EXHIBIT Z

FINANCIAL INDUSTRY
REGULATORY AUTHORITY
CASE NO. 2009-017-9845

ORIGINAL

IN RE
THE MATTER OF:

DAVID L. SMITH

INVESTIGATIVE TESTIMONY OF

DAVID L. SMITH

VOLUME IV, PAGES 907-1091

WOODBRIDGE, NEW JERSEY

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ATKINSON-BAKER, INC.
COURT REPORTERS
500 North Brand Boulevard, Third Floor
Glendale, California 91203-4725
(818) 551-7300
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REPORTED BY: JILL A. PRAML-BUSSANICH,
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DAVID L. SMITH)
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Investigative testimony of DAVID L. SMITH, taken on behalf of FINRA, District 9 at 581 Main Street, 7th Floor, Woodbridge, New Jersey, commencing at 9:50 a.m., February 12, 2010, before Jill A. Praml-Bussanich, CSR No. XI01807.

A P P E A R A N C E S

FOR FINRA:

FINRA
BY: STEVEN E. ROWEN, Senior Examiner
MICHAEL NEWMAN, Senior Regional Counsel
CHRISTOPHER D. RATTINER, Principal Examiner
MICHAEL H. PAULSEN, Examination Manager
ROBERT McCARTHY, Examination Manager
GARY JAGGS, Principal Examiner
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095

FOR DAVID L. SMITH:

STRADLEY, RONON, STEVENS & YOUNG, LLP
BY: DAVID C. FRANCESKI, JR., ESQUIRE
2600 One Commerce Square
Philadelphia, Pennsylvania 19103-7098

McGINN SMITH & COMPANY, INC.
JOSEPH B. CARR, General Counsel
99 Pine Street
Albany, New York 12207

DAVID L. SMITH,

having first been duly sworn, was

examined and testified as follows:

MR. ROWEN: We're on the record at approximately 9:50 on February 12, 2010. This is a continuation of the on-the-record interview of Davis Smith, which had adjourned on February 3, 2010.

EXAMINATION

BY MR. ROWEN:

Q. What is RTC Trust?

A. RTC was a grantor trust that was formed for the purpose of financing through the collateralization and securitization of alarm contracts.

I believe RTC specifically referred to a monitoring station somewhere. I can't tell you what the exact moniker stands for.

Q. Who are the owners of RTC Trust?

A. If there is any, it's a grantor trust. I'm not sure there are any real owners.

The owners are, in effect, the note holders that finance it. If there is a residual ownership, it stays in the trust, and the trustee I think was more likely than not McGinn Smith Capital Holdings. That's generally the case.

I don't know that for certain, but that's generally the case.

Q. What is your role with RTC?

A. The only role I would have as principal -- if, in fact, McGinn Smith Capital Holding was the trustee, I don't remember that specifically. If that was the case, I am an owner and principal in McGinn Smith.

Q. What roles did you perform for RTC?

A. The trustee, if that is in fact -- if that's what the evidence shows, the trustee generally monitors the payments, both coming in, distributions out and sees to it the affairs of the trust are conducted according to the indenture and prospectus.

Q. Does your broker-dealer raise funds for RTC?

A. Yes.

Q. How much?

A. I don't remember.

Q. When was that?

A. Well, it was prior to 2003. That's

all I can tell you.

MR. ROWEN: Can I have this marked as Exhibit 23.

(List was received and marked FINRA Exhibit 23 for identification.)

Q. BY MR. ROWEN: I'm handing you Exhibit 23 in this matter. It's a total of five pages.

These were provided to FINRA by the broker-dealer as documentation of First Advisory income notes use of customer proceeds.

First two pages stamped MGS 0020096 and 97 are copies of a registry report of transactions between First Advisory income notes and RTC. Of the last three pages stamped MGS 0020098 through MGS 0020100 are copies of a grid note between First Advisory income notes and RTC.

Please take a minute to review that.

A. Yes.

Q. Turn to the final page of the exhibit Bates stamped finishing 100.

Does this refresh your memory about who the trustee of RTC Trust is?

