

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

Case No. 1:10-CV-457
(GLS/CFH)

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, AND :
DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY MCGINN, :

Defendants, :

LYNN A. SMITH and :
NANCY MCGINN, :

Relief Defendants. and :

GEOFFREY R. SMITH, Trustee of the :
David L. and Lynn A. Smith Irrevocable :
Trust U/A 8/04/04, :

Intervenor. :

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**RECEIVER’S OMNIBUS REPLY TO OBJECTIONS TO SECOND MOTION
FOR AN ORDER DISALLOWING PAPER CLAIMS**

William J. Brown, as Receiver (“Receiver”), by his counsel, Phillips Lytle LLP, respectfully submits (i) this Omnibus Reply and (ii) the Declaration of William J. Brown, as Receiver, in Support of the Omnibus Reply to Objections to Second Motion for an Order Disallowing Paper Claims (“Brown Declaration”).

PRELIMINARY STATEMENT

Three objections have been filed to the Second Motion of William J. Brown, as Receiver, for an Order Disallowing Paper Claims (Docket No. 974) (“Motion”). This Omnibus Reply will respond in order to each objection. Only one of the objections was served on the Receiver.

MCCAFFERTY OBJECTION

On March 16, 2018, Harry and Diane McCafferty (the “McCafferty’s”) filed and served a pro se objection (Docket No. 982) (“McCafferty Objection”) to the Motion. The Motion seeks to strike or disallow the paper claim filed by the McCafferty’s (“McCafferty Paper Claim”) for their investment in SAI Trust 03 (“SAI”), with an asserted principal balance of \$38,610.75. The McCafferty’s have an allowed Receiver-granted claim for their \$30,000 unpaid principal balance in TAIN Secured Junior Notes due 12/15/2009 (“TAIN Claim”). Upon resolution of the McCafferty Paper Claim, the TAIN Claim (Claim No. 5738A) will be processed, allowed, and paid in accordance with the Plan of Distribution (Docket No. 847). Brown Dec’l. ¶ 3.¹

The Receiver seeks to disallow the McCafferty Paper Claim, as well as other paper claims filed on account of investments in SAI, because SAI was totally liquidated by a senior secured creditor in 2008 prior to the Receivership, and, consequently, there is no *res* or corpus to which the McCafferty Paper Claim can attach. They are, therefore, not entitled to a distribution.

¹ “Brown Dec’l ¶ ___” refers to the Declaration of William J. Brown dated April 6, 2018, filed in support of the Reply.

Investors in SAI, including the McCafferty's, were well aware through written communications they received from McGinn Smith² beginning in April 2008 and continuing through December 2008 that the assets of the SAI entities had been liquidated by a senior creditor and that their investments were worthless at that time. Brown Dec'1 ¶ 4. The Receiver is not in a position to return assets to investors when there have been none to recover.

A. Investors in SAI Trust are Not Entitled to Distributions

During the Receivership, the Receiver reviewed the events surrounding SAI and determined that there was no ability to recover any assets on behalf of the SAI investors. Brown Dec'1 ¶ 4. As investors in SAI, the McCafferty's received at least three written communications from McGinn Smith in 2008 about the dire circumstances impacting SAI and its liquidation by senior lenders. Brown Dec'1 ¶ 4. First, in April 2008, David Smith sent the letter attached to the Brown Declaration as **Exhibit A** discussing why interest payments were not made to investors in early 2008. It also informed the McCafferty's that SAI's senior lender had foreclosed on the stock of SAI and taken control of the company. Subsequently, by letter dated August 5, 2008, attached to the Brown Declaration as **Exhibit B**, the McCafferty's received another letter from David Smith, providing further updates on the developments and the likelihood that no payment to SAI investors would be made. Finally, in the letter attached as **Exhibit C** to the Brown Declaration, dated December 23, 2008, the McCafferty's were notified that the SAI investor notes were worthless and should be written off for a tax loss in 2008.

² Terms not otherwise defined in the Reply have the meaning given to them in the Motion.

The Plan of Distribution was developed by the Receiver after extensive reviews of the records and transactions of McGinn Smith and significant efforts at recovering assets for the repayment of defrauded investors. Brown Dec'1 ¶ 5. At the commencement of the Receivership, the funds on hand were only \$485,491 and, ultimately, after operating the remaining businesses and successfully selling them, as well as collecting amounts from various investments made by McGinn Smith, the Receiver achieved a significant recovery in excess of \$21 million for the approximately 900 investors with over 3,000 claims aggregating approximately \$124,000,000 in Receivership entities that held assets at the commencement of the Receivership. *Id.*

In the course of his investigation, the Receiver came to realize that the so-called SAI entities were included within the Receivership at the request of the SEC. Brown Dec'1 ¶ 6. When the SEC formulated the potential Receivership entities in 2010, the Receiver understands that it was done on a protective basis without knowing in great detail prior to the filing of the SEC's Complaint initiating this action the then current circumstances of the individual entities or investments. *Id.* For example, the Pine Street entities were originally included and later removed from the list of Receivership Entities at the request of the SEC and approved by the Court. *See* Docket Nos. 51 and 68. Later, after consultation with the SEC, it was determined that the Plan of Distribution should exclude SAI claims because all SAI assets had been liquidated by a senior secured creditor prior to the Receivership and no assets remained to collect or recover. Any monies held and recovered by the Receiver for distribution to investors had no relation to the investments in SAI. The SAI saga concluded by itself in early 2008. *Id.* The exclusion of the SAI entities in the Plan of Distribution was

approved by the Memorandum-Decision and Order entered by the Court approving the Plan of Distribution (Docket No. 904) (“MDO”). *See* MDO, p. 13.

The claims administration procedures approved by Order of the Court entered March 27, 2012 (Docket No. 475) excluded claims for investments in SAI because of the previous liquidation of SAI’s assets. Accordingly, such claims were not included on the Receiver’s schedules of known claims against the MS Entities posted to the Receiver’s website, and such investors did not receive Claim Forms from the Receiver for investments in SAI. Brown Dec’1 ¶ 7.

B. There is No Known Connection Between Firstline Security and SAI

Contrary to the assertions in the McCafferty Objection, the Receiver is well aware of all SAI investors and had access to their information in the administration of the Receivership. Brown Dec’1 ¶ 8. Additionally, the Receiver did not provide any capital to SAI, since no SAI entity existed with an investment during the Receivership. There is no known connection between Firstline Security and SAI, and, even if there were, it would be irrelevant to the matter at hand. Finally, unlike the circumstances surrounding SAI, the Receiver was able to locate and liquidate assets held by the Firstline entities, and, thus, investors in those entities were granted a distribution. *Id.*

C. The Plan of Distribution is Fair and All Investors had Notice of its Terms

The Plan of Distribution sought to pool the assets of various McGinn Smith entities and distribute the pooled assets equally to investors holding allowed claims on a pro rata basis. The Plan of Distribution thus treats all investors equally without making a distinction based on the particular McGinn Smith entity underlying the applicable claim or investment. *See* Plan of Distribution pp. 11-12.

Further, the Plan of Distribution contained a number of forms of relief, including substantive consolidation, the imposition of a collateral recovery rule, and an overall distribution and claims reserve process, which a number of investors took notice of and asserted objections. For example, see the objections filed at Docket Nos. 856, 862, 864, 865 and 868 with respect to the collateral recovery rule, due process and other issues. The MDO approving the Plan of Distribution overruled all objections. At all times, the status of the Plan and the filing of the pleadings related thereto were prominently posted and available for review and downloading or printing on the Receiver's website beginning on December 30, 2015. Brown Dec'1 ¶ 10.

The McCafferty's knew in 2012 that their SAI claim was not included in the Receiver's claims database. For this reason, they filed a paper claim by letter dated May 24, 2012. Brown Dec'1 ¶ 9. In March 2013, Mr. McCafferty had discussions with the Receiver, and the Receiver explained the reason for excluding SAI from the Receiver's claims database and from any potential distributions. *Id.* Thus, the McCafferty's knew how to monitor the Receiver's website and obviously did so as evidenced by the foregoing.

Finally, the MDO is a Final Order, no longer subject to rehearing or appeal. By letter dated August 11, 2010, attached to the Brown Declaration as **Exhibit D**, mailed

shortly after the Receiver was appointed, the Receiver notified all investors that they were responsible for periodically reviewing the Receiver's website for updates. Brown Dec'1 ¶ 10.

The letter stated in pertinent part:

ALL FUTURE NOTICES AND COMMUNICATIONS WILL BE MADE ONLY ON THE WEBSITE MCGINNSMITHRECEIVER.COM. YOU NEED TO REVIEW THE SITE PERIODICALLY. FUTURE MAILINGS THROUGH THE U.S. POSTAL SERVICE ARE TOO EXPENSIVE TO CONTINUE TO PROVIDE TO ALL PARTIES. . . . As noted above, all future communications will be posted to mcginnsmithreceiver.com. You are responsible for periodically reviewing that site for updates. I suggest you do so at least every other week so you have notice of important developments and the claims process.

See August 11, 2010 Letter pp. 2-3. The same direction was initially filed with the Court on June 4, 2010 (Docket No. 49) and posted to the Receiver's website. *See* First Report of the Receiver p. 11, attached to the Brown Declaration as **Exhibit E**.

H. SMITH OBJECTION AND B. SMITH OBJECTION

Two other pro se objections were received by the Court on April 2, 2018 and provided to the Receiver on April 5, 2018 by Chambers since they were not served on the Receiver.

On April 2, 2018, Harold Albert Smith ("H. Smith") filed a pro se objection ("H. Smith Objection") to the Motion. The Motion seeks to strike or disallow two paper claims filed by H. Smith ("H. Smith Paper Claims") for his investment in Integrated Excellence Senior Trust, with an asserted principal balance of \$100,485 and for his investment in TDM Verifier Trust 07 ("TDM 07") with an asserted principal balance of \$90,000. H. Smith has three allowed Receiver-granted claims (collectively, the "H. Smith Allowed Claims") for his (1) \$10,000 unpaid principal balance in FEIN Secured Senior Subordinated Notes, (2) \$50,000 unpaid principal balance in FEIN Secured Senior Subordinated Notes, and (3)

\$73,492.38 unpaid principal balance in Integrated Excellence Senior Trust. Upon resolution of the H. Smith Paper Claims, the H. Smith Allowed Claims (Claim Nos. 6480A, 6481A, and 6482P) will be processed, allowed, and paid in accordance with the Plan of Distribution (Docket No. 847). Brown Dec'1 ¶ 12.

