

**Resolution Date:** 12/05/1994

**Sanctions Ordered:** Censure  
Monetary/Fine \$3,000.00

**Other Sanctions Ordered:****Sanction Details:****Regulator Statement**

ON DECEMBER 5, 1994, DISTRICT NO. 11 NOTIFIED MCGINN SMITH & CO., INC., TIMOTHY M. MCGINN AND DAVID L. SMITH THAT THE LETTER OF ACCEPTANCE, WAIVER AND CONSENT NO. C11940056 WAS ACCEPTED; THEREFORE, THEY ARE CENSURED AND FINED \$3,000, JOINTLY AND SEVERALLY - (ARTICLE III, SECTION 1 OF THE RULES OF FAIR PRACTICE - RESPONDENT MEMBER, ACTING THROUGH RESPONDENT MCGINN, FAILED TO COMPLY WITH SEC RULE 15C3-3 IN THAT WHILE PURPORTING TO OPERATE WITHIN AN EXEMPTIVE PROVISION OF THE RULE AND NOT OTHERWISE COMPLYING WITH THE PROVISIONS OF THE RULE, RECEIVED AND HELD CUSTOMER FUNDS AND SECURITIES; AND, IN CONTRAVENTION OF THE BOARD OF GOVERNORS FREE-RIDING AND WITHHOLDING INTERPRETATION, RESPONDENT MEMBER, ACTING THROUGH RESPONDENT SMITH, SOLD SHARES OF A NEW ISSUE WHICH TRADED AT A PREMIUM IN THE IMMEDIATE AFTERMARKET TO A RESTRICTED PERSON).

**\*\*\$3,000 J&S PAID 1/9/95 INVOICE #94-11-816\*\***

**Reporting Source:**

Firm

**Current Status:**

Final

**Allegations:**

FAILURE TO COMPLY WITH SEC RULE 15C3-3 WHILE PURPORTING TO OPERATE WITHIN AN EXEMPTION PROVISION, NOT COMPLYING WITH THE PROVISIONS; RECEIVED & HELD CUSTOMER FUNDS & SECURITIES. SOLD SHARES OF NEW ISSUE WHICH TRADED AT PREMIUM IN AFTER-MARKET, TO A RESTRICTED PERSON. ARTICLE III SECTION 1 RULES OF FAIR PRACTICE.

**Initiated By:**

NASD REGULATION, INC.

**Date Initiated:**

05/20/1994

**Docket/Case Number:**

C11940056

**Principal Product Type:**

Direct Investment(s) - DPP & LP Interest(s)

**Other Product Type(s):**

EQUITY

**Principal Sanction(s)/Relief Sought:**

Censure

**Other Sanction(s)/Relief Sought:**

MONETARY PENALTY/FINE



**Resolution:** Acceptance, Waiver & Consent(AWC)

**Resolution Date:** 12/05/1994

**Sanctions Ordered:** Monetary/Fine \$3,000.00

**Other Sanctions Ordered:**

**Sanction Details:** \$3000.00 FINE JOINTLY AND SEVERALLY, PAID 01/09/95 BY SINGLE PAYMENT, NOTHING WAIVED.

**Firm Statement** \$3000 FINE PAID 01/09/95, AWC ACCEPTED BY NASD, CASE CLOSED.

**Disclosure 17 of 18**

**Reporting Source:** Regulator

**Current Status:** Final

**Allegations:** FAILURE TO MAINTAIN A CONTINUOUS SURETY BOND IN VIOLATION OF 9 VSA 4216.

**Initiated By:** VERMONT SECURITIES DIVISION

**Date Initiated:** 05/24/1993

**Docket/Case Number:** 93-012-S

**Principal Product Type:**

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:**

**Other Sanction(s)/Relief Sought:**

**Resolution:** Consent

**Resolution Date:** 05/24/1993

**Sanctions Ordered:** Monetary/Fine \$1,250.00

**Other Sanctions Ordered:**

**Sanction Details:** ON MAY 24, 1993, MCGINN, SMITH & CO., ENTERED INTO A CONSENT ORDER WITH THE VERMONT SECURITIES DIVISION WHEREIN RESPONDENT NEITHER ADMITTED OR DENIED THE DIVISION'S ALLEGATIONS THAT IT FAILED TO MAINTAIN A CONTINUOUS SURETY BOND IN VIOLATION OF THE VERMONT SECURITIES ACT. A \$1250 FINE AND \$250 IN INVESTIGATION COSTS WERE PAID IN SETTLEMENT OF THIS





**Regulator Statement**      MATTER.  
Not Provided

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**Reporting Source:**      Firm