A. I'm sorry. Where are we looking?

Q. Final page, stamped finishing 100.

A. Yes.
Q. It is, in fact, McGinn Smith Capital Holding who is the trustee?
A. Correct.
Q. What is your involvement with the loans documented in this exhibit?
A. I believe for First Advisory they picked up an income stream as evidenced by the grid note, which was designed to provide sufficient credit on an ongoing basis to provide for the operating deficiency that was occurring in the RMR, the recurring monthly revenues, of the monitoring contracts.
We can see virtually every month there was -- there was an advance to cover that underneath the grid note. And the collateral was ongoing contracts, which would be in somewhat perpetuity.
Q. Why is First Advisory income notes providing a line of credit to a company?
A. Because that's the business they are in. They are in the business of providing credit facilities.
So, this was both a business that we knew and a business that, again, as we have indicated in earlier testimony, had no ongoing risk for First

Advisory, because the note itself was secured by the pledge of the fees. And it provided a facility and a means to provide income to the LLC, which is the business purpose of the LLC.

Q. I'm confused by what you refer to as pledging the fees.

I believe it was your earlier testimony that it was investments in affiliates of which McGinn Smith or any McGinn Smith entity or someone personally was a 20 percent owner in the entity, correct?

A. Basically entity or affiliate we deemed to have a conflict in the case of a RTC -- as I indicated a few moments earlier, the ownership really rests until the residual ownership is concluded. Then the residual ownership rests in the trustee, which McGinn Smith Capital Holding is an affiliate of us.

Q. Were there other similar entities where there was no personal ownership, but which McGinn Smith Capital Holdings was the trustee that were also had their transaction with one of the four funds or four LLCs collateralized?

A. There might be. There was some discretion used with this.

Specifically with RTC, the feeling was at the time that this was not a new loan. This was a facility that was being provided to in effect address a deficiency. And that because of that deficiency, we wanted to remove any concern of conflict.

If it was a brand new loan, that may not be considered under those circumstances. But, under these circumstances, the original RTC had run into a deficiency in terms of its income. And to sort of be above any criticism, that was something that we considered.

Q. Was there a list of entities which --

A. Yes.

Q. Who maintained that list? Is there a list of entities that had their loans with one of the four LLCs collateralized by fees due by the LLCs?

A. There is a schedule of those entities that qualify for that, yes.

Q. Who maintains that list?

A. Brian Cooper.

MR. RATTINER: Is that list different from the schedule of fees?

THE WITNESS: Same.

M & S Partners borrowed money --

MR. FRANCESKI: Let me stop you. I don't want to interrupt your answer. Mr. Newman asked for the name of the entities. If you give us history as well as the names, we'll be here forever.

THE WITNESS: M & S Partners, McGinn Smith & Company through its preferred, a number of the -- in the later years transactions that involved TDM Cable or Transaction Funding, those were both entities.

RTC. I'm sure there is others that don't come to mind right at the moment.

MR. NEWMAN: You said that --

Q. BY MR. ROWEN: What about SAI?

A. No.

Q. Was SAI a similar entity to RTC Trust?

MR. FRANCESKI: Objection. What do you mean similar?

A. No. I answered why we took the position with RTC that we did as opposed to S & M.

Q. The reason being because MSCH being the trustee on RTC?

A. No.

Q. Because of the interest your entities had in the success of RTC based on a trustee relationship and a placement agent relationship?

MR. FRANCESKI: Can we just get on the record what we're talking about here? You two seem to be having a conversation, but I don't think there was any investment in SAI. There may have been an investment in SAI trust. If that's it, make it clear.

Am I right?

THE WITNESS: Yes. But I think Steve -- asked --

MR. FRANCESKI: You don't know what he's asking. Let him ask the question.

Q. BY MR. ROWEN: SIA Trust being the entity we discussed and compared with RTC Trust.

What potential conflict arose out of RTC Trust and its investment by any of the four funds that would be different from SIA Trust and any investment it received from the four funds?