On April 2, 2018, Bradley Smith ("B. Smith") also filed a pro se objection ("B. Smith Objection") to the Motion. The Motion seeks to strike or disallow two paper claims filed by B. Smith ("B. Smith Paper Claims") for his investment in Integrated Excellence Senior Trust, with an asserted principal balance of \$100,485 and for his investment in TDM 07 with an asserted principal balance of \$90,000. B. Smith has three allowed Receiver-granted claims (collectively, the "B. Smith Allowed Claims") for his (1) \$10,000 unpaid principal balance in FEIN Secured Senior Subordinated Notes due 1/30/2009, (2) \$50,000 unpaid principal balance in FEIN Secured Senior Subordinated Notes due 1/30/2009, and (3) \$73,492.38 unpaid principal balance in Integrated Excellence Senior Trust. Upon resolution of the B. Smith Paper Claims, the B. Smith Allowed Claims (Claim Nos. 6467A, 6468A, and 6469P) will be processed, allowed, and paid in accordance with the Plan of Distribution (Docket No. 847). Brown Dec'1 ¶ 13.

A. Prior Communications Between Receiver and H. Smith

The Receiver has had multiple communications with H. Smith throughout the claims administration process. On December 20, 2017, the Receiver sent a letter to H. Smith, attached to the Brown Declaration as **Exhibit F**, explaining that of the four paper claims that H. Smith had submitted in 2012, two were exact duplicate paper claims that were expunged by the Order entered granting the Receiver's First Claims Motion. Brown Dec'1 ¶ 14. This letter also explained why H. Smith was granted his Integrated Excellence

Senior Trust claim in the reduced amount of \$73,492.38 and why the Receiver did not grant H. Smith a claim for his asserted TDM claim. The Receiver also offered H. Smith an opportunity to withdraw his remaining paper claims to expedite the processing and payment of his Receiver-granted claims. *Id.*

H. Smith responded with a letter dated December 29, 2017, attached to the Brown Declaration as **Exhibit G**, attaching copies of his paper claims filed in 2012 and the records of his investments. Brown Dec'1 ¶ 15. H. Smith reasserted his paper claims against Integrated Excellence Senior Trust and TDM and did not consent to withdraw those claims. On February 28, 2018, H. Smith contacted the Receiver and his counsel by phone and email, inquiring whether the Receiver had received his December letter and what he could do to address the Motion. *Id.* Receiver's counsel responded to H. Smith by letter dated March 1, 2018, attached to the Brown Declaration as **Exhibit H**, reiterating the Receiver's bases for seeking to disallow H. Smith's paper claims by the Motion, and informing H. Smith that if he still disagreed with the Receiver, he could file an objection with the Court on or before April 2, 2018. *Id.*

B. The Asserted Integrated Excellence Senior Trust Claims were Appropriately Reduced

H. Smith and B. Smith are entitled to distributions on account of their claims in Integrated Excellence Senior Trust, but in the reduced amount of \$73,492.38. Before the Receivership, the principal of Integrated Excellence Senior Trust was reduced on account of normal amortization, as well as on account of interest paid in 2009 and 2010 that was subsequently treated by the Receiver as a reduction in principal due to the Ponzi scheme. Investors were so notified. Brown Dec'1 ¶ 16. The adjustment to Integrated Excellence Senior Trust principal on account of amortization and recharacterized interest payments

resulted in a reduction of approximately 31.635% of the original principal of Integrated Excellence Senior Trust. *Id.* Accordingly, H. Smith's and B. Smith's claims in Integrated Excellence Senior Trust were reduced by 31.635% of their original investments of \$107,500 each, resulting in allowed claims in Integrated Excellence Senior Trust in the amount of \$73,492.38. *Id.*

C. H. Smith and B. Smith Are Not Entitled to Distributions on Account of Their Asserted TDM 07 Claims But May Be Entitled to Claims in TDM 07R

H. Smith and B. Smith are not entitled to distributions on account of their claims asserted in TDM 07 because the records of McGinn Smith show those investments as non-existent.

Although H. Smith and B. Smith assert claims against TDM 07, they actually may hold investments in TDM Verifier Trust 07R ("TDM 07R") because when TDM 07 matured, McGinn Smith rolled the investments into TDM 07R. Brown Dec'1. ¶ 17. The financial records of TDM 07R support the Receiver's position that the H. Smith and B. Smith investments were redeemed. The McGinn Smith records for TDM 07R also support the conclusion that H. Smith and B. Smith are no longer investors with investments in that fund. The Receiver and his staff have reviewed the evidence several times, including late yesterday after reviewing the Smith Objections.

As a result of last night's renewed investigation, the Receiver's staff located the following document which creates some doubt in the Receiver's mind as to whether the Smiths' TDM 07R investments were redeemed. H. Smith and B. Smith are listed as investors on the original investment register for TDM 07R, which was an excel spreadsheet maintained internally at McGinn Smith to track investments (the "Investment Register"). Brown Dec'1. ¶ 18. A summary copy of the Investment Register is attached to the Brown

Declaration as **Exhibit I**. The Investment Register has been redacted to protect certain personal information, as well as to remove certain extraneous information. *Id.* In addition, the “Financial Products Register” dated November 3, 2008, attached to the B. Smith Objection, lists his investment as TDM Verifier Trust 07R.

The Investment Register shows that H. Smith’s and B. Smith’s TDM 07R investments were marked as “REDEEM PEND”. While the financial records do not support a “redemption pending” conclusion and are at odds with the less reliable nature of the Investment Register, the Receiver believes he should allow the two TDM 07R claims if H. Smith and B. Smith each sign and return to the Receiver affidavits signed under penalty of perjury stating that their respective \$90,000 asserted TDM 07R claims were not redeemed or paid to them. Brown Dec’1. ¶ 19.

CONCLUSION

The Receiver requests that the Court (i) overrule the McCafferty Objection, (ii) overrule the H. Smith and B. Smith Objections except to the extent of permitting the Receiver to allow the H. Smith and B. Smith TDM 07 or TDM 07R \$90,000 claims upon the condition of signed affidavits as suggested by the Receiver, (iii) enter an Order substantially in the form attached to this Omnibus Reply disallowing the Paper Claims listed on Exhibit A through C to the Motion other than those claims which have been withdrawn by consent as indicated on the attached proposed Order, and (iv) grant such other and further relief as the Court deems just and proper.

Dated: April 6, 2018

PHILLIPS LYTLE LLP

By /s/ Catherine N. Eisenhut
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

Plaintiff,

vs.

Case No. 1:10-CV-457
(GLS/CFH)

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, AND :
DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY McGINN, :

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants. and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.

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**ORDER APPROVING MOTION OF WILLIAM J. BROWN, AS RECEIVER,
FOR AN ORDER DISALLOWING PAPER CLAIMS**

Upon the Motion of William J. Brown, as Receiver, for an Order Disallowing Paper Claims; and notice of the Motion having been given to the Securities and Exchange Commission, each investor listed on Exhibit A, Exhibit B and Exhibit C to the Motion by first class mail, and all parties who have filed a Notice of Appearance in this action by ECF, and all creditors of the McGinn, Smith entities and other parties in interest via the Receiver’s website, which notice is deemed good and sufficient notice; and the Court having deemed that sufficient cause exists; it is therefore

ORDERED, that the Motion is approved, and it is further

ORDERED, that each of the filed paper claims listed on Exhibit A, Exhibit B and Exhibit C to the Motion as attached to this Order other than those claims marked as “withdrawn by Investor Consent” is disallowed, and the rights of the Receiver to object on any other basis to the claims of all investors or claimants is expressly preserved; and it is further

ORDERED, that the asserted claims of H. Smith and B. Smith in TDM Verifier 07 or TDM 07R are allowed per the recommendation of the Receiver provided that each of H. Smith and B. Smith duly sign an affidavit in form provided by the Receiver stating under penalty of perjury that they did not redeem or recover a redemption of any monies with respect to either of those investments.

Dated: April ____, 2018

HON. CHRISTIAN F. HUMMEL

Doc #01-3098042.3

EXHIBIT A**Discrepant Claims**

	Claim Number	Description of Investment	Amount of Allowed Claim	Amount of Paper Claim
Paper Claim Withdrawn by Investor Consent	4707A	TAIN Secured Junior Notes Due 12/15/2009	\$148,000.00	\$173,000.00
Paper Claim Withdrawn by Investor Consent	4776A	Seton Hall Mortgage Note Holders	\$ 8,630.83	\$ 8,603.83
	5363P	Firstline Trust 07B Junior Contract Certificates 11% Due 10/01/12	\$ 7,935.69	\$ 10,000.00
Paper Claim Withdrawn by Investor Consent	5494P	FAIN Secured Senior Notes	\$ 22,998.83	\$ 25,000.00

EXHIBIT B**Paper Claims**

	Claim Numbers	Description of Investment	Amount of Paper Claim	Reason for Disallowance
Paper Claim Withdrawn by Investor Consent	4258A	TDM Verifier Trust 07R Contract Certificates	\$ 10,000.00	Exact duplicate of Receiver-granted claim in the amount of \$10,000
Paper Claim Withdrawn by Investor Consent	4259A	TDDM Benchmark Trust 09 8%	\$ 10,000.00	Exact duplicate of Receiver-granted claim in the amount of \$10,000
Paper Claim Withdrawn by Investor Consent	4776A	SAI Trust 00	\$ 10,000.00	Claim for investment in entity excluded from Receivership pursuant to Plan of Distribution
	5535A	Coventry CMS	\$ 8,000.00	Claim for investment in non-Receivership entity
	5535A	Series One Bond #245	\$ 8,000.00	Claim for investment in non-Receivership entity
	5738A	SAI Trust 03	\$ 38,610.75	Claim for investment in entity excluded from Receivership pursuant to Plan of Distribution
	5753P (no allowed claims)	Unknown	Unknown	No liability claim
	6566P (no allowed claims)	Unknown	\$ 25,000.00	No liability claim
Paper Claim Withdrawn by Investor Consent	6710A	TAIN Secured Senior Subordinated Notes 7.75% Due 12/15/2009	\$ 30,000.00	Exact duplicate of Receiver-granted claim in the amount of \$30,000

