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## BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

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In the Matter of
MCGINN SMITH & COMPANY
20090179845

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VOLUME II

INVESTIGATIVE TESTIMONY OF

TIMOTHY MCGINN

WOODBRIDGE, NEW JERSEY

FEBRUARY 4, 2010

ATKINSON-BAKER, INC.

COURT REPORTERS

Telephone: 1-800-288-3376

Website: www.depo.com

REPORTED BY: S. ARIELLE SANTOS, RPR, CSR, CLR

FILE NO.: A400C32

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2 3	APPEARANCES: BY - CHRISTOPHER RATTINER	2 3	TIMOTHY MCGINN, Having	
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1		Page 166		Page 1	68
1		TIMOTHY MCGINN	1	TIMOTHY MCGINN	
2	· Q	What's the entity?	2	A CCV borrowed funds from McGinn Smir	th
3	A	It's called Legacy Monitoring.	3	Transaction Funding; may have borrowed funds from	
4	Q	And what were the terms of that note?	4	McGinn Smith Funding LLC; and there were three of	
5	A	It was a demand note, and 10 percent	5	four private notes sold to investors.	01
6	interest.	it was a demand note, and to percent	6	Q What do you mean by private notes?	
7	Q	And who is Mr. Cornacchia?	7	A Just we offered a short-term note,	
8	Q A	Mr. Cornacchia is an investor, and	8	maturing generally between six and twelve months t	to
9		envestor of the firm for probably 15 years.	9	I think, three or four investors.	ιο,
10			10	Q And what is the current status? Have	
11	Q entities?	And what is he invested in, which	11	the notes matured?	
12	A	He invested in many of any Alams	12		
13		He invested in many of our Alarm	13	A They have not matured.	
1	-	sically just Alarm Trusts over the years.	I	Q When are they due?	
14	Q	And do you have a business	14	A Anywhere from April to December 2010	١.
15	-	ip with him?	15	Q And how much was the total raised,	
16	Α	I have a partnership with him that is	16	the three or four notes?	
17		ntly active.	17	A 275; 300,000.	
18	Q	And what was that?	18	MR. NEWMAN: Cumulatively or	
19	A	It was a horse breeding operation.	19	individually?	
20	Q	Did you raise any funds for that	20	THE WITNESS: Cumulatively.	:
21	operation		21	MR. NEWMAN: Was there a	
22	A	I did not.	22	memorandum given to them?	
23	Q	How about Mr. Cornacchia?	23	THE WITNESS: It wasn't a	
24	A	He did not.	24	memorandum. It was more of a business	
25	Q	Okay. Did CCV pay an advisory fee to	25	plan presented to them.	
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1					
		TIMOTHY MCGINN	1	TIMOTHY MCGINN	
2	McGinn Sr		1.	TIMOTHY MCGINN MR_NEWMAN: Are they	
1		nith or any entities affiliated with McGinn?	2	MR. NEWMAN: Are they	
2	N		2 3	MR. NEWMAN: Are they accredited investors?	
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	ship that has been chartered, and we anticipate	2	executed three years later?
3	revenue from passenger payments.	3	THE WITNESS: We when the
4	Q And the ship that has been chartered	4	question was asked, we looked in our
5	has been fully paid for?	5	files, we couldn't find them. So we
6	A Not yet.	6	wanted to memorialize the economic
7	Q How much is owed on that ship?	7	event, and so we created the notes and
8	A Roughly \$175,000.	8	executed them at that time.
9	Q And where is that money going to come	9	BY MR. RATTINER:
10	from?	10	Q That was the question asked by FINRA?
11	A Either passenger revenues or other	11	A Yes.
12	investments by myself or Mr. Smith or some of the	12	Q When were those notes dated?
13	four parties that I have mentioned to date.	13	A I don't know that they were dated. I
14	Q You mentioned yesterday that in	14	don't know if there was a particular date on that
15	association with the loans that were taken from TDM	15	note.
16	and/or CCV, either via note promissory note	16	Q Do you normally not date a document
17	created?	17	when you sign it?
18	A Yes.	18	A Sometimes yes, sometimes no.
19	Q Was that done in all instances?	19	Q In addition to the notes that we are
20	A It probably was not done in all	20	talking about from October 2006, were there other
21	instances. It was certainly recorded as such in all	21	notes that you signed on a similar today in
22	instances.	22	November 2009 for previous loans?
23	Q And did you take any loans via	23	A I don't recall signing any other
24	promissory note in 2009?	24	notes on that particular day.
25	A Most likely, yes.	25	Q How about within
		25	
1	Page 171	,	Page 173
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Q And when would that have been	2	November/December 2009?
4	seasonally?	3	A There may have been.
5	A Oh, I don't know. I mean, it could	5	Q Do you recall signing upwards of 15 notes in November/December 2009 total?
6	have been it would have been probably in the first six months of the year.	6	
7		7	A I signed a number of notes in 2009.
	Q Okay. And have you signed any	8	Q In November/December?
8 9	promissory notes in the last half of the year in 2009?	9	A Yes.
10		I	Q In response to FINRA's request?
		110	A Voc
1		10	A Yes.
11	Q How about subsequent to November?	11	Q I am going to introduce
11 12	<ul><li>Q How about subsequent to November?</li><li>A Excuse me, yes, I have.</li></ul>	11 12	Q I am going to introduce MR. RATTINER: Let's go off
11 12 13	<ul><li>Q How about subsequent to November?</li><li>A Excuse me, yes, I have.</li><li>Q And when was that?</li></ul>	11 12 13	Q I am going to introduce MR. RATTINER: Let's go off the record for one second.
11 12 13 14	<ul> <li>Q How about subsequent to November?</li> <li>A Excuse me, yes, I have.</li> <li>Q And when was that?</li> <li>A We executed notes in November of '09.</li> </ul>	11 12 13 14	Q I am going to introduce MR. RATTINER: Let's go off the record for one second. (Whereupon a recess is taken.)
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11 12 13 14 15 16	<ul> <li>Q How about subsequent to November?</li> <li>A Excuse me, yes, I have.</li> <li>Q And when was that?</li> <li>A We executed notes in November of '09.</li> <li>Q And what was that for?</li> <li>A That was for the TDM Cable 06</li> </ul>	11 12 13 14 15 16	Q I am going to introduce MR. RATTINER: Let's go off the record for one second. (Whereupon a recess is taken.) MR. RATTINER: It's going to be Exhibit Number 3.
11 12 13 14 15 16	Q How about subsequent to November? A Excuse me, yes, I have. Q And when was that? A We executed notes in November of '09. Q And what was that for? A That was for the TDM Cable 06 transaction.	11 12 13 14 15 16 17	Q I am going to introduce MR. RATTINER: Let's go off the record for one second. (Whereupon a recess is taken.) MR. RATTINER: It's going to be Exhibit Number 3. (Whereupon Exhibit 3 is
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11 12 13 14 15 16 17 18 19 20 21 22	Q How about subsequent to November? A Excuse me, yes, I have. Q And when was that? A We executed notes in November of '09. Q And what was that for? A That was for the TDM Cable 06 transaction. MR. NEWMAN: Who is we? THE WITNESS: Myself and Mr. Smith and Mr. Rogers. MR. NEWMAN: And those notes were for the transactions that occurred	11 12 13 14 15 16 17 18 19 20 21 22	Q I am going to introduce MR. RATTINER: Let's go off the record for one second. (Whereupon a recess is taken.) MR. RATTINER: It's going to be Exhibit Number 3. (Whereupon Exhibit 3 is Marked.) BY MR. RATTINER: Q Mr. McGinn, what is in front of you is what's been labeled Exhibit Number 3. If you have a moment, just take a look at that.