A. What I answered earlier, maybe not particularly clearly, was that the loans to the RTC Trust that were instituted by two of the LLCs, one was the First Advisory and the prior to that there was Third Albany possibly. I know there was two.

The position that we took on that was that, in effect, those loans were done after the original offering. They were done as a clear objective was buying the future stream or the future income stream at a time when it was deficient of meeting its obligations.

So, to me that raised questions in terms of both conflict and a credit decision. So, therefore, the decision regarding RTC and the clear difference in my mind is that that was an entirely different situation because of the -- both of the conflict and credit decision.

Q. SIA Trust was not deficient at the time it borrowed money from any of the four LLCs?

A. No.

Q. What about Pacific Trust?

A. I don't believe it was deficient. I don't know. I can't remember the history of that. I don't believe it was deficient.

Q. That would not be covered by the security agreement?

A. Pacific Trust was covered, because it was a -- it was -- at the stage that we made the loan, it was winding down and the ongoing stream was going to be directed to a McGinn Smith entity.

Therefore, again potential for -- we didn't make the loan at the time of the initial offering.

Pacific Trust, I believe, was a situation where we were taking some investors out of the transaction, either it had reached maturity, I don't recall all the events, but I think that was the case.

Therefore, again, different circumstances you're using money to in effect retire the debt to be above the level of criticism, I would construe that as to be eligible for the pledge of the fees.

Q. What about JGC?

A. No.

Q. That was not covered by the security agreement?

A. We didn't have any interest in it, no.

Q. What was your role with JGC Trust?

A. Personal role?

Q. Yes.

A. Didn't have any personal role. It was a -- it was a local waste management contractor. And I believe there was a -- there was an original trust that -- I think -- yes. Let me back up and change my answer.

I believe the JGC Trust was an original trust used to finance -- away from the funds, away from the funds. And the loan to -- subsequent loan to JGC I think was in addition to the trust agreement that we raise some capital from outside investors. That's the best of my recollection.

Q. Who is the trustee for JGC Trust?

A. Again, it might have been McGinn Smith Capital Holdings.

Q. What would JGC Trust need a loan from any of the four LLCs for?

A. I believe it was part of their working capital and business plan.

My recollection, it wasn't a material loan in addition to the trust. But, I would have to look at the records. My recollection is a very small loan.

Q. What is the status of JGC Trust?

A. That's not current. We've been trying to collect on some of the collateral. My recollection was that the loans were secured by the assets of the company, which were primarily garage trucks and other things.

And we had some -- we made some sales, got some, but I think there is outstanding balance on it.

Again, I don't think it's material. But it's outstanding, and somewhere in the process of trying to be collected.

Q. The broker-dealer raised funds for JGC Trust?

A. It was a small offering that I think Mr. McGinn was involved in.

And my recollection was it was raised by three or four investors. Not a broad, company-wide offering.

Q. Were those investors paid back their principals?

A. I believe so.

Q. You're aware of whether JGC's loan from the four LLCs was used to support the repayment of principals those investors?

A. I don't believe so, no.

Q. Sounds like a lot of thought goes into whether or not an entity should be covered by the security agreement.

Who is involved with the decision of whether or not a loan would be covered by the security agreement?

MR. FRANCESKI: Objection to the commentary, but the question I'm okay with.

A. The parties would be MS Advisors.

Q. Who within MS Advisors would make the decision?

equal decision?

THE WITNESS: Yeah. We had the discussion. Sure.

MR. NEWMAN: Who initiated the idea?

THE WITNESS: I actually think it was Mr. McGinn at the time. I wouldn't say that with certainty. It was a discussion.

MR. NEWMAN: Mr. McGinn was not involved with the advisor between 2003 and November of 2006?

THE WITNESS: He was involved with the advisor in that he was a member of MS Advisors. He was kept apprised at various times as to what was going on. But, his involvement was minimal.

MR. NEWMAN: He had the ownership position, but it was a passive situation there in terms of decision making, that was being done by you?

THE WITNESS: It was being done primarily myself, yes. He was involved in the other business.