	Claim Numbers	Description of Investment	Amount of Paper Claim	Reason for Disallowance
	6760P (no allowed claims)	One Liberty Ppty	Unknown	Claim for investment in non-Receiver entity
	6760P (no allowed claims)	RTC	\$ 50,000.00	No liability claim
	6760P (no allowed claims)	Integrated Alarm	\$ 50,000.00	Claim for investment in non-Receiver entity
	6760P (no allowed claims)	CCI	\$ 50,000.00	Claim for investment in non-Receiver entity
	6760P (no allowed claims)	Coventry/CMS	\$ 50,000.00	Claim for investment in non-Receiver entity

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EXHIBIT C

Paper Claims Held by Investors Who Received Correspondence Before January, 2018

Claim Numbers	Description of Investment	Amount of Allowed Claim(s) (if applicable)	Amount of Paper Claim	Reason for Disallowance
No Number Assigned	Miscellaneous no liability investments		\$ 33,232.00	No liability claim
4417A	TAIN Secured Senior Subordinated Notes 7.75% Due 12/15/2009	\$120,000.00	\$120,000.00	Exact duplicate of Receiver-granted claim
5248P	No Liability, Third Albany Income Notes LLC		\$450,000.00	No liability claim
5249P	No Liability, Third Albany Income Notes LLC		\$450,000.00	No liability claim
5238A - 5244A	Coventry Carelink Holding Corp Series One Bonds		\$235,000.00	Claim for investment in non-Receiver-ship entity
5238A - 5244A	Integrated Alarm Services		\$ 60,000.00	Claim for investment in non-Receiver-ship entity
5238A - 5242A	Third Albany Income Notes		\$450,000.00	No liability claim
5238A - 5242A	CMS Financial Services Corp.		\$200,000.00	Claim for investment in non-Receiver-ship entity
5238A - 5242A	Coventry Carelink Holding Corp Series One Bonds		\$ 35,000.00	Claim for investment in non-Receiver-ship entity
5238A - 5242A	Integrated Alarm Services		\$ 60,000.00	Claim for investment in non-Receiver-ship entity
5238A - 5242A	Integrated Alarm Services		\$100,000.00	Claim for investment in non-Receiver-ship entity
5238A - 5242A	Integrated Alarm Services		\$300,000.00	Claim for investment in non-Receiver-ship entity
5243A -	CMS Financial Services Corp.		\$200,000.00	Claim for investment in non-Receiver-ship entity

	Claim Numbers	Description of Investment	Amount of Allowed Claim(s) (if applicable)	Amount of Paper Claim	Reason for Disallowance
	5244A				Receivership entity
	5243A - 5244A	Coventry Carelink Holding Corp. Series One Bonds		\$200,000.00	Claim for investment in non-Receivership entity
	5243A - 5244A	Integrated Alarm Services, Inc.		\$ 60,000.00	Claim for investment in non-Receivership entity
	5243A - 5244A	Integrated Alarm Services, Inc.		\$100,000.00	Claim for investment in non-Receivership entity
	5243A - 5244A	Integrated Alarm Services, Inc.		\$300,000.00	Claim for investment in non-Receivership entity
	5243A - 5244A	ExchangeBlvd.com		\$100,000.00	Claim for investment in non-Receivership entity
	5238A - 5242A	ExchangeBlvd.com		\$100,000.00	Claim for investment in non-Receivership entity
	5238A - 5242A	Worldwide Auction Solutions Inc.		Unknown	Claim for investment in non-Receivership entity
	5243A - 5244A	Coventry Carelink Holding Corp.		\$200,000.00	Claim for investment in non-Receivership entity
	5238A - 5242A	Coventry Carelink Holding Corp.		\$200,000.00	Claim for investment in non-Receivership entity
	5238A - 5242A	Coventry Carelink Holding Corp. Series One Bonds		\$ 35,000.00	Claim for investment in non-Receivership entity
	5353P - 5354P	Firstline Trust 07 9.25% Senior Contract Certificates Due 09/01/10	\$ 88,483.60	\$100,000.00	Duplicate of Receiver-granted claims in different amount
Paper Claim Withdrawn by Investor Consent					
Paper Claim Withdrawn by Investor Consent	5356P	No Liability, TDM Verifier Trust 08		\$ 50,000.00	No liability claim

	Claim Numbers	Description of Investment	Amount of Allowed Claim(s) (if applicable)	Amount of Paper Claim	Reason for Disallowance
Paper Claim Withdrawn by Investor Consent	5357P	No Liability, TDM Verifier Trust 08		\$ 50,000.00	No liability claim
Paper Claim Withdrawn by Investor Consent	5358P	No Liability, Firstline Sr. Trust 07		\$100,000.00	No liability claim
	5403A - 5404A	Seton Hall Mortgage Note Holders	\$ 43,153.94	\$ 43,153.94	Exact duplicate of Receiver-granted claims
	5468P	No Liability, TDM Cable Trust 06		\$ 90,000.00	No liability claim
	5469P	Firstline Trust 07B Junior Contract Certificates 11% Due 10/01/12	\$ 15,871.38	\$ 20,000.00	Duplicate of Receiver-granted claims in different amount
	5470P	Firstline Trust 07B Senior Contract Certificates 9.50% Due 10/01/11	\$ 24,830.34	\$ 30,000.00	Duplicate of Receiver-granted claims in different amount
	5474P	No Liability, Firstline Sr. Trust 07		\$ 6,233.00	No liability claim
	5475P	No Liability, Firstline Sr. Trust 07		\$ 6,175.00	No liability claim
	5476P	No Liability, McGinn Transaction Funding Corp.		\$ 58,300.00	No liability claim
	5477P	No Liability, TDM Cable Trust 06		\$ 2,505.00	No liability claim
	5478P	No Liability, TDM Verifier Trust 08		\$ 2,500.00	No liability claim
	6470P	TDM Verifier Trust 07		\$ 90,000.00	No liability claim
	6469P	Integrated Excellence Sr Trust 08	\$ 73,492.38	\$100,485.00	Duplicate of Receiver-granted claim in different amount
	6482P	Integrated Excellence Sr Trust 08	\$ 73,492.38	\$100,485.00	Duplicate of Receiver-granted claim in different amount
	6483P	No Liability, TDM Verifier Trust 08		\$ 90,000.00	No liability claim
	6599A- 6602A	SAI00		\$ 10,000.00	Claim for investment in entity excluded from Receivership

Claim Numbers	Description of Investment	Amount of Allowed Claim(s) (if applicable)	Amount of Paper Claim	Reason for Disallowance
				pursuant to Plan of Distribution
6599A-6602A	SAI00		\$ 15,000.00	Claim for investment in entity excluded from Receivership pursuant to Plan of Distribution
6599A-6602A	SAI00		\$ 10,000.00	Claim for investment in entity excluded from Receivership pursuant to Plan of Distribution
6599A-6602A	SAI00		\$ 15,000.00	Claim for investment in entity excluded from Receivership pursuant to Plan of Distribution
6599A-6602A	Unknown		\$ 20,000.00	No liability claim
6602A	Third Albany Income Note, LLC	\$56,000.00	\$ 110,000.00	Investor partially redeemed this investment, which resulted in a reduced Receiver-granted claim
6602A	Third Albany Income Notes LLC (second identical paper claim)	\$56,000.00	\$ 110,000.00	Investor partially redeemed this investment, which resulted in a reduced Receiver-granted claim
6599A-6602A	SAI Trust 00		\$ 70,000.00	Claim for investment in entity excluded from Receivership pursuant to Plan of Distribution
6599A-6602A	SAI Trust 03		Unknown	Claim for investment in entity excluded from Receivership pursuant to Plan of Distribution
6599A-6602A	RTC Trust 02		\$ 100,000.00	No liability claim

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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(GLS/CFH)

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, AND
DAVID L. SMITH, GEOFFREY R. SMITH,
Individually and as Trustee of the David L. and
Lynn A. Smith Irrevocable Trust U/A 8/04/04,
LAUREN T. SMITH, and NANCY McGINN,

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants,

- and -

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.

-----X

**DECLARATION OF WILLIAM J. BROWN, AS RECEIVER,
IN SUPPORT OF OMNIBUS REPLY TO OBJECTIONS TO SECOND MOTION
FOR AN ORDER DISALLOWING PAPER CLAIMS**

William J. Brown, as Receiver, declares, under the penalty of perjury, pursuant to 28
U.S.C. § 1746, as follows:

1. I am the Receiver of McGinn, Smith & Co. Inc., et al. (“McGinn
Smith”) appointed by the Court in this action pursuant to the Preliminary Injunction Order

dated July 26, 2010 (Docket No. 96).

2. I make this Declaration in support of the Receiver's Omnibus Reply to Objections to Second Motion for an Order Disallowing Paper Claims.

MCCAFFERTY OBJECTION

3. On March 16, 2018, Harry and Diane McCafferty (the "McCafferty's") filed and served a pro se objection (Docket No. 982) ("McCafferty Objection") to the Receiver's Second Motion for an Order Disallowing Paper Claims (Docket No. 974) ("Motion"). The Motion seeks to strike or disallow the paper claim filed by the McCafferty's ("McCafferty Paper Claim") for their investment in SAI Trust 03 ("SAI"), with an asserted principal balance of \$38,610.75. The McCafferty's do have an allowed Receiver-granted claim for their \$30,000 unpaid principal balance in TAIN Secured Junior Notes due 12/15/2009 ("TAIN Claim"). Upon resolution of the McCafferty Paper Claim, the TAIN Claim (Claim No. 5738A) will be processed, allowed, and paid in accordance with the Plan of Distribution (Docket No. 847).

4. During the Receivership, I reviewed the events surrounding SAI and determined that there was no ability to recover any assets on behalf of the SAI investors. As investors in SAI, the McCafferty's received at least three written communications from McGinn Smith¹ in 2008 about the dire circumstances impacting SAI and its liquidation by senior lenders. First, in April 2008, David Smith sent the letter attached as **Exhibit A** discussing why interest payments were not made to investors in early 2008. It also informed the McCafferty's that SAI's senior lender had foreclosed on the stock of SAI and taken control of the company. Subsequently, by letter dated August 5, 2008, attached as **Exhibit**

¹ Terms not otherwise defined herein have the meaning ascribed to them in the Motion.