**Current Status:**      Final

**Allegations:**      FAILURE TO MAINTAIN A SURETY BOND AS REQUIRED BY VERMONT  
SECURITIES ACT 9 V.S.A. 4216

**Initiated By:**      STATE OF VERMONT  
DEPARTMENT OF BANKING & INSURANCE  
SECURITIES

**Date Initiated:**      08/25/1992

**Docket/Case Number:**      93-012-S

**Principal Product Type:**      Debt - Corporate

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:**      Civil and Administrative Penalt(ies) /Fine(s)

**Other Sanction(s)/Relief Sought:**

**Resolution:**      Settled

**Resolution Date:**      05/24/1993

**Sanctions Ordered:**

**Other Sanctions Ordered:**      NONE

**Sanction Details:**      FINE OF \$1250., ADMINISTRATIVE COSTS OF \$250. PAID TO VERMONT  
5/17/93. NOTHING WAIVED.

**Firm Statement**      A CONSENT ORDER WAS SIGNED BY DAVID L. SMITH AS PRESIDENT; FINE  
OF \$1250 AND ADMINISTRATIVE COSTS OF \$250 PAID; ON 5/24/93, UPON  
RECEIPT BY THE VERMONT TREASURER OF THE CHECKS, THE CASE WAS  
SETTLED.

**Disclosure 18 of 18**

**Reporting Source:**      Regulator

**Current Status:**      Final

**Allegations:**





**Initiated By:** NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

**Date Initiated:** 05/07/1982

**Docket/Case Number:** BOS-481-AWC

**Principal Product Type:**

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:**

**Other Sanction(s)/Relief Sought:**

**Resolution:** Decision

**Resolution Date:** 05/07/1982

**Sanctions Ordered:** Censure  
Monetary/Fine \$500.00

**Other Sanctions Ordered:**

**Sanction Details:**

**Regulator Statement** COMPLAINT #BOS-481-AWC FILED 05/07/82  
DIST. #13  
DECISION 05/07/82: CAF \$500

**Reporting Source:** Firm

**Current Status:** Final

**Allegations:** VIOLATIONS OF ARTICLE III, SECTIONS 1 AND 15(B) OF THE RULES OF FAIR PRACTICE. ALLEGED LOSSES \$3350.

**Initiated By:** NASD REGULATION, INC.

**Date Initiated:** 10/22/1981

**Docket/Case Number:** BOS-481-AWC

**Principal Product Type:** Equity Listed (Common & Preferred Stock)

**Other Product Type(s):**

**Principal Sanction(s)/Relief Sought:** Censure

**Other Sanction(s)/Relief Sought:** RESTITUTION



<b>Resolution:</b>	Acceptance, Waiver & Consent(AWC)
<b>Resolution Date:</b>	05/07/1982
<b>Sanctions Ordered:</b>	Monetary/Fine \$500.00 Disgorgement/Restitution
<b>Other Sanctions Ordered:</b>	
<b>Sanction Details:</b>	RESTITUTION TO CLAIMANTS OF \$3350. BY APPLICANT ON 04/26/1982. PAID NASD A FINE OF \$500. CLOSED 05/07/1982.
<b>Firm Statement</b>	VIOLATION OF RULES OF FAIR PRACTICE, ARTICLE III SECTIONS 1 & 15(B). RESTITUTION AND FINES PAID, CLOSED 5/7/1982.

**Civil - Pending**

This type of disclosure event involves a pending civil court action that with seek an injunction to cease certain investment-related activity or alleges a violation of any investment-related statute or regulation.

**Disclosure 1 of 1****Reporting Source:**

Regulator

**Current Status:**

Pending

**Allegations:**

SEC PRESS RELEASE 2010-62, APRIL 20, 2010: THE SECURITIES AND EXCHANGE COMMISSION ("COMMISSION") FILED AN EMERGENCY ENFORCEMENT ACTION AGAINST MCGINN, SMITH & CO., INC. ("MS & CO.") TO HALT A FRAUDULENT SCHEME BEING ORCHESTRATED BY TWO CO-OWNERS WHO MISUSED INVESTOR MONEY TO FUND THEIR STRUGGLING BUSINESS OPERATIONS AND MEET EVER-INCREASING LIQUIDITY NEEDS. THE COMMISSION ALLEGED THAT MS & CO. VIOLATED SECTIONS 5(A), 5(C) AND 17(A) OF THE SECURITIES ACT OF 1933 ("SECURITIES ACT"), SECTIONS 10(B) AND 15(C)(1) OF THE SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT") AND RULES 10B-3 AND 10B-5 THEREUNDER, AND SECTIONS 206(1), 206(2) AND 206(4) OF THE INVESTMENT ADVISERS ACT OF 1940 ("ADVISERS ACT") AND RULE 206(4)-8 THEREUNDER.