MR. NEWMAN: I want to go back just to this RTC Trust for a minute.

You said it was a grantor trust established under New York law?

THE WITNESS: I believe so.

MR. NEWMAN: Who actually creates the trust document?

THE WITNESS: At the time we had in-house counsel. Marianne McGinn was the party. And since I believe that transaction was, as I indicated earlier, at the time Marianne was with the firm, it would have been herself.

MR. NEWMAN: In terms of the terms of the trust, who gives her the terms of that? Is that you?

THE WITNESS: That business was really run by Mr. McGinn, and he would have been responsible.

MR. NEWMAN: Understand McGinn Smith Holding was the trustee for the RTC Trust?

THE WITNESS: McGinn Smith Capital Holdings.

MR. NEWMAN: The trust is established in -- the trust is the structure that holds the alarm contract investments?

THE WITNESS: Correct.

MR. NEWMAN: Interest, investments?

THE WITNESS: Correct.

MR. NEWMAN: Then when the money is

raised, there is an initial offering done -- it was approximately 2002 there was about $6 million raised by RTC.

Does that refresh your recollection at all?

THE WITNESS: I would have guessed smaller than that.

MR. NEWMAN: Based on the information we received from the firm -- we'll get the exact number -- there is an offering raising a certain amount of money from investors.

The investors in the RTC Trust offering is getting what? What is their interest they are receiving?

THE WITNESS: They are note holders in the trust. There are notes pledged to them, a certain return.

The structure of the transactions, generally I don't know if I can recall specifically for RTC, but generally constituted a senior tranche or senior level and a junior level.

Senior level was generally financed by institutions, typically banks. I think from time to time we had a small insurance company play in that space.

The junior tranche was generally clients of McGinn Smith who became the junior note holders.

MR. NEWMAN: Did each one receive the same interest rate or different rates?

THE WITNESS: The tranches received different interest rates.

MR. NEWMAN: There are three tranches?

THE WITNESS: Two.

MR. NEWMAN: The promise to pay is made by the trust?

THE WITNESS: I believe that's the case.

MR. NEWMAN: That would be -- the trust is owned by McGinn Smith Capital Holdings?

THE WITNESS: Well, McGinn Smith Capital Holdings is the trustee. I don't really know the legal nuances of that. I would refrain from answering.

MR. NEWMAN: What do you understand --

THE WITNESS: The grantor trust, my understanding of it, is simply that they are the one responsible. They are the ones who hold the assets. They are the ones responsible for paying the notes. And that the ownership itself resides in the trust.

And I think from a legal standpoint, I think there is residual if you will, that once the obligations of the trust are satisfied, there remains a residual interest. I don't know if that reverts to the trustee or someone else. I don't know the legal aspects.

MR. NEWMAN: I'm trying to determine who are the actual owners of the trust are?

THE WITNESS: I'm not trying to be evasive. As I said, it's so often there was not residual interest. It was never intentioned to be a residual interest.

I don't know if there was specific names affiliated with the trust in terms of ownership. I don't know the legal aspects of a grantor trust, whether the trustee itself assumed that ownership. I'm not sure.

MR. NEWMAN: Who is making the promise to pay?

THE WITNESS: The trust itself.

MR. NEWMAN: We don't know how that --

THE WITNESS: The trustee in effect acts on behalf of the trust, but your question is is there an ownership in the trust, an equity ownership, and I don't know -- my understanding is that there is none, unless if, in fact, there was in any way there was a residual interest, I don't know who that would go to, whether that would go to the trustee or -- if there was some other -- when the trust itself is formed, whether there is a ownership. I don't know the answer to that.

MR. NEWMAN: Is McGinn Smith Capital Holdings the one who is operating the trust?

THE WITNESS: That's correct.

MR. NEWMAN: Managing the trust?

THE WITNESS: That's correct.

MR. NEWMAN: Making the decision on what contracts to buy and sell, paying the monthly expenses, etc.?

THE WITNESS: That's correct.

MR. NEWMAN: Who is actually issuing -- these are quarterly interest payments?

THE WITNESS: There was different formats.