B, the McCafferty's received another letter from David Smith, providing further updates on the developments and the likelihood that no payment to SAI investors would be made. Finally, in the letter attached as **Exhibit C**, dated December 23, 2008, the McCafferty's were notified that the SAI investor notes were worthless and should be written off for a tax loss in 2008.

5. I developed the Plan of Distribution after extensive reviews of the records and transactions of McGinn Smith and significant efforts at recovering assets for the repayment of defrauded investors. At the commencement of the Receivership, the funds on hand were only \$485,491 and, ultimately, after operating the remaining businesses and successfully selling them, as well as collecting amounts from various investments made by McGinn Smith, I achieved a significant recovery in excess of \$21 million for the approximately 900 investors with over 3,000 claims aggregating approximately \$124,000,000 in Receivership entities that held assets at the commencement of the Receivership.

6. In the course of my investigation, I realized that the so-called SAI entities were included within the Receivership at the request of the SEC. When the SEC formulated the potential Receivership entities in 2010, I understand that it was done on a protective basis without knowing in great detail prior to the filing of the SEC's Complaint initiating this action the then current circumstances of the individual entities or investments. For example, the Pine Street entities were originally included and later removed from the list of Receivership Entities at the request of the SEC and approved by the Court. *See* Docket Nos. 51 and 68. Later, after consultation with the SEC, it was determined that the Plan of Distribution should exclude SAI claims because all SAI assets had been liquidated

by a senior secured creditor prior to the Receivership and no assets remained to collect or recover. Any monies that I held and recovered for distribution to investors had no relation to the investments in SAI. The SAI saga concluded by itself in early 2008.

7. The claims administration procedures approved by Order of the Court entered March 27, 2012 (Docket No. 475) excluded claims for investments in SAI because of the prior liquidation of SAI's assets. Accordingly, such claims were not included on the schedules of known claims against the MS Entities posted to the Receiver's website, and such investors did not receive Claim Forms from the Receiver for investments in SAI.

8. I am well aware of all SAI investors and had access to their information in the administration of the Receivership. Additionally, I did not provide any capital to SAI, since no SAI entity existed with an investment during the Receivership. There is no known connection between Firstline Security and SAI, and, even if there were, it would be irrelevant to the matter at hand. Finally, unlike the circumstances surrounding SAI, I was able to locate and liquidate assets held by the Firstline entities and thus investors in those entities were granted a distribution.

9. The McCafferty's knew in 2012 that their SAI claim was not included in the Receiver's claims database. For this reason, they filed their paper claim by letter dated May 24, 2012. In March 2013, I had discussions with Mr. McCafferty, and I explained to him the reason for excluding SAI from the Receiver's claims database and from any potential distributions.

10. At all times since filing the Plan of Distribution with the Court, the status of the Plan and the filing of the pleadings related thereto were prominently posted and available for review and downloading or printing on the Receiver's website beginning on

December 30, 2015. By letter dated August 11, 2010, attached as **Exhibit D**, mailed shortly after my appointment as Receiver, I notified all investors that they were responsible for periodically reviewing the Receiver's website for updates. The letter stated in pertinent part:

ALL FUTURE NOTICES AND COMMUNICATIONS WILL BE MADE ONLY ON THE WEBSITE MCGINNSMITHRECEIVER.COM. YOU NEED TO REVIEW THE SITE PERIODICALLY. FUTURE MAILINGS THROUGH THE U.S. POSTAL SERVICE ARE TOO EXPENSIVE TO CONTINUE TO PROVIDE TO ALL PARTIES. . . . As noted above, all future communications will be posted to mcginnsmithreceiver.com. You are responsible for periodically reviewing that site for updates. I suggest you do so at least every other week so you have notice of important developments and the claims process.

See August 11, 2010 Letter pp. 2-3. I filed the same direction with the Court on June 4, 2010 (Docket No. 49) and posted it to the Receiver's website. *See* First Report of the Receiver p. 11, attached as **Exhibit E**.

H. SMITH OBJECTION AND B. SMITH OBJECTION

11. Two other pro se objections were received by the Court on April 2, 2018 and provided to the Receiver on April 5, 2018 by Chambers since they were not served on the Receiver.

12. On April 2, 2018, Harold Albert Smith ("H. Smith") filed a pro se objection ("H. Smith Objection") to the Motion. The Motion seeks to strike or disallow two paper claims filed by H. Smith ("H. Smith Paper Claims") for his investment in Integrated Excellence Senior Trust, with an asserted principal balance of \$100,485 and for his investment in TDM Verifier Trust 07 ("TDM 07") with an asserted principal balance of \$90,000. H. Smith has three allowed Receiver-granted claims (collectively, the "H. Smith Allowed Claims") for his (1) \$10,000 unpaid principal balance in FEIN Secured Senior Subordinated Notes due 1/30/2009, (2) \$50,000 unpaid principal balance in FEIN Secured

Senior Subordinated Notes due 1/30/2009, and (3) \$73,492.38 unpaid principal balance in Integrated Excellence Senior Trust. Upon resolution of the H. Smith Paper Claims, the H. Smith Allowed Claims (Claim Nos. 6480A, 6481A, and 6482P) will be processed, allowed, and paid in accordance with the Plan of Distribution (Docket No. 847).

13. On April 2, 2018, Bradley Smith (“B. Smith”) also filed a pro se objection (“B. Smith Objection”) to the Motion. The Motion seeks to strike or disallow two paper claims filed by B. Smith (“B. Smith Paper Claims”) for his investment in Integrated Excellence Senior Trust, with an asserted principal balance of \$100,485 and for his investment in TDM 07 with an asserted principal balance of \$90,000. B. Smith has three allowed Receiver-granted claims (collectively, the “B. Smith Allowed Claims”) for his (1) \$10,000 unpaid principal balance in FEIN Secured Senior Subordinated Notes due 1/30/2009, (2) \$50,000 unpaid principal balance in FEIN Secured Senior Subordinated Notes due 1/30/2009, and (3) \$73,492.38 unpaid principal balance in Integrated Excellence Senior Trust. Upon resolution of the B. Smith Paper Claims, the B. Smith Allowed Claims (Claim Nos. 6467A, 6468A, and 6469P) will be processed, allowed, and paid in accordance with the Plan of Distribution (Docket No. 847).

14. I have had multiple communications with H. Smith throughout the claims administration process. On December 20, 2017, I sent a letter to H. Smith, attached as **Exhibit F**, explaining that of the four paper claims that H. Smith had submitted in 2012, two were exact duplicate paper claims that were expunged by the Order entered granting the Receiver’s First Claims Motion. This letter also explained why H. Smith was granted his Integrated Excellence Senior Trust claim in the reduced amount of \$73,492.38 and why H. Smith was not granted a claim for his asserted TDM 07 claim. I also offered H. Smith an

opportunity to withdraw his remaining paper claims to expedite the processing and payment of his Receiver-granted claims.

15. H. Smith responded with a letter dated December 29, 2017, attached as **Exhibit G**, attaching copies of his paper claims filed in 2012 and the records of his investments. H. Smith did not consent to withdraw the H. Smith Paper Claims. On February 28, 2018, H. Smith contacted me by phone and email, inquiring whether I had received his December letter and what he could do to address the Motion. Counsel to the Receiver responded to H. Smith by letter dated March 1, 2018, attached as **Exhibit H**, reiterating the bases for seeking to disallow the H. Smith Paper Claims by the Motion, and informing H. Smith that if he still disagreed, he could file an objection with the Court on or before April 2, 2018.

16. Before the Receivership, the principal of Integrated Excellence Senior Trust was reduced on account of normal amortization, as well as on account of interest paid in 2009 and 2010 that was subsequently treated by the Receiver as a reduction in principal due to the Ponzi scheme. Investors were so notified. The adjustment to principal on account of amortization and recharacterized interest payments resulted in a reduction of approximately 32.635% of the original principal of Integrated Excellence Senior Trust. Accordingly, H. Smith's and B. Smith's claims in Integrated Excellence Senior Trust were reduced by 32.635% of their original investments of \$107,500 each, resulting in allowed claims in Integrated Excellence Senior Trust in the amount of \$73,492.38.

17. H. Smith and B. Smith may hold investments in TDM Verifier Trust 07R ("TDM 07R") because when TDM 07 matured, McGinn Smith rolled the investments into TDM 07R. The financial records of TDM 07R support the Receiver's position that the

H. Smith and B. Smith investments were redeemed. The McGinn Smith records for TDM 07R also support the conclusion that H. Smith and B. Smith are no longer investors with investments in that fund. I and my staff have reviewed the evidence several times, including late yesterday after reviewing the Smith Objections.

18. As a result of last night's renewed investigation, my staff located the following document which creates some doubt in the Receiver's mind as to whether the Smiths' TDM 07R investments were redeemed. H. Smith and B. Smith are listed as investors on the original investment register for TDM 07R, which was an excel spreadsheet maintained internally at McGinn Smith to track investments (the "Investment Register"). A summary copy of the Investment Register is attached here as **Exhibit I**. The Investment Register has been redacted to protect certain personal information, as well as to remove certain extraneous information.

19. The Investment Register shows that H. Smith's and B. Smith's TDM 07R investments were marked as "REDEEM PEND". While the financial records do not support a "redemption pending" conclusion and are at odds with the less reliable nature of the Investment Register, the Receiver believes he should allow the two TDM 07R claims if H. Smith and B. Smith each sign and return to the Receiver affidavits signed under penalty of perjury stating that their respective \$90,000 asserted TDM 07R claims were not redeemed or paid to them.

