



# Department of Justice

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## **Former McGinn, Smith & Co., Inc. Senior Managing Director Pleads Guilty to Filing a False Federal Income Tax Return**

ALBANY, N.Y.— United States Attorney Richard S. Hartunian, Special Agent-in-Charge Charles R. Pine of the New York Office of the Criminal Investigation Division of the Internal Revenue Service, and Special-Agent-in-Charge Clifford C. Holly of the Albany Division of the Federal Bureau of Investigation, announced that Matthew Rogers, 46, of Vero Beach, Florida, pled guilty today before United States District Court Judge David N. Hurd to one count of Filing a False Federal Income Tax Return, in violation of Title 26, United States Code, Section 7206(1). Sentencing is scheduled for April 21, 2012 in Utica, New York. Rogers faces up to three years in prison and a \$250,000 fine.

As part of the guilty plea, Rogers admitted the following:

In 2006, Matthew Rogers, who was working for USBX Advisory Services, LLC, a Santa Monica, California investment bank, began working with McGinn, Smith & Co. Inc. (“the broker-dealer”) on business deals related to the alarm industry. In the fall of 2006, the broker-dealer hired Rogers as a senior managing director, and he began working for the broker-dealer in January 2007.

### **The 2006 Fees and Return**

On September 29, 2006, Timothy M. McGinn, David L. Smith, and Matthew Rogers formed TDM Cable Funding LLC, and, on that same day, TDM Cable Funding LLC purchased \$2.6 million of “triple play” (cable, broadband, and telephone service) contracts related to two Florida housing developments. In connection with that transaction, the broker-dealer later raised approximately \$3,550,000 from investors through a private placement offering made by TDM Cable Trust 06. In connection with transactions related to TDM Cable Trust 06, Rogers received \$385,000 in fees from TDM Cable Funding LLC (\$350,000 on October 3, 2006 and \$35,000 on December 21, 2006). The other two partners of TDM Cable Funding LLC also received fees in amounts similar to those received by Rogers.

On January 10, 2007, Rogers submitted a personal financial statement to Mercantile Bank in Boca Raton, Florida requiring him to list all sources of income and all liabilities for 2006. Rogers concealed the \$385,000 in fees that he had received in 2006 by failing to include it as income that he had received in 2006.

In the fall of 2007, when Rogers gathered materials to prepare his 2006 federal income tax

return, he called Timothy M. McGinn who told him that the \$385,000 of fees were “loans,” and said “that’s the way it is.”

On October 15, 2007, Rogers signed the 2006 joint U.S. Individual Income Tax Return prepared for himself and his wife under the penalty of perjury knowing that the total income of \$196,566 reported on line 22 of the return was false because it did not reflect the \$385,000 in fees that he had received. The return was filed on October 18, 2007 at the Atlanta, Georgia service center.

#### **The 2007 Fees and Return**

During 2007, Rogers received an additional \$278,000 in fees as follows: \$148,000 (\$86,000 on January 30, 2007 and \$62,000 on April 30, 2007) from TDM Cable Funding LLC in connection with transactions related to the TDM Verifier Trust 07 offering which raised \$3,475,000 from investors; \$30,000 on July 12, 2007 from TDM Cable Funding LLC in connection with transactions related to the TDM Luxury Cruise Trust 07 offering which raised \$3,625,000 from investors; and \$100,000 from McGinn Smith Funding LLC, a New York limited liability company, on December 31, 2007, in connection with transactions related to the TDM Verifier Trust 08 offering which raised \$3,850,000 from investors.

On November 13, 2008, Rogers filed the joint 2007 U.S. Individual Income Tax Return prepared for himself and his wife under the penalty of perjury knowing that the total income of -\$67,089 reported on line 22 of the return was false because it did not reflect the \$278,000 in fees that he had received.

#### **The 2008 Fees and Return**

During 2008, Rogers received \$285,000 in fees from NEI Capital LLC, a New York limited liability company (\$245,000 on October 3, 2008 and \$40,000 on November 7, 2008) in connection with transactions related to the Fortress Trust 08 offering which raised \$3,060,000 from investors.

On January 20, 2009, Rogers submitted a personal financial statement to Mercantile Bank in Boca Raton, Florida requiring him to list all sources of income and all liabilities for 2008. Rogers concealed the \$285,000 in fees that he had received in 2008 by failing to include it as income that he had received in 2008. Rogers also did not list the \$285,000 in fees that he had received as “loans.”

On October 19, 2009, Rogers filed the joint 2008 U.S. Individual Income Tax Return prepared for himself and his wife under the penalty of perjury knowing that the total income of \$99,928 reported on line 22 of the return was false because it did not reflect the \$285,000 in fees that he had received.

#### **The 2009 Fees**

On June 10, 2009, Rogers received \$25,000 in fees from TDMM Cable Funding LLC, a Florida limited liability company, in connection with transactions related to the TDMM Cable Jr. Trust 09 offering which raised \$1,300,000 from investors.

### **The Execution of Backdated Promissory Notes**

In November 2009, Timothy M. McGinn pressured Rogers to sign promissory notes in connection with the following fee transactions from TDM Cable Funding LLC: the October 3, 2006 transaction (\$350,000), the January 30, 2007 transaction (\$86,000), and the July 12, 2007 transaction (\$30,000). When Rogers learned about the promissory notes, he was angry and called McGinn. McGinn told him that FINRA needed the notes and that Rogers had to sign them. Rogers, who did not want to be required to repay the fees that he had received, obtained a November 13, 2009 letter from McGinn, as managing member of TDM Cable Funding LLC, stating that the “debt” related to those fee transaction would be “forgiven” over four years. After receiving this fraudulent “forgiveness-of-debt” letter, Rogers executed the promissory notes. The only date on the promissory notes was the date of each transaction. Although Rogers knew that the promissory notes would be provided to FINRA, Rogers did not date his signature, and the promissory notes did not reveal that Rogers signed them in November 2009, more than two years after the transactions had actually occurred.

### **The 2009 Return Falsely Declaring \$873,000 as “Forgiveness of Indebtedness”**

On October 15, 2010, after Rogers became aware of the federal criminal investigation, Rogers filed his 2009 income tax return declaring \$873,000 of the \$948,000 of fees that he had received from 2006 through 2008 as other income on line 21. Rogers falsely described the \$873,000 as “forgiveness of indebtedness” when, as he knew, (a) the fees had never been “loans,” (b) no “debt” had been “forgiven,” and (c) he had received the fees during four different tax years. Rogers executed the jurat for that return on September 10, 2010.

The total amount of loss is the tax loss resulting from Rogers’s failure to declare the \$948,000 that he received in fees from TDM Cable Funding LLC, McGinn Smith Funding LLC, NEI Capital LLC, and TDMM Cable Funding LLC.

The investigation was conducted by the Criminal Investigation Division of the Internal Revenue Service and the Federal Bureau of Investigation. The case is being prosecuted by Assistant United States Attorneys Elizabeth C. Coombe and Richard Belliss of the United States Attorney’s Office for the Northern District of New York.