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. RATTINER: I'm sorry, I'll	2	MR. NEWMAN: So does that mean
3	read into the record.	3	there was never one prepared in
4	Exhibit Number 3 is a	4	October 2006?
5	promissory note dated on the document	5	THE WITNESS: You know what, I
6	is dated October 2, 2006, in the amount	6	don't know if one was prepared, but I
7	of \$352,341; and it was for value	7	certainly couldn't produce one.
8	received by Mr. Timothy McGinn.	8	MR. NEWMAN: Well, this is for
9	THE WITNESS: (Reviewing).	9	\$350,000. Is it your custom and
10	BY MR. RATTINER:	10	practice to engage in transactions of
11	Q Was this one of the notes we have	11	this magnitude without any
12	just referenced a minute ago?	12	documentation?
13	A Yes.	13	THE WITNESS: Well, there I
14	Q Let's start on page 4. Can you just	14	would argue that there was an entry made
15	read into the record the last paragraph.	15	into the books and records of TDM Cable
16	A The last paragraph?	16	Funding which recognized this amount and
17	Q Yes, please.	17	comparable amounts to both Mr. Smith and
18	A "In witness whereof this note has	18	Mr. Rogers, as of that date, as loans.
19	been executed, delivered on the date specified above	19	MR. NEWMAN: Okay. I'm asking
20	by the duly authorized representative of the maker."	20	you about the actual underlying
21	Q And if we go to page 1 at the top of	21	documentation, not an accounting entry.
22	the document, can you read the date on there?	22	Is it your practice to engage
23	A October 2, 2006.	23	in transactions of this magnitude
24	Q Was this signed on October 2, 2006?	24	without documentation?
25	A No.	25	MR. FRANCESKI: Let me I
	Down 175		
_	Page 175		Page 177
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Q And why was that?	2	think I know what you are asking, but
3	A As I indicated earlier, we didn't	3	let's be specific. When you say
4	find the note. We wanted to memorialize this	4	"underlying documentation," because the
5	financial arrangement, which was entered into our	5	witness' answer to that was the
6	books accordingly. And this October 2, 2006 really	6	accounting entry is the part of the
7	should have said "as of October 2, 2006."	7	underlying documentation. I don't know
8	Q In response to the 8210 request that	8	where you want to go with that, but
9	the Staff had provided, did you indicate to the Staff	9	MR. NEWMAN: This is a
10	that this note was not signed as it was dated?	10	promissory note, right?
11	A No.	11	THE WITNESS: That's what it
12	Q And why was that?	12	is.
13	A I didn't think it was material.	13	MR. NEWMAN: And so
14	Q That's not a material fact?	14	essentially what I'm asking, is it your
15	A I didn't think it was a material	15	practice to engage in oral promissory
16	fact.	16	notes without a written promissory note?
17	MR. NEWMAN: This was signed	17	THE WITNESS: Our business is
18	in November 2009?	18	largely done on an oral basis.
19	THE WITNESS: That is correct.	19	MR. NEWMAN: Would that
1	MR. NEWMAN: Was there ever a	20	include \$350,000 promissory notes?
20		21	THE WITNESS: It would.
21	promissory note that was prepared and		
21 22	signed in October 2006?	22	BY MR. RATTINER:
21 22 23	signed in October 2006?  THE WITNESS: We could not	23	Q When the staff was at the firm in
21 22	signed in October 2006?		