Dated: April 6, 2018

/s/ William J. Brown
William J. Brown

Exhibit A

April 9, 2008

Re: Registration: _____
Internal Investment #: _____

Dear _____:

As an investor in SAI Trust 00 and SAI 03 you are well aware that you have not received principal and interest payments for February, March and April of 2008. I apologize for the delay in this correspondence, but up until the end of February the Company assured us several times that our payments would be forthcoming immediately. I have no doubt that the Company was sincere, but on February 22nd, the Company was served a notice of default by their Senior lender, Cordell Funding, LLLP (“Lender”), and by the terms of a certain Intercreditor Agreement among Borrower, Lender, and the Subordinated Lenders, of which SAI Trust 00 and SAI 03 are Subordinated Lenders, no payments of principal or interest may be made by the Borrower on the subordinated debt. Thus, until the Company and its senior lenders reach some accommodation we are precluded from receiving any payments. In a conversation that I had on March 27, 2008 with Ray Gross, Chief Executive Officer of SAI, Inc., Mr. Gross informed me that he believed a resolution was likely in the next two weeks. Considering the complexity of the issues, the state of the credit markets, and the preliminary proposals put forth by the Company, I am highly suspect that a resolution will be reached in that time frame.

The following is a brief chronological history of the events leading to the default as explained to me by Mr. Gross in two conversations that I have had with him, February 26, 2008 and March 27, 2008.

In my conversation of February 26, 2008 I expressed to Mr. Gross my frustration and displeasure of having been promised multiple times during the last few weeks that our payment was imminent. I reminded him that I had several emails from his associates making such promises. Mr. Gross apologized, but indicated that while working on their short term cash difficulties, they were “blindsided” by the February 22nd default notice from Cordell Funding LLLP and were now in a position that legally they could not forward any monies until Cordell was in agreement. Mr. Gross stated that Cordell put SAI into default because they noticed that we and Whitecap Advisors, LLC (another

subordinated lender with an additional \$60,000,000 in invested equity) were not being paid and they were concerned that we would preempt their payments.

SAI's problems are evidently, but not surprisingly, related to the sub-prime debt crisis presently engulfing all of the financial markets. In August of 2007, SAI purchase some 80,000 alarm accounts from several dealers at a price of approximately \$70 million. The West LB Bank had given SAI a financing commitment, but was unable to honor the commitment when they got into financial difficulty as a result of their substantial investment in Countrywide Credit, the country's largest sub-prime lender. Unfortunately, the 80,000 accounts had been already transferred to SAI and they felt a moral obligation to service the accounts. The dealers who transferred the accounts and did not receive their money for selling the accounts, did not feel a similar obligation to pay SAI for the servicing, an amount that approximated \$500,000 per month. Since SAI has not been paid since September 2007 and has accrued a receivable of some \$3,500,000 dollars, they in turn were unable to meet their obligations, and thus fell into default.

In my conversation of March 27, 2008 with Mr. Gross, I was informed that Cordell has foreclosed on the stock of SAI held for collateral and has taken control of the Company. SAI has since received \$1,500,000 of the \$3,500,000 that they are owed which has allowed them to continue to operate, but not sufficient to meet their debt service. The Company has plans to sell their wholesale business and concentrate on the retail business with a downsized company. The proceeds from the sale will enable them to get current with their creditors. Mr. Gross anticipated that sale would take approximately 30 days. I am doubtful of that time frame as well. In addition, the Senior creditors, depending on the level of debt reduction from the sale proceeds, will then have to grant permission for the subordinated lenders to be paid.

On, March 7, 2008, we sent our in house attorney, Mr. Joseph Carr, to a Creditors' Committee meeting in New York City. It was more informational than action oriented, and we await further word on any future meetings to be scheduled.

In conclusion, I suspect that the creditors will eventually reach accommodation and the Company will be allowed to operate and meet their debt service. However, we may be asked (or forced) to modify our loan. McGinn, Smith will stay diligently involved and do everything within their legal capability to protect our clients' interest! As events unfold, we will keep you apprised.

Respectfully,

David L. Smith
President
McGinn, Smith & Co., Inc.

Exhibit B

August 5, 2008

Dear Investor,

We last updated you regarding your investment in SAI Trust 00 or SAI 03 on April 7, 2008. At that time we presented you with some of the background and events that had led to a default of principal and interest payments due for February, March and April of 2008. At that time I related that the Company believed that a resolution to their problems would be reached in the next two weeks. I expressed a high degree of skepticism that the time frame would prove to be accurate. In addition, the Company stated the sale of their wholesale business would take place within 30 days and that event would enable them to get current with their creditors. Here again, I expressed my doubts as to whether that time frame was realistic. The fact that we are now providing you with an update four months later demonstrates that we had every reason to question the Company's assertions.

The last four months have been very frustrating as our ability to influence events has been extremely limited. Sometime after April 7th the Company was able to procure a \$2,000,000 credit facility that has provided them with sufficient working capital to continue operating. All lenders agreed to subordinate their position to that loan. The maturity and payment of that loan was to coincide with the eventual sale of the wholesale business. On July 24th we noticed on the SSN Newswire that C.O.P.S. Monitoring had announced that on July 18, 2008 they had purchased substantially all of the wholesale monitoring assets of SAI. SAI had transferred to C.O.P.S. Monitoring more than 900 dealer contracts representing more than 128,000 subscriber accounts. The total proceeds of the sale were \$11.5 million, with approximately another \$500,000 to be delivered pending resolution of some minor issues. According to Ray Gross, CEO of SAI, the allocation of proceeds was as follows:

- \$500,000 fees
- 2,300,000 held in escrow by C.O.P.S. for 12 months versus indemnification
- 9,000,000 to Cordell, of which 2,000,000 went to repay the working capital loan

Of the approximate \$7,000,000 remaining, Cordell will allocate \$1.5 -2.0 million to get accounts payable current. Credit obligations such as ours are not considered accounts payable. Thus, Cordell will use all the remaining balance to reduce the balance of their loan.

The other major event of the last thirty days was that the foreclosure proceeding occurred as scheduled on Monday, July 7th. At the proceeding, Cordell Funding, LLLP ("Cordell") bid its "Junior Note" at full balance of approximately \$13.9 million for the pledged SAI collateral, subject to senior notes held also by Cordell in the amount of approximately \$16.5 million. The collateral is now held by a new company, SA Services

LLC (“SAS”), a Delaware limited liability company, which is wholly owned by Cordell. The Cordell notes are no longer an obligation of SAI.

Now that SAS has taken ownership of the assets of SAI pursuant to the foreclosure proceedings, SAI and SAS have agreed to enter into a definitive services agreement whereby (A) SAS (1) engages SAI to render all services that may be required under the agreements acquired by SAS, (2) agrees to reimburse SAI for all costs incurred by SAI in rendering such services, and (3) agrees to allow SAI use of all such SAS-owned assets as are required by SAI for the rendering of such services and (B) SAI (1) agrees to provide SAS with the full use and benefit of all assets not transferred to SAS in connection with the foreclosure, including, without limitation, all (i) licenses, authorizations and approvals, whether in the name of SAI, its officers, employees or nominee, (ii) intellectual property, (iii) real property and (iv) equipment leases, used or useful in connection with the operation of the alarm servicing business as conducted and as anticipated to be conducted prior to the consummation of the foreclosure, and (2) agrees to collect and use for the benefit of SAS all amounts payable with respect to the alarm servicing agreements included in the business as conducted prior to the foreclosure, regardless of whether consent or notice has been given with respect to the transfer of such agreements.

While the exact financial position has not been stated to us, nor have we received the promised financial statements, we believe the following to be a reasonably accurate financial picture for the Company:

- 1) Cordell is netting \$5-5.5 million against their \$30.4 million in Senior and Junior loans.
- 2) SAI no longer has any obligation to Cordell, but neither does it retain any tangible assets.
- 3) Dwight Capital is owed approximately \$25,000,000 by SAI, including \$12.5 million advanced in October 2007.
- 4) SAI Trust 00 and SAI 03 are owed approximately \$6.5 million.
- 5) SAI will now be essentially a much smaller company whose primary source of revenues will be management and administrative fees from SA Services, LLC, the new company formed by Cordell.

It appears to us, that in this newly reorganized state, SAI will be extremely hard pressed to generate sufficient revenues to service both the Dwight and SAI Trust loans.

Up to this point, acting as your agent, we have been reluctant to declare the Company in default as to their obligations since we believed cooperation in restructuring would be critical to all of the parties. As a result of the Cordell foreclosure we must now chart a new course. We are presently reaching out to Dwight to understand their intentions and to see if we may work with them. While we have not been approached by SAI as to how they intend to address their obligations to us, it seems reasonable that their only alternative is to seek to have us convert our debt to equity. While we would obviously not rule out any approach this early, this approach does not seem to have a lot

of appeal as SAI has struggled for the last 4-5 years with essentially the same management, but an ever changing marketing and operating plan.

These new developments of the past 30 days have not given us sufficient time to address all of our options. Unfortunately, time was lost while we waited for the Company to sort out its problems. While we presently do not have an answer to what comes next, we did want to communicate these recent developments. McGinn, Smith will be very proactive over the next few months in considering all alternatives available to us and in engaging counsel to explore what recourse we have. We will continue to inform you of unfolding developments.

Respectfully,

David L. Smith
President

Exhibit C

December 23, 2008

Re: Investment #

Dear Investor:

We last communicated to you on August 5, 2008 regarding your investment in either SAI Trust 03, or SAI Trust 00, and at that time indicated that the assets supporting your investment had been foreclosed on by the senior lender. We also indicated that we would attempt to work with the other subordinated lender to review any options that might be available to us. Our efforts to reach out to the other subordinate lender, Dwight Asset Management, were unproductive, for reasons that I suspect were related to their need to focus on other investments that were being impaired by the credit crisis that had accelerated throughout the year. While their loan of approximately \$27,000,000 is significant, they are a billion dollar asset management fund and are probably more concerned with managing impaired assets that they can control. Dwight sent a Notice of Default on November 19, 2008, but are really in the same situation that we find ourselves.

McGinn, Smith Acceptance Corp., as agent for various lenders, including, SAI Trust 03, and SAI Trust 00, notified SAI that they were in default in principal amount of \$ 7,063, 810 and accrued interest through June 30, 2008 in the amount of \$289,293. We demanded immediate payment, and in the event that payment was not received, we indicated that we will proceed as it deems appropriate to protect our rights to the fullest extent allowed by law.

I have enclosed a copy of the letter received on December 19, 2008 from Brian C. Johnson, CFO of Security Associates International, Inc. and President and CEO of Castle Rock Security, Inc. The letter states that our investor notes can be considered worthless. Consequently, investors can write off their remaining principal for a tax loss for the tax year of 2008. I have enclosed a schedule of interest and principal payments made throughout the time you held the investment and you can see from the schedule what your remaining principal is.