In the early years, for most of the trusts, they were done on a monthly basis. At some point there was a change to quarterly interest for administrative purposes.

MR. NEWMAN: Who is issuing the actual checks?

THE WITNESS: It would have been our back office group, which consisted of primarily Patty Secluna (phonetic). As years evolved, Dave Rees, Brian Cooper might have taken it over.

MR. NEWMAN: Who is directing the payments? Who is saying this is the amount you have to pay to this person?

THE WITNESS: Mr. McGinn generally controlled that process.

MR. NEWMAN: When moneys are received from the alarm contracts from the customers, where do those funds go?

THE WITNESS: It was generally an operating account. They came initially into a lock box arrangement, which is set up at a bank. That lock box would transfer the money to the operating account of the trust.

That operating account would then subsequently, upon the dates that the interest payments were due, would issue the checks or wires or whenever form the client desired.

MR. NEWMAN: In the operating account, who had signatory over that?

THE WITNESS: Probably a multiple number of people. Certainly Mr. McGinn. More likely than not myself. And generally somebody from the operational side, whether it be -- might have been Dave Rees. Might have been Brian Shay (phonetic) -- not Brian Shay. Those would be the principal parties.

MR. NEWMAN: What was McGinn Smith Capital Holding's financial benefit as acting as trustee?

THE WITNESS: None.

MR. NEWMAN: There is no financial benefit for McGinn Smith Capital Holdings acting as a trustee?

THE WITNESS: Only if the assumptions I'm making that if there is a residual interest at the end of it, if it goes to the trustee, I'm not certain of that. It was never anticipated there would be residual interest in these things, in terms of fees or ongoing economic benefit, there was none.

MR. NEWMAN: Was there any employment agreement or contract between the trust and/or you and Mr. McGinn to pay the monthly or quarterly or annual salary or financial benefit?

THE WITNESS: None.

MR. NEWMAN: The money that is raised from the offering, whatever amount it was, the initial offering, that money is used to purchase the contracts?

THE WITNESS: Just the contracts, correct.

MR. NEWMAN: Once the contracts are purchased, the trust is up and running and there is operating income and expenses and -- there is a cash flow for the trust that is going to dictate the ability to pay the notes and principal?

THE WITNESS: Correct.

MR. NEWMAN: Generally speaking?

THE WITNESS: Correct.

MR. NEWMAN: What -- at the time of these investments in 2006, these loans, what was the financial status of RTC, the RTC Trust?

Had the trust up to that point been making all the required interest payments?

THE WITNESS: The trust had a split life, for lack of a better description.

My recollection was is that a majority of the trust was purchased by IASG. And some portion of the trust was not. And I don't know if it was 15 percent or 17 percent or 13 percent, but there was some portion.

And the reason for that -- again, I

wasn't involved, but the best of my recollection was within RTC Trust there was two or three different monitoring companies. And one of the monitoring companies chose not to, in effect, transfer the assets to IASG. I don't know if it's because they never been sold -- there were two ways to acquire the assets. Buy them outright or lend money against them.

But, in any rate, at some point in time, roughly 85 percent of RTC investors were paid back. And there was this residual amount, we'll refer to it as 15 percent for lack of my total memory, and then -- so, that portion, that 15 percent portion continued to be serviced by the remaining contracts that they did not get sold or transferred to IASG.

At some point in time, and it would have been about the time of this loan, there was a deficiency of dollars. At which point, as I've indicated earlier, a decision was made to in effect take possession of the ongoing stream going forward.

An analysis was done of the value and the RMR at the time. That analysis concluded that the price that we were paying, if you will, as it related to the grid loan note and what the possible credit facility might be, was about 36 times, which was a multiple considerably -- less than the norm.

Normally, the low side on valuation of these things is about 40 times. Generally can run as high as I -- there have been transactions at 100 times. Not a particular smart purchase, but, nonetheless, there have been purchases at that level.

So, from a valuation standpoint, it was our opinion that the run out of these things were likely to be beneficial for some period of years. But in order to meet its ongoing obligation, there had to be a credit facility.