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Do you recall what your response was	2	those loans, are there other loan documents that were
3	at that time?	3	created in or around November 2009?
4	A I don't recall what my response was.	4	A Yes.
5	Q Who created this document?	5	Q That were signed by yourself?
6	A This would have been created by Mr.	6	A Correct.
7	Carr.	7	Q What entities?
8	Q Okay. I am going to use an	8	A I don't have a list of those
9	approximate number. There are approximately	9	entities. They may have included a thing called NEI
10	somewhere between 12 and 20 of these documents	10	Capital.
11	produced to the Staff.	11	Q Any others?
12	Are there other documents that were	12	A MS Funding LLC. And there may have
13 14	not produced to the staff that would have fallen	13	been others. I can't recall specifically at the
15	under the same category?	14	moment.
16	MR. FRANCESKI: Hold on. When	15	Q And can you what is NEI Capital?
17	you say as a predicate to that question	16	A NEI Capital is an entity that was
18	there were did you say 12 to 20?	17 18	created in late 2008 to effect an alarm security
19	MR. RATTINER: I could count	19	alarm transaction.
20	them.	20	Q And who owns it?
21	MR. FRANCESKI: My only		A It is owned by McGinn Smith Holdings.
22	concern, you said "these documents," and	21	Q And did they do a raise?
1	I don't know if you mean Timothy McGinn	22	A I'm sorry?
23	notes or notes or	23	Q Did they do a raise of funds?
24	MR. RATTINER: Sure. I will	24	A I would say October 2008.
25	qualify.	25	Q And how much was raised?
	Page 179		Page 181
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	BY MR. RATTINER:	2	A \$2 million.
3	Q In terms of I guess the Staff	3	Q And did any of the four note
- 4	requested all promissory notes for certain entities	4	entities, LLCs, loan money to NEI?
5	at the time via 8210.	5	A No.
6	And in response to that request, the	6	Q And what is the current status of
7	firm provided us with the promissory notes for	7	that \$2 million?
8	mainly Mr. McGinn, mainly for two entities, which	8	A It's outstanding.
9	would be TDM Cable Funding and CCV.	9	Q And what was the maturity date; was
10	Are there other documents outside of	10	it a note?
11	TDM Cable Funding and CCV that would have fallen	11	A No. It was a securitization. It had
12	under the same category where a note was produced and	12	an amortization schedule. And I think the
13	signed after the promissory note was actually	13	amortization schedule goes out for five years.
14	transacted?	14	Q Are there interest payments in
15	A Yes.	15	between or no?
16	Q What would that be?	16	A Oh, sure, monthly payments.
17	A I don't know specifically.	17	Q Monthly?
18	Q And how many of those?	18	A Yes.
19	A I have no idea.	19	Q How is the status?
20	Q And where would those reside?	20	A It's current within 60 days.
21	A My guess is you have a copy. And my	21	Q And how is the future status, I will
22	guess is that we have a copy at 99 Pine Street.	22	say within the next three months?
23	Q Away from the ones that were provided	23	MR. FRANCESKI: To the extent
1 2 4	to the Staff. The Staff has TDM Cable and CCV.	24	he can foresee the future.
24 25	Away from those two entities and	25	