We at McGinn, Smith are obviously extremely disappointed with the outcome of this investment. While SAI, Inc. has struggled for the last several years, management was always optimistic that they were turning things around and that our investment would ultimately be protected. When the senior lender, Cordell Funding, chose to foreclose on the assets of the Company, SAI was essentially put out of business.

If you or your tax advisor has any questions concerning this communication, please do not hesitate to call me.

Sincerely,

David L. Smith
President

DLS/gbg
Enclosures

Exhibit D

**William J. Brown, as Receiver
of McGinn, Smith & Co., Inc., et al.**

Tel: 716.847.8400

3400 HSBC Center
Buffalo, NY 14203
inquiry@mcginnsmithreceiver.com

August 11, 2010

Dear Sir/Madam:

Re: Securities and Exchange Commission v. McGinn, Smith & Co, Inc., et al.

This letter is being sent to all known persons who have investments with McGinn Smith & Co., Inc. ("McGinn Smith") or a related entity. I am the court-appointed Receiver of McGinn Smith and the other entities related to McGinn Smith which are listed on the Schedule attached to this letter ("Receivership Entities").

This letter will provide some explanation of why a Receiver has been appointed, some basic information about what is going on and how you can learn more, and what you can expect to happen in the future. Finally, the Conclusion section of this letter will instruct you on how to stay in touch with on-going developments.

INTRODUCTION

As many of you know from newspaper accounts, your broker, conversations with me, or through other sources including the website ("Website") I maintain (mcginnsmithreceiver.com), the United States Securities & Exchange Commission commenced a lawsuit in the federal court in Albany, New York on April 20, 2010 against McGinn Smith and others. The SEC's complaint which was amended on August 2, alleges that the defendants are guilty of violating specified securities law and seeks a variety of relief including enjoining those practices, appointing a Receiver over the Receivership Entities, and freezing and eventually recovering assets of the defendants for the purpose of creating a fund to help repay investors with legitimate claims.

The Complaint, the Amended Complaint, and the First Report of the Receiver are located on the Website at Docket Numbers 1, 100 and 49. You will also find the other court pleadings there as well. While the Court initially unfroze the Smith Trust account in its decision at Docket No. 86, based on newly discovered evidence not previously provided to the SEC or the Court, the Smith Trust has once again been frozen by the Court subject to a further hearing later this month.

**William J. Brown, as Receiver
of McGinn, Smith & Co., Inc., et al.**

Tel: 716.847.8400

3400 HSBC Center
Buffalo, NY 14203
inquiry@mcginnsmithreceiver.com

THE RECEIVER'S ROLE

My role is to recover as many assets as possible for the benefit of legitimate investors. Efforts in that regard are already underway. I am overseeing the businesses run directly by McGinn Smith, and I am in control of the bank accounts of the Receivership Entities. Those parties who were making their payments to the Receivership Entities prior to my appointment continue to do so.

I am now proceeding to establish a process for the sale of certain assets to the highest and best bidders. Those sales which will likely take some time to complete will include alarm contracts and triple play deals (cable, telephone and internet service to condominium and apartment complexes), as well as other investments. I have also met with a number of parties who owe money to the Receivership Entities. Some of those parties are resisting payment and others while acknowledging the obligation claim an inability to pay. Collection efforts as you would expect will take time and will take a variety of forms.

ASSETS

Upon my interim appointment as Receiver in late April, there was \$485,491 in the bank accounts of the Receivership Entities with checks for over \$200,000 having been previously written to pay some select investors. The Court's Order froze the bank accounts, and the banks returned the checks. Many of you know that McGinn Smith had been illiquid for some time because you were not getting your promised payments.

At this time, I have suspended payments to investors until at least (i) the circumstances of the various investments and who has been paid and not paid can be explored and understood, (ii) monies can be raised from collections and asset sales to create a sufficient fund to pay legitimate investors, and (iii) all taxes are paid and tax returns filed.

WHAT CAN INVESTORS DO AND WHAT ABOUT A CLAIMS PROCESS?

As soon as it makes sense to do, I will post a notice of a claims process for you to follow to file a claim with me based on your particular investment or interest. ALL FUTURE NOTICES AND COMMUNICATIONS WILL BE MADE ONLY ON THE WEBSITE MCGINNSMITHRECEIVER.COM. YOU NEED TO REVIEW THE SITE PERIODICALLY. FUTURE MAILINGS THROUGH THE U.S. POSTAL SERVICE ARE TOO EXPENSIVE TO CONTINUE TO PROVIDE TO ALL PARTIES.

**William J. Brown, as Receiver
of McGinn, Smith & Co., Inc., *et al.***

Tel: 716.847.8400

3400 HSBC Center
Buffalo, NY 14203
inquiry@mcginnsmithreceiver.com

CONCLUSION

As noted above, all future communications will be posted to mcginnsmithreceiver.com. You are responsible for periodically reviewing that site for updates. I suggest you do so at least every other week so you have notice of important developments and the claims process.

This will be a difficult process. I know many of you are in the position of needing your investments returned and are at risk of losing a very substantial portion of your investment depending upon your particular investment. I will do my best to try and recover as much as possible for all of you.

William J. Brown
Receiver

Schedule A
List of Known Entities Controlled By McGinn and/or Smith

107th Associates LLC Trust 07
107th Associates LLC
74 State Street Capital LP
Acquisition Trust 03
Capital Center Credit Corporation
CMS Financial Services
Cruise Charter Ventures LLC dba YOLO Cruises
Cruse Charter Ventures Trust 08
First Advisory Income Notes LLC
First Commercial Capital Corp.
First Excelsior Income Notes LLC
First Independent Income Notes LLC
FirstLine Junior Trust 07
FirstLine Senior Trust 07
FirstLine Trust 07
Fortress Trust 08
Integrated Excellence Junior Trust
Integrated Excellence Junior Trust 08
Integrated Excellence Senior Trust
Integrated Excellence Senior Trust 08
IP Investors
James J. Carroll Charitable Fund
JGC Trust 00
KC Acquisition Corp.
KMB Cable Holdings LLC
Luxury Cruise Center, Inc.
Luxury Cruise Holdings, LLC
Luxury Cruise Receivables, LLC
M & S Partners
McGinn, Smith & Co.
McGinn, Smith Acceptance Corp.
McGinn, Smith Advisors
McGinn, Smith Alarm Trading
McGinn, Smith Asset Management Corp.
McGinn, Smith Capital Holdings
McGinn, Smith Capital Management LLC
McGinn, Smith Financial Services Corp.
McGinn, Smith FirstLine Funding LLC
McGinn, Smith Funding LLC
McGinn, Smith Group LLC
McGinn, Smith Holdings LLC
McGinn, Smith Independent Services Corp.
McGinn, Smith Licensing Co.

Schedule A - continued
List of Known Entities Controlled By McGinn and/or Smith

McGinn, Smith Transaction Funding Corp.
Mr. Cranberry LLC
MS Partners
MSFC Security Holdings LLC
NEI Capital LLC
Pacific Trust 02
Point Capital LLC
Prime Vision Communications LLC
Prime Vision Communication Management Keys Cove LLC
Prime Vision Communications of Cutler Cay LLC
Prime Vision Funding of Cutler Cove LLC
Prime Vision Funding of Key Cove LLC
RTC Trust 02
SAI Trust 00
SAI Trust 03
Security Participation Trust I
Security Participation Trust II
Security Participation Trust III
Security Participation Trust IV
Seton Hall Associates
TDM Cable Funding LLC
TDM Cable Trust 06
TDM Luxury Cruise Trust 07
TDM Verifier Trust 07
TDM Verifier Trust 07R
TDM Verifier Trust 08
TDM Verifier Trust 08R
TDM Verifier Trust 09
TDM Verifier Trust 11
TDMM Benchmark Trust 09
TDMM Cable Funding LLC
TDMM Cable Jr Trust 09
TDMM Cable Sr Trust 09
Third Albany Income Notes LLC
Travel Liquidators, LLC
White Glove Cruises LLC
White Glove LLC

Doc # 01-2388893.3

Exhibit E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
	:	
<i>Plaintiff,</i>	:	
	:	
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; AND	:	
DAVID L. SMITH,	:	
	:	
	:	
<i>Defendants, and</i>	:	
LYNN A. SMITH,	:	
	:	
<i>Relief Defendant.</i>	:	

**FIRST REPORT OF THE
RECEIVER**

The First Report of the Receiver is filed pursuant to the Order to Show Cause, Temporary Restraining Order and Order Freezing Assets and Granting Other Relief dated April 20, 2010 (Docket No. 5) (“TRO”).

INTRODUCTION

Following the signing of the TRO by this Court on the afternoon of April 20, 2010 and my appointment as Receiver, I proceeded at approximately 3:30 p.m. to what I understood to be the Albany, New York business premises of the 82 MS Entities (as defined in

- 2 -

the TRO). When I arrived, federal law enforcement officials were still in the process of executing a search warrant.

I was accompanied by two paralegals and one attorney from my counsel, Phillips Lytle LLP. Acting under my direction, they assisted me that evening in undertaking several tasks until approximately 9:00 p.m. including (i) identifying the names, contact information and functions of the employees who were still on-site, (ii) photographing and taking a very generalized inventory of the documents in each office and file cabinet, (iii) changing the door locks with the assistance of a locksmith, and (iv) inspecting two floors in the building to ascertain if valuable information or property was not secure. We came to learn that most of the current documentary information had been removed as part of the search warrant process that day.

At the same time, I met with several of the employees including the Controller and in-house counsel to try to understand cash flow, bank accounts, material asset locations, and payroll and other short-term needs. Since there are 82 MS Entities (as listed on Exhibit A to the TRO), my focus was on primarily attempting to make sure where the largest amounts of cash were located. I had virtually no prior information about the MS Entities prior to arriving at the Albany premises. I was informed that cash flow was “tight” and multiple litigations and arbitrations were pending in various stages and needed to be dealt with. I spent time communicating that evening with one bank in particular where a significant amount of checks approximating \$200,000 were in float for payment to third parties. We were successful in securing confirmation that evening that the account had been effectively frozen.