So, we provided it. We knew the business. And as I said before, as an additional credit guarantee, we pledged the fees.

When -- in our judgment, the -- when this winds down, those continued dollars will continue to flow to us.

MR. NEWMAN: I want to be more specific. What was the approximate dollar amount of the -- what you called the deficiency at the time the investments were made or loans were made by the notes?

THE WITNESS: I think the first one

was made, it was running maybe 5 or $6,000 a month.

MR. NEWMAN: 5, $6,000 a month behind?

THE WITNESS: Yes. It was insufficient, correct.

MR. NEWMAN: That was for the interest payments?

THE WITNESS: No. I think that was a -- I think by that time there was amortization going on. I'm not absolutely certain. But whatever the obligation was at that time, was deficient to that amount. And it obviously grew as attrition went.

As we're looking at this loan here, which is in 2006, you can see that the number had grown to about 18,000.

MR. NEWMAN: Did RTC seek to borrow the money from any lenders, third parties?

THE WITNESS: It did not. It would not have been available. This type of lending is a very specialized lending that is done by maybe a half a dozen people in the country. And when McGinn Smith was active in the markets, they were one of the largest ones.

MR. NEWMAN: Why couldn't RTC have received a loan from a third party?

THE WITNESS: Because it wouldn't -- it wouldn't have enough to interest anybody. It was too small a facility.

MR. NEWMAN: The notes lend this money over a period of time to RTC, correct?

THE WITNESS: Yes.

MR. NEWMAN: And there is a promise to pay?

THE WITNESS: There is a promise to pay.

MR. NEWMAN: Who is making the promise to pay the notes back for this money?

THE WITNESS: RTC.

MR. NEWMAN: There is also a promise that is owed to the initial investors. Moneys that are owed to the original note holders too?

THE WITNESS: The initial note holders are now out. The recurring monthly revenue is being applied to reduce the loan. But the original note holders are out. They are paid, paid in full.

MR. NEWMAN: Paid in full by the moneys invested by the notes?

THE WITNESS: No. Totally out of the --

MR. NEWMAN: Had he time -- you said

there is a deficiency in operating income. There is moneys owed and note payments by RTC.

Who are those note payments owed to? Who are the people who are owed this money, receiving the payments?

I'm talking about the RTC now note holders.

THE WITNESS: Some of the original note holders, until such time as they were paid out, now they have been fully paid out. The money that continues to come in is being used to reduce the loan made by the LLCs.

MR. NEWMAN: I'm asking you, at the time the money is being lent, the initial investment or loans is being made by the LLCs, are there moneys that are owed to note holders?

THE WITNESS: Sure.

MR. NEWMAN: Once the loans are starting to come in from the LLCs, are those moneys being used to pay the note holders for the trust?

THE WITNESS: Yes. That's -- we are providing a credit facility to RTC, which is then used to meet its obligation. And we are buying a future income stream going out long past, hopefully into perpetuity, past the time that the note holders are paid out, which is exactly what happened.

MR. NEWMAN: At the time these initials loans are starting to be made, there is an operating deficit based on the cash flow of the contract?

THE WITNESS: That's correct.

MR. NEWMAN: Why is this a good investment for the LLC investors given the financial condition of these -- of this RTC at the time these moneys -- substantial amounts of money is being lent, why do you believe, as the investment advisors for the LLCs, this is a good investment?

THE WITNESS: Because the income stream is going to go long beyond when the investors are paid out.

What you do is take the investment stream going out, take it back to a present value, you do a multiple of what we call RMR, and, in effect, based on those numbers, you determine whether it is a good loan.

At 36 times, that was a good loan.

And, in fact, what has happened we are now in effect getting those dollars that will -- they may go on forever.

In the meantime, from a credit

standpoint, and I'm beating this to death, but because of the concerns that you have raised, we determined that in effect we wanted to pledge our fees to support that.

So, in the crudest sense, there was -- in our judgment, there was no risk to the funds. Their investment is totally covered by fees, and they are, in effect, getting an ongoing investment stream, which if they did nothing, if they paid the fees out, they obviously got zero, or if the money was sitting in cash, they are basically getting zero.