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	Page 182		Page 184
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	THE WITNESS: Payments will	2	done?
3	continue to be made for the next three	3	THE WITNESS: If it was done,
4	months.	4	it would have been done in the
5	BY MR. RATTINER:	5	October 2008 time frame.
6	Q And in addition to NEI and MS funding	6	BY MR. RATTINER:
7	LLC, you are not aware of any others that you recall	7	Q What was NEI's financial viability in
8	as we sit here today?	8	October 2008?
9	A Correct.	9	A It was a newly-formed entity.
10	Q And at whose direction did you sign	10	Q Did it have any revenues?
11	these notes?	11	A No. It was a single-purpose entity.
12	A At whose direction?	12	Q And how about now, do they have any
13	Q If any?	13	revenues currently?
14	A No one, no one in particular.	14	A It remains a single-purpose entity.
15	Q Did you date any of the notes that	15	Q What do you mean?
16	you signed in November 2009?	16	A The revenues come from the portfolio
17	A Well I don't know.	17	of assets that were purchased. And that revenue
18	MR. FRANCESKI: I take it,	18	stream is probably \$1.2 million annually.
19	Chris, you mean did he put a date next	19	Q How much of the \$2 million went to
20	to his signature?	20	purchasing assets?
21	MR. RATTINER: Correct.	21	A Roughly 60, 65 percent.
22	Right. All of the notes obviously have	22	Q And what about the rest?
23	a date embroiled on the document.	23	A It was they were, those funds were
24	MR. FRANCESKI: Did you	24	used to make loans to myself, Mr. Smith and Mr.
25	understand the question that way?	25	Rogers.
	Page 183		Page 185
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	THE WITNESS: Yes.	2	Q And those loans were approximately
3	MR. ROWEN: Excuse me.	3	600,000, 200 each or
4	Outside of the \$2 million	4	A I would guess probably somewhere
5	raise in October 2008, what other	5	between 600 and 800,000.
6	entities invested in NEI?	6	MR. NEWMAN: Those loans were
7	THE WITNESS: We did that	7	made when?
8	transaction as a joint venture with a	8	THE WITNESS: They would have
9	firm called Fall Circle Funding out of	9	been made in that same time frame,
10	Westchester, New York.	10	October/November 2008.
11	MR. ROWEN: Is that a	11	MR. NEWMAN: What is the
12	broker-dealer?	12	interest rate?
13	THE WITNESS: It is a hedge	13	THE WITNESS: Somewhere
14	fund.	14	between 3 and 6 percent.
15	MR. ROWEN: Did any entities	15	MR. NEWMAN: Between 3 and
16	that you have any affiliation with loan	16	6 percent?
17	money to NEI?	17	THE WITNESS: Hm-hm.
18	THE WITNESS: There may have	18	MR. NEWMAN: How is that
19	been a bridge loan until the transaction	19	interest rate negotiated and arrived at?
20	was until the capital raise was	20	THE WITNESS: It wasn't
21 22	completed. And I can't tell you who	21	negotiated. It was arbitrary.
23	that was from. I don't believe it was	22	MR. NEWMAN: And who
24	from any of the four funds: The FIIN,	24	selected who made the determination
25	FEIN, FAIN, TAIN.	25	on what the interest was going to be?
140	MR. ROWEN: When was that	40	THE WITNESS: I did.