- 3 -

The essential business operation at the Albany office is the so-called Alarm Traders business, which services thousands of primarily residential alarm contracts and earns fees in doing so. I was informed that evening that other MS Entities operated in a more or less independent manner (including Benchmark Communications LLC and White Glove Cruises LLC which operate in Louisiana and Florida, respectively).

The following day was spent almost entirely dealing with the frozen bank accounts, issued credit cards, and cash flow and payroll issues. I also met briefly with defendant David Smith and requested a meeting with him and Timothy McGinn as soon as possible to ascertain their perspective on the operating businesses and near-term critical items which could be difficult for me to independently ascertain given the decentralized and what appeared to me initially as a somewhat “informal” management system. While on the premises that day, I came upon an employee preparing a Form D for filing with the SEC. I would not authorize the continuation of the process.

Access procedures to the premises were changed to provide for improved security including the use of a single office door for access. Additionally, a Phillips Lytle receptionist was stationed at the premises, and a sign-in and sign-out sheet process was implemented until a Sonitrol electronic card system was installed last Friday. Satellite business and record locations were also identified. Significant storage facilities in Clifton Park, New York were secured and some offices under construction were inspected. I met with the employees and explained my role and the procedures which would be followed in the continuing operation of the non-broker dealer businesses.

- 4 -

Considerable time was spent meeting with the principals of Pine Street Capital Partners LP and their counsel to understand their business and its upcoming decision points.

In the midst of attempting to gather enough information to be aware of critical facts, each of the businesses still needed to function on an ongoing basis with limited staff to accomplish both efforts.

On the evening of Sunday, April 25, I met with David Smith and Timothy McGinn and their counsel for the purpose of obtaining an explanation of the assets and liabilities of the operating entities and the identification of short-term critical needs and risks.

BUSINESS OPERATIONS

1. General

The next several weeks were spent in trying to bring some normalcy and routine to the remaining operating businesses which include Alarm Traders (an alarm service business), so-called “triple play deals” on the U.S. Gulf Coast such as Benchmark (cable television, Internet and phone services at condominiums and apartment buildings), and a Florida travel agency (White Glove Cruises LLC) by (a) requesting the preparation of 90-day cash flow projections; (b) obtaining confirmation as to bank accounts and balances and working through procedures with each of their banks, (c) conferences to learn about the businesses, operations and history, and (d) reviewing and approving each gross payroll and vendor payment request. In general, payments to insiders and investors were not approved. Significant time was spent terminating credit cards, dealing with individual requirements of each depository bank, and communicating on a daily basis with management employees as “new” emergency situations seemed to arise daily. It appears that all gross payroll and taxes have been paid based upon information provided

- 5 -

to me to date. Critical vendor payments have been made, and a process towards paying payables once per week is being established.

2. McGinn, Smith & Co., Inc.

This is the registered broker dealer entity and a defendant in this action. It ceased essential operations in December 2009 when its business was acquired by DLG Wealth Management in Clifton Park, New York. Remnants of this business, however, remain as recurring liabilities including several employees, vendor payments and other claims. There are, for example, shared services between certain of the McGinn Smith entities and Alarm Traders which have historically not been broken out. The embedded and recurring McGinn Smith costs need to be dealt with because there is not sufficient money on hand to pay those liabilities which to some degree cross over to other MS Entities such as Alarm Traders.

3. Cruise Charter Ventures, LLC d/b/a YOLO Cruises

I learned shortly after my appointment that a deposit of \$88,560 had not been made to Carnival Cruise Lines in February 2010 as required for a prearranged Halloween weekend “lifestyle” charter pursuant to an August 14, 2009 charter agreement. Carnival Cruise Lines, the counterparty for the lifestyle charter, sent a default letter shortly after entry of the TRO. The default put at risk a YOLO deposit of \$425,000 already in place with Carnival. The Receiver’s counsel requested Carnival to withdraw the default letter based on the stay provided in the TRO. Carnival agreed to withdraw the default letter reserving its rights, and settlement negotiations ensued. Carnival and the Receiver reached an agreement to terminate the lifestyle cruise contract. The cruise was significantly undersubscribed, and, in my judgment, represented a significant financial and reputational risk. The estate was at risk of not only having to pay the

- 6 -

additional \$88,560 past-due deposit but up to approximately another \$171,000 for potential underbooking penalties to Carnival. Although Carnival was entitled to keep the entire deposit and to assert claims for greater amounts from YOLO, following several days of negotiation, Carnival agreed on May 10, 2010 to return to the Receiver \$222,397.41 in return for the right to cancel the charter contract. Carnival also released the Receiver and the estates. A determination needs to be made as to if and when to return deposits to the limited number of cruise customers because it appears other MS Entities may have funded YOLO's operation.

4. Bank Accounts and Cash on Hand

There are a significant number of open bank accounts (confirmed so far) in at least four financial institutions. New accounts have been opened under the Receiver's name and sole signature authority while the existing accounts remain frozen.

At the time of the Receiver's appointment, total bank account balances (not including some remote business operations whose bank accounts were not immediately visible to the financial staff in Albany, New York) were \$485,491.63. As of June 2, 2010, the balances at those same accounts totaled \$750,763.38 plus the Carnival settlement payment of \$222,397.41. These balances do not take into account timing differences for payment of payables.

An additional \$3,278.655.40 has also been received post-TRO as a result of a loan payoff at a Pine Street Capital Partners LP portfolio company. A portion of these proceeds would be due to Pine Street's investors which include the Relief Defendant and the David and Lynn Smith Trust.

INTERIM EVENTS

1. Cash Flow Projections. I received cash flow projections from various operating entities as requested. The purpose was to assure that the businesses were operating on at least a cash flow neutral basis. Operations have essentially continued on that basis.

2. Employees and Staff. Two employees (who are related to the defendants) resigned. One employee who was not performing any material current functions was terminated. A review is underway to identify how to utilize remaining employees with an eye towards minimizing costs. Prior to my appointment, former McGinn Smith brokers were continuing to be paid commissions. That practice has ceased.

3. Benchmarking and Best Practices. I requested Alarm Traders to begin to benchmark against industry standards its performance in terms of customer calls received, waiting time, attrition. The account receivable and customer termination practices for customer non-payment have been accelerated. At my request, the staff is also conducting a current inventory of the several thousand alarm contracts purchased in mid-April 2010 in the so-called “Firstline” transaction. These contracts were physically delivered post-TRO but were never inventoried after their arrival.

4. Leased Premises. On the second day of my Receivership, I met with the Albany landlord’s agent to review occupancy terms and status of the occupancy in Albany, to advise the landlord’s agent of my role and function, and to request copies of the existing leases. I informed the landlord of the change of locks and access to the premises. The landlord’s agent declined to accept keys to the premises and instead arranged for the cleaning service to come before the business closes each day. The landlord requested that the McGinn Smith trash including used

- 8 -

office furniture, computers, monitors and paper files that were in the third and fifth floor hallways be removed. The clean-up has since been accomplished. Most of the items were generated from the move by McGinn Smith from the building's fifth floor and in its attempt to move to Clifton Park. All surplus equipment formerly in the hallways and on the fifth floor has been inventoried and, if capable of being moved, has been removed to a secure location or otherwise trashed or recycled, as appropriate.

5. Other Real Property Interests. As part of my due diligence process, I learned that the Receiver has an interest in at least three parcels of non-residential real property. They include the Century Imaging facility in Latham, New York, which is a two condominium vacant commercial building in deteriorating condition. I have inspected the property and found abandoned material on site. I am in the process of studying its legal situation since the estate appears to be subordinate to a senior mortgage and significant real estate taxes. The second property is the Seton Hall Medical Office Building in Troy, New York. Communications have been established with a potential buyer who, this week, has requested a meeting with me to discuss the legal and financial status of the building with an eye towards acquisition. The property needs better management and the possible infusion of capital. The third property is a local hotel which is in foreclosure proceedings. I am considering the best approach to these property interests.

6. Accountants. I have preliminarily retained Chiampou Travis Besaw & Kerschner LLP ("Chiampou Travis"). Chiampou Travis spent one day on site interviewing the Controller and his assistant as to cash flow, assets and accounting practices. As a result of that session, it was agreed that the Controller's recommendations for ongoing cash flow procedures were

- 9 -

satisfactory and that further accounting steps would be taken once the Receivership was out of its gap period, assuming a preliminary injunction order and a continuing Receivership Order were entered. I reached that conclusion based upon the limited cash presently available to the estate and in an attempt to maintain the status quo to the extent that it was not materially detrimental to the Receivership estates.

7. Compilation of Important Business Records. During this period, the financial staff at my request has prepared lists of transfers made within the last 120 days to allow me to assess the potential voidability of any such transfers including payments. The staff is also preparing at my request a list of amounts due from former McGinn Smith brokers which, at least in several cases, constitute material amounts. There had not been a regular practice of collecting these amounts, and they remain unpaid including one dating back to as early as 2002.

TASKS IN PROCESS

The financial staff need to:

1. Bring all financial records up to date – the books of account are not current and need to be brought up to date.
2. Reconcile all bank accounts for the pre-Receivership period.
3. Complete the 120-day transfer charts for some entities whose accounts are not readily accessible.
4. Develop a plan for filing extended and possibly past-due tax returns and identifying refund possibilities.

- 10 -

The Receiver has an extensive list of projects to complete considering the circumstances including:

1. Complete asset and liability estimates and an analysis of how to best monetize value for investors and creditors.
2. At this time, it is premature to file any bankruptcy petitions, but consideration of that alternative will continue.
3. Continue to meet and communicate with significant borrowers or persons owing money to the Receivership estates including former brokers. Two accounts aggregating in excess of \$1 million may need to be sued in the very near term if prompt agreements cannot be reached.
4. Complete the identification of all lenders which has been an ongoing process. Some lenders identified to date are unsecured while others have collateral for their claims. Investigations will continue and will be presented in greater detail in the next several Reports once all documents are gathered and the bona fides of the transactions assessed.
5. Determine to what extent external accounting firm assistance is needed and justified.
6. Identify and understand the more remote business investments. The check writing function is in the process of being centralized in Albany at my request.
7. Complete the assembly and organization of all corporate documents for the MS Entities. This project is nearly complete.
8. Finalize an investor and entity list for communications with investors and the establishment of a potential claims process.