THE COMMISSION ALLEGED THAT MS & CO., ITS PRINCIPALS AND AFFILIATED ENTITIES RAISED APPROXIMATELY \$120 MILLION FROM INVESTORS IN MORE THAN 25 DEBT OFFERINGS THAT WERE NOT REGISTERED WITH THE COMMISSION UNDER THE SECURITIES LAWS. THEY MISREPRESENTED THAT THE INVESTMENTS WOULD GENERATE SUFFICIENT INCOME TO SUPPORT THE PROMOTED INTEREST RATES AND THE RETURN OF PRINCIPAL AT THE END OF THE NOTES' TERMS.

THE COMMISSION ALLEGED THAT MS & CO.'S PRINCIPALS KNEW THAT IT WOULD NEVER BE POSSIBLE TO REPAY INVESTORS THEIR PRINCIPAL, LET ALONE THE QUARTERLY INTEREST PAYMENTS PROMISED. THE COMMISSION FURTHER ALLEGED THAT MS & CO.'S PRINCIPALS INSTEAD MISUSED OFFERING PROCEEDS TO SUPPORT THEIR FINANCIALLY TROUBLED OR BANKRUPT ENTITIES, TO MAKE PAYROLL FOR MS & CO., AND EVEN FOR THEIR OWN PERSONAL ACTIVITIES SUCH AS PROCURING STRIPPERS FOR A "SEXUALLY THEMED" CRUISE. ALTHOUGH THE FULL EXTENT OF THE FRAUD IS NOT YET KNOWN, IT APPEARS THAT INVESTORS ARE CURRENTLY OWED AT LEAST \$80 MILLION.

THE COMMISSION ALLEGED THAT THE DEBT OFFERINGS HAVE BEEN SOLD TO HUNDREDS OF INVESTORS THROUGH FOUR FUNDS AND AT LEAST 18 TRUSTS CREATED BY MS & CO. AFFILIATES. THEY MADE A HOST OF REPRESENTATIONS ABOUT THE EXTENT OF DUE DILIGENCE



THEY HAD PERFORMED, AMONG OTHER THINGS. CONTRARY TO THEIR REPRESENTATIONS TO INVESTORS, MS & CO.'S PRINCIPALS USED MUCH OF THE MONEY RAISED IN THESE OFFERINGS TO MAKE PROHIBITED INVESTMENTS IN THEIR OTHER BUSINESSES OR MAKE UNSECURED LOANS TO FINANCIALLY SUPPORT THEM. THEY ALSO MISUSED INVESTOR FUNDS TO PAY EXORBITANT COMMISSION AND TRANSACTION FEES TO THEIR AFFILIATED ENTITIES AND MAKE INTEREST PAYMENTS TO INVESTORS IN THE OTHER ENTITIES.

<b>Initiated By:</b>	UNITED STATES SECURITIES AND EXCHANGE COMMISSION
<b>Court Details:</b>	UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK; ALBANY, NY; 1:10-CV-457
<b>Date Court Action Filed:</b>	04/20/2010
<b>Principal Product Type:</b>	Other
<b>Other Product Types:</b>	UNSPECIFIED DEBT OFFERINGS
<b>Relief Sought:</b>	Injunction
<b>Other Relief Sought:</b>	RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF A RECEIVER, ACCOUNTING, DOCUMENT FREEZE, DISGORGEMENT, PREJUDGMENT INTEREST, CIVIL PENALTY
<b>Regulator Statement</b>	THE COMMISSION OBTAINED A COURT ORDER FREEZING MS & CO.'S ASSETS.



### Arbitration Award - Award/Judgment

Brokerage firms are not required to report arbitration claims filed against them by customers; however, BrokerCheck provides summary information regarding FINRA arbitration awards involving securities and commodities disputes between public customers and registered securities firms in this section of the report.

The full text of arbitration awards issued by FINRA is available at [www.finra.org/awardsonline](http://www.finra.org/awardsonline).

#### Disclosure 1 of 5

**Reporting Source:** Regulator

**Type of Event:** ARBITRATION

**Allegations:** ACCOUNT RELATED-BREACH OF CONTRACT; ACCOUNT RELATED-FAILURE TO SUPERVISE; ACCOUNT RELATED-NEGLIGENCE; FRAUDULENT ACTIVITY-BRCH OF FIDUCIARY DT

**Arbitration Forum:** NASD

**Case Initiated:** 02/22/2002

**Case Number:** 02-00354

**Disputed Product Type:** COMMON STOCK

**Sum of All Relief Requested:** \$227,834.32

**Disposition:** AWARD AGAINST PARTY

**Disposition Date:** 08/21/2003

**Sum of All Relief Awarded:** \$322,077.05

There may be a non-monetary award associated with this arbitration.  
Please select the Case Number above to view more detailed information.