From the perspective of evaluation 36 times, it more than stands up in the marketplace. From a present value standpoint, the return was above market. And from a risk standpoint, it was zero.

Those are the three criteria I would use.

MR. NEWMAN: How did the investment turn out?

THE WITNESS: For the investors, fine.

MR. NEWMAN: RTC?

THE WITNESS: Yes.

MR. NEWMAN: All the moneys were

repaid?

THE WITNESS: Yes.

MR. FRANCESKI: You mean the LLC note holders?

MR. NEWMAN: Yes.

Were they repaid --

MR. RATTINER: We have the RTC investors and also the LLC investors.

The RTCs were paid back with the moneys invested from the LLCs?

THE WITNESS: Well, no. What they were paid by partial whatever that deficiency was, whether it was $5,000 a month or $18,000 a month, that money that went into RTC would be used as working capital was, in fact, used to meet the deficiency I referred to not -- not entirely, but the deficiency.

Those people, I believe, Mike's question was did the RTC investors get paid, and I answered yes.

MR. RATTINER: Have the LLC investors been paid back from RTC?

THE WITNESS: The note is in the process of being paid down every month. There is an application of fees.

MR. RATTINER: Based on the RMR?

THE WITNESS: Yes.

MR. RATTINER: Did you conduct the analysis for the RMR?

THE WITNESS: It was done I believe by Mr. Keenholtz (phonetic) or Mr. McGinn.

MR. RATTINER: How long did that analysis show it would take to pay back the LLC?

THE WITNESS: At the time it was a seven- or eight-year backpack.

MR. RATTINER: Would the LLCs have already matured?

The four LLCs have a majority date of five years?

THE WITNESS: Yes. But, again, the LLCs were designed as an operating ongoing company. The debt that they had, yes, matured, but the -- don't confuse the fact that the debt meant that that was the end of the LLCs. The LLCs were designed to be a perpetuating operating company. And they were like any other operating company, they would get ongoing financing, and that they would continue to make loans, and have loans or investments that were in their portfolio that would go on beyond the majority date.

There was no -- there was not an attempt to, in effect, time every investment and every loan to December 31, 2008. You couldn't possibly do that. That was never the design of the operating company.

MR. RATTINER: Have you ever doubted whether or not the LLCs would be paid back based on the RMR analysis?

MR. FRANCESKI: On this particular transaction?

MR. RATTINER: Right.

THE WITNESS: No. Because they had the fees pledged to cover.

MR. RATTINER: What is the current pay back rate?

THE WITNESS: I think $10,000 a month right now.

MR. RATTINER: Is that in line with what you initially thought?

THE WITNESS: No. That's come down as the attrition in the industry has risen, that's come down from I think -- best of my recollection, the RMR at the time was over 20,000 a month.

MR. RATTINER: Now you have a 16-year pay back period?

THE WITNESS: Not at all. More likely than not offset it and pay the loan back.

MR. RATTINER: Based on collateral?

THE WITNESS: Right.

MR. NEWMAN: Based on the fees coming in, you're talking about the fees owed to different -- let me finish the question.

The fees owed to the McGinn Smith affiliates?

THE WITNESS: I'm sorry. I anticipated again.

MR. NEWMAN: Looking at the loans, the stream of money being lent by the LLCs to RTC in 2007, looks like $20,000, $30,000 was being lent on a monthly basis from January 2007 through approximately October 2007.

MR. FRANCESKI: It's probably a yes on that, but the numbers are that high back at the beginning.

THE WITNESS: It looks like, Mike, the first advance was back in April of 2006.

MR. NEWMAN: Right. Looking ahead, looking at the stream of money going from -- flowing from the LLCs to RTC, there is approximately 20 or $30,000 going on a monthly basis.

What was the operating performance of the trust in 2007 as this money is being lent?

THE WITNESS: I believe the best of my recollection there would be that the RMR at that time was in excess of $20,000. That's my best recollection.