- 11 -

RETAINED PERSONNEL

Phillips Lytle LLP has been engaged to represent the Receiver, and Chiampou Travis has been engaged to provide accounting advice.

COMMUNICATIONS

1. The Receiver established a website (www.mcginnsmithreceiver.com) as a means of communication with investors and other parties at the start of the Receivership. Pleadings and other information have been and will be posted there as events evolve. I intend to send a letter with general information to all investors in the next few weeks once facts are more certain.

2. IRA's – It appears that some parties may not have had their IRA transfers completed. The Receiver is attempting to work out a process to have this completed without cost to the estates if possible.

3. Call Logs – A log of all investor calls and messages is being maintained.

Dated: June 4, 2010

/s/ William J. Brown

William J. Brown, Esq.
Receiver

Exhibit F

**William J. Brown, as Receiver
of McGinn, Smith & Co., Inc., et al.**

Tel: 716.847.7089
www.mcginnsmithreceiver.com

One Canalside
125 Main Street
Buffalo, NY 14203

December 20, 2017

Harold Albert Smith
PO Box 438
Bloomsburg, PA 17815

Re: McGinn Smith & Co. Inc. - Paper Claims

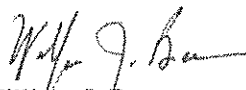
Dear Mr. Smith,

In reviewing your claim file, we have determined that, in 2012, you filed four paper claims for your investments in McGinn Smith & Co, as set forth on the enclosed schedule. Two of your paper claims are duplicates of your Receiver-granted claims in the same amounts. The Receiver has moved to expunge these duplicate claims, which motion is pending before the District Court for the Northern District of New York.

In addition, you filed a paper claim on account of your investment in Integrated Excellence Senior Trust 08 in the amount of \$100,485. However, with respect to this investment, the Receiver granted you a claim in the amount of \$73,492.38. The difference between your paper claim and your Receiver-granted claim likely is the result of payments which you received. You also filed a paper claim for your investment in TDM Verifier Trust 07 in the amount of \$90,000. However, such investment was not listed in the Receiver's books and records and the Receiver has not granted you a claim for this investment. If you filed these paper claims because you disagree with the Receiver's books and records, you certainly have the right to retain these claims, which will be resolved when the Receiver files an objection to them and the Court issues an Order. You certainly have the right to be heard. I believe, however, that the Receiver's books and records are correct.

The Receiver will need to file a claims objection with the Court to expunge these two paper claims prior to making any payment distribution to you unless you agree to withdraw these paper claims in writing. In that case, your Receiver-granted claims will be processed promptly. If you wish to withdraw the two paper claims, please send us a letter to that effect as soon as possible, but no later than January 5, 2017.

Very truly yours,


William J. Brown
Receiver

EEEht
Doc #02-569598.1

Exhibit G

Rec'd 1/2/18
HAB

Harold Albert Smith, Esq.
PO Box 438
Bloomsburg, PA 17815
Phone: 570-387-9494. Fax: 570-389-9495

December 29, 2017

Dear Mr. William J. Brown, Receiver:

Thank you for your enclosed letter of December 20. First, the envelope did not have the four claims' schedule mentioned in your letter. Would you please send it?

Second, you wrote that in 2012 I made four claims, and that two were duplicates in the same amount. In fact, I made four paper claims in 2012 on the following investments:

1. Integrated Excellence Senior Trust 08 (MSA069396#2), with a principle of \$100,485
2. TDM Verifier Trust 07 (MSA069396#R9), principle: \$90,000
3. Fein Secured Senior Subordinated Notes from First Excelsior Income Notes LLC (MSA069396#30), principle: \$10,000
4. Fein Secured Senior Subordinated Notes from First Excelsior Income Notes LLC (MSA069396#77), principle: \$50,000

I am including copies of my claims and investment record. None of my four claims above are duplicates.

Third, you wrote that I was granted a claim for \$73,492.38 out of my total claim for Integrated Excellence Senior Trust 08 - \$100,485. I purchased this certificate for \$107,500 in 2008, received \$7,015, and still had an investment in it for \$100,485 as of 2009 when McGinn Smith ceased payments. This is what I meant when I wrote in my Claim Form that I claimed \$100,485 and had received \$7,015 in payments. I don't know why my claim should be only \$73,492.38.

Finally, you wrote that you do not have a record for the TDM Verifier Trust 07 (\$90,000). I am enclosing my McGinn Smith certificate for this investment as well as the National Financial Services interest statements from 2008 and 2009, which show that I made the investment. Although I requested redemption of it, I did not receive it or payments after 2009.

Yours sincerely,

Harold Albert Smith, Esq.



CC: Hon. Christian Hummel

Exhibit H



Phillips Lytle LLP

Harold Albert Smith, Esq.
PO Box 438
Bloomsburg, PA 17815

March 1, 2018

Re: McGinn Smith - Paper Claims

Dear Mr. Smith:

I am writing in response to your email sent on February 28, 2018. The Receiver has received the letter you sent dated December 29, 2017 with enclosures.

The Receiver has granted you three claims for your investments in McGinn Smith & Co.: Claim No. 6480A on account of your investment in FEIN Secured Senior Subordinated Notes in the amount of \$10,000; Claim No. 6481A on account of your investment in FEIN Secured Senior Subordinated Notes in the amount of \$50,000; and Claim No. 6482P on account of your investment in Integrated Excellence Sr Trust 08 in the amount of \$73,492.38.

In the Receiver's Second Motion to disallow certain investor paper claims, the Receiver is seeking to disallow two of your paper claims, which are described below.

- You filed a paper claim for your investment in Integrated Excellence Sr Trust in the amount of \$100,485. The difference between your paper claim and your Receiver-granted claim for this investment likely is the result of payments which you have previously received.
- You filed a paper claim for an investment in TDM Verifier Trust 07 in the amount of \$90,000, of which there is no record in the books and records of McGinn Smith & Co. Inc.

While the Receiver believes that the books and records are correct, you certainly have a right to be heard with respect to your paper claims. If you wish to object to the Receiver's Motion and the disallowance of the two paper claims described above, you must file a written objection with the District Court for the Northern District of New York no later than April 2, 2018. If however, you agree with the three claims granted to you by the Receiver and if you wish to expedite the processing and payment of these

CATHERINE N. EISENHUT

DIRECT 716 847 8323 CEISENHUT@PHILLIPSLYTLLE.COM

ATTORNEYS AT LAW

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NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTLLE.COM



Harold Albert Smith
Page 2

March 1, 2018

three claims, you may send the Receiver a letter agreeing to withdraw your two paper claims.

Very truly yours,

Phillips Lytle LLP

By

Catherine N. Eisenhut

CNE

Exhibit I

TDM Verifier Trust 07R
Investment Register

CLT TYPE	COM NAME	INVEST REGISTRATION	INVEST PRD ID	PRD DESC	PRD DESC2	TOTPAID	TICKETED AMOUNT	CURRENT VALUE	TOT PAYMENTS	FIRST PAYMENT	LAST PAYMENT	INVEST STATUS	INVEST MATURITY DT
INDIV	Bradley Smith	BRADLEY C SMITH	TDMVER 07R	TDM VERIFIER TRUST 07 CONTRACT CERTIFICAT E	8.5% DUE 8/15/09	90000	90000	0	1	17-Mar-08	17-Mar-08	REDEEM PEND	15-Aug-09
INDIV	Harold Albert Smith	HAROLD ALBERT SMITH	TDMVER 07R	TDM VERIFIER TRUST 07 CONTRACT CERTIFICAT E	8.5% DUE 8/15/09	90000	90000	0	1	17-Mar-08	17-Mar-08	REDEEM PEND	15-Aug-09

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

Case No. 1:10-CV-457
(GLS/CFH)

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, AND
DAVID L. SMITH, GEOFFREY R. SMITH,
Individually and as Trustee of the David L. and
Lynn A. Smith Irrevocable Trust U/A 8/04/04,
LAUREN T. SMITH, and NANCY MCGINN,

Defendants,

LYNN A. SMITH and
NANCY MCGINN,

Relief Defendants. and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.
-----X

CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on April 6, 2018, a true and correct copy of the Receiver’s Omnibus Reply to Objections to Second Motion for an Order Disallowing Paper Claims (“Omnibus Reply”) was caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court’s ECF filing system, and by First Class Mail to the parties indicated below:

- **William J. Brown** wbrown@phillipslytle.com,khatch@phillipslytle.com
- **Certain McGinn Smith Investors** apartk@weirpartners.com
- **Elizabeth C. Coombe** elizabeth.c.coombe@usdoj.gov, paul.condon@usdoj.gov, CaseView.ECF@usdoj.gov,kelly.ciccarelli@usdoj.gov
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- **James H. Glavin** , IVhglavin@glavinandglavin.com

- **Bonnie R. Golub** bgolub@weirpartners.com
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cjoy@dreyerboyajian.com,coconnell@dreyerboyajian.com
- **E. Stewart Jones, Jr** esjones@joneshacker.com, mleonard@joneshacker.com,
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- **James D. Linnan** jdlinnan@linnan-fallon.com,lawinfo@linnan-fallon.com
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- **Walter Weir** wwair@weirpartners.com,smorris@weirpartners.com
- **Bryan M. Westhoff** bryan.westhoff@kayescholer.com
- **Benjamin Zelermyer** bzlaw@optonline.net,steincav@aol.com

And, I hereby certify that on April 6, 2018, I mailed, via first class mail using the United States Postal Service, a copy of the Omnibus Reply to the individuals listed below:

Nancy McGinn
426-8th Avenue
Troy, NY 12182

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Urbelis & Fieldsteel, LLP
155 Federal Street
Boston, MA 02110-1727

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Greenberg Traurig, LLP
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Albany, NY 12207

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Gusrae, Kaplan, Bruno & Nusbaum PLLC
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RBS Citizen, N.A.
Cooper Erving & Savage LLP
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Albany, NY 12207

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David G. Newcomb
Judith A. Newcomb
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Mount Bethel, PA 18343

Harry G. & Diane B. McCafferty
2306 Caraway Drive
Venice, FL 34292

Bradley Smith
410 Merritt Boulevard
Isle of Palms, NC 29451

Harold Albert Smith
P.O. Box 438
Bloomsburg, PA 17815

Dated: April 6, 2018

/s/ Karen M. Ludlow
Karen M. Ludlow