#### Disclosure 2 of 5

**Reporting Source:** Regulator

**Type of Event:** ARBITRATION

**Allegations:** ACCOUNT RELATED-NEGLIGENCE; FRAUDULENT ACTIVITY-CHURNING; FRAUDULENT ACTIVITY-MISREPRESENTATION; FRAUDULENT ACTIVITY-OMISSION OF FACTS

**Arbitration Forum:** NASD

**Case Initiated:** 10/01/2003

**Case Number:** 03-06918



**Disputed Product Type:** UNKNOWN TYPE OF SECURITIES  
**Sum of All Relief Requested:** \$2,903,125.00  
**Disposition:** AWARD AGAINST PARTY  
**Disposition Date:** 02/15/2007  
**Sum of All Relief Awarded:** \$158,400.00

There may be a non-monetary award associated with this arbitration.  
 Please select the Case Number above to view more detailed information.

#### Disclosure 3 of 5

**Reporting Source:** Regulator  
**Type of Event:** ARBITRATION  
**Allegations:** ACCOUNT RELATED-FAILURE TO SUPERVISE; ACCOUNT  
 RELATED-NEGLIGENCE; FRAUDULENT ACTIVITY-BRCH OF FIDUCIARY DT;  
 FRAUDULENT ACTIVITY-UNSUITABILITY  
**Arbitration Forum:** FINRA  
**Case Initiated:** 11/18/2008  
**Case Number:** 08-04216  
**Disputed Product Type:** CORPORATE BONDS  
**Sum of All Relief Requested:** \$400,000.00  
**Disposition:** AWARD AGAINST PARTY  
**Disposition Date:** 02/01/2010  
**Sum of All Relief Awarded:** \$455,000.00

There may be a non-monetary award associated with this arbitration.  
 Please select the Case Number above to view more detailed information.

#### Disclosure 4 of 5

**Reporting Source:** Regulator  
**Type of Event:** ARBITRATION  
**Allegations:** ACCOUNT RELATED-BREACH OF CONTRACT; ACCOUNT  
 RELATED-FAILURE TO SUPERVISE; ACCOUNT RELATED-NEGLIGENCE;  
 FRAUDULENT ACTIVITY-BRCH OF FIDUCIARY DT  
**Arbitration Forum:** FINRA





**Case Initiated:** 12/10/2008  
**Case Number:** 08-04631  
**Disputed Product Type:** CORPORATE BONDS; OTHER TYPES OF SECURITIES  
**Sum of All Relief Requested:** \$8,002,010.12  
**Disposition:** AWARD AGAINST PARTY  
**Disposition Date:** 04/06/2010  
**Sum of All Relief Awarded:** \$1,923,668.01

There may be a non-monetary award associated with this arbitration.  
 Please select the Case Number above to view more detailed information.

#### Disclosure 5 of 5

**Reporting Source:** Regulator  
**Type of Event:** ARBITRATION  
**Allegations:** ACCOUNT RELATED-BREACH OF CONTRACT; FRAUDULENT  
 ACTIVITY-BRCH OF FIDUCIARY DT; FRAUDULENT  
 ACTIVITY-MISREPRESENTATION; FRAUDULENT ACTIVITY-OMISSION OF  
 FACTS  
**Arbitration Forum:** FINRA  
**Case Initiated:** 12/31/2008  
**Case Number:** 08-04924  
**Disputed Product Type:** ANNUITIES; COMMON STOCK; MUTUAL FUNDS; OTHER TYPES OF  
 SECURITIES  
**Sum of All Relief Requested:** \$2,577,000.00  
**Disposition:** AWARD AGAINST PARTY  
**Disposition Date:** 12/31/2009  
**Sum of All Relief Awarded:** \$805,110.01

There may be a non-monetary award associated with this arbitration.  
 Please select the Case Number above to view more detailed information.

**Civil Bond**

This type of disclosure event involves a civil bond for the brokerage firm that has been denied, paid, or revoked by a bonding company.

**Disclosure 1 of 1**

**Reporting Source:** Firm

**Policy Holder:** MCGINN, SMITH & CO., INC.

**Bonding Company Name:** UNITED STATES FIDELITY AND GUARANTY CO.

**Disposition:** Payout

**Disposition Date:** 07/21/1988

**Payout Details:** \$11,531.60 11/21/1988

**Firm Statement** OPERATIONS MGR EMBEZZLED \$23,713 FROM PARENTS' ACCT.  
DISCOVERED BY INTERNAL AUDIT. ALL MONIES PAID BACK TO CLIENT.  
CLEARING BROKER REIMBURSED FIRM \$6,000, WITHOUT ADMITTING  
LIABILITY.



**End of Report**



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