MR. NEWMAN: The performance operating standpoint was continuing -- continuing to operate in a deficit?

THE WITNESS: It was operating in a deficit at that time.

MR. NEWMAN: It wasn't improving?

THE WITNESS: It would not likely improve based on the nature of the business.

MR. NEWMAN: Why do you believe as the investment advisor -- you are the fiduciary for the LLCs. Why do you believe it was in the best interest in the LLCs to continually lend money to a failing exercise?

THE WITNESS: Specifically to this, you look at what your anticipated cash flow is -- remember, there is life when the investors no longer have to get any money because they are paid out.

MR. FRANCESKI: Can I help here, Mike?

MR. NEWMAN: No. He's answering the

question.

MR. FRANCESKI: There are numbers on here that will explain it very clearly.

MR. NEWMAN: The witness is testifying.

MR. FRANCESKI: Trying to help.

THE WITNESS: At any rate, there is an ongoing stream that, based on the underlying contracts, could last for 40 years. Nobody knows for certain.

Most people, once they get past a certain period of time with the alarms, they keep them forever.

What you're looking at is that you're trying to identify the fact that there is a deficit now. You're not thinking that at some point that deficit is going to go away, because there is no longer a need to pay the original investors of RTC.

So, therefore, there is going to be -- let's assume there is no attrition. Assume that my recollection, which may be faulty, was $20,000 a month. Well, that's $240,000 a year.

If there was no attrition, it would take roughly two years to pay that loan back.

And then, subsequent to that, you

would have that $20,000 every single month. That would make a pretty good investment.

When you do that analysis, you basically have to make some assumptions, like everything else, one of the assumption is attrition. You look at what the history has been. My recollection is we used 12 percent attrition rate, but I'm not certain. But you assume that cash flow is going to diminish. And then you have some idea of when that would be paid out.

And, again, from an operating business, that LLC would have had the advantage of that cash flow for as long as the company was in business.

If at the time you're making the decision that you're not -- you're not doing it on an evaluation that is excessive, as I said, my recollection it was about 35 or 36 times RMR, which is very appropriate and actually quite cheap.

And, B, from an attrition standpoint, you're making an assumption that will hold up. There are contracts in place. If you look at these things the attrition actually -- there wasn't a lot of attrition. You go -- you look at 2006 and go to basically the next year, the deficit was about the same.

It wasn't until we got into the later stages, and maybe we've now seen the attrition in that industry work it's way up, I think there is a lot of reasons to explain it. Certainly the economic we're in as it relates to housing is a part of it.

But, at the time of the loan, it was a good loan. It was a good loan.

If the assumptions had stayed, it was a good loan. In addition to that, we were supported by the fact we are prepared if it wasn't a good loan, we were prepared to put our own butts on the line.

And the mere fact we're willing to do that suggests to me we must have thought it was going to be a good loan, because in the end, our fees are used to pledge and guarantee those amounts, who is that hurting. It's us. It's our money contractually.

So, we didn't make that decision on the basis that we enjoy losing whatever it might be. Whether it was 250 or $400,000, that isn't anything anyone takes on lightly. So, obviously, at the time we did it we thought the valuation was good. And the likelihood is that we wouldn't -- we, I speak of we, McGinn Smith Advisors, etc., wouldn't, in effect, lose any money.

To me it's testimony that we felt very comfortable with the loan.

MR. NEWMAN: You still feel that way today? You still think it was a good loan?

THE WITNESS: Under the circumstances at the time, absolutely.

MR. NEWMAN: You would do it again if you had to?

THE WITNESS: If the circumstances were the same, yes.

MR. PAULSEN: The long-term analysis sounds promising, but who benefits from that?

THE WITNESS: The funds. The LLCs, because they would own the income stream forever.

MR. PAULSEN: How about the investors?

THE WITNESS: The investors of the LLCs?

MR. PAULSEN: Yes.

THE WITNESS: The investors of the LLCs would have an income stream supporting their notes. And, in fact, and again --

MR. PAULSEN: Let me be more specific.