	Page 186	[	Page 188
1		1	
1 2	TIMOTHY MCGINN	1 2	TIMOTHY MCGINN
3	MR. NEWMAN: Has the loan been	3	MR. NEWMAN: Why isn't that
1	repaid?		disclosed to the investors?
4	THE WITNESS: No.	4	THE WITNESS: It wasn't
5	MR. NEWMAN: When are the	5	disclosed to the investors for basically
6	payments due?	6	the reason that the total transaction,
7	THE WITNESS: Typically these	7	the total cost of the transaction,
8	loans have anywhere from a five to seven	8	including compensation for these loans,
9	year maturity.	9	was an aggregate number; and that's what
10	MR. NEWMAN: Why is that?	10	was disclosed.
11	THE WITNESS: It is the way we	11	MR. NEWMAN: How does that
12	have done it.	12	loan that's payable in five to seven
13	MR. NEWMAN: Is that the	13	years benefit the investors?
14	customary practice?	14	THE WITNESS: How does it
15	THE WITNESS: It has been our	15	benefit the investors?
16	customary practice, yes.	16	MR. NEWMAN: Yes.
17	MR. NEWMAN: And you're	17	THE WITNESS: Well, without
18	receiving a loan I'm sorry. What is	18	having some form of compensation to the
19	the entity who is issuing the loan?	19	principals, there wouldn't be a
20	THE WITNESS: NEI.	20	transaction. So to the extent that the
21	MR. NEWMAN: And what is your	21	transaction is beneficial to the
22	position with NEI?	22	investors, it becomes part of that.
23	THE WITNESS: Probably	23	MR. NEWMAN: Now, the amount
24	managing member.	24	that was raised again, I'm sorry, was
-25	MR. NEWMAN: So you're lending	25	how much?
	Page 187		Page 189
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	money to yourself?	2	THE WITNESS: I don't know the
3	THE WITNESS: Correct.	3	exact amount. I said 2 million, it
4	MR. NEWMAN: Determining the	4	could have been more than that, it could
5	interest rate, determining when the loan	5	have been 3 million. May have been 3
6	is going to be repaid, and typically	6	million. I don't have that in front of
7	it's five to seven years after you get	7	me.
8	the money?	8	MR. NEWMAN: Approximately?
9	THE WITNESS: Correct.	9	This is a transaction
10	MR. ROWEN: Did you anticipate	10	THE WITNESS: Somewhere
11	this loan at the time the NEI Capital	11	between 2 and \$3 million.
12	raise through the broker-dealer was	12	MR. NEWMAN: Let's say it's \$2
13	being conducted?	13	1/2 million, approximately.
14	THE WITNESS: Yes.	14	THE WITNESS: Okay.
15	MR. ROWEN: Was that disclosed	15	MR. NEWMAN: And the loan
16	was the loan disclosed to the	16	amount the face value of the amount
17		17	•
18	potential investors in NEI Capital in	18	you got was how much again?
19	the private placement memorandum?	l	THE WITNESS: The face value
l .	THE WITNESS: No. As I	19	of the loan that I got was somewhere
20	testified yesterday, we disclosed the	20	between 275 and 300,000 dollars.
21	total acquisition cost, which included	21	MR. NEWMAN: So basically
22	the loan proceeds.	22	10 percent of the offering amount is
23	MR. ROWEN: Did it specify the	23	going to you in this loan; is that
24	loan proceeds?	24	correct?
25	THE WITNESS: It did not.	25	THE WITNESS: Yes.

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	Page 190		Page 192
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. NEWMAN: And when does the	2	with this deal?
3	offering suggest, project, tell	3	A Yes.
4	investors that they can expect a return	4	Q And what was that?
5	for their investment?	5	A It was a fee paid to McGinn Smith &
6	THE WITNESS: The investors	6	Company.
7	get a return every month and have gotten	7	Q Percentage?
8	a return every month since the	8	A Oh, I don't know.
9	transaction was consummated.	9	Q Is there a typical advisory fee?
10	MR. NEWMAN: Based on what	10	A A typical advisory fee might be as
11	revenues?	11	much as 10 percent of the offering.
12	THE WITNESS: Based on the	12	Q Now, maybe I am confusing the
13	revenue from the underlying portfolio of	13	terminology.
14	security Alarm Contracts that was	14	Is there also an underwriting fee?
15	purchased.	15	A Yes.
16	MR. NEWMAN: Those are the	16	Q Would the underwriting fee would be
17	quarterly interest payments?	17	the 10 percent, I assume?
18	THE WITNESS: Actually, I	18	A No. The underwriting fee would be
19	think they are monthly.	19	more in the area of 6 percent.
20	MR. NEWMAN: Those payments	20	Q Okay. So in this case, the
21	don't represent a return of principal,	21	underwriting fee was approximately 6 percent?
22	they represent actual interest payments?	22	A Yes.
23	THE WITNESS: Actually, they	23	Q Also an advisory fee of 10 percent?
24.	represent interest and principal. It's	24	A Correct.
25	a debt service payment. There is a	25	Q And in addition to that about
	Page 191		Page 193
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	component of interest and a component of	2	30 percent came out in loans?
3	principal.	3	A Yes.
4	MR. NEWMAN: Was there a	4	Q So NEI takes 44 percent of the total
5	written note associated with this loan	5	raise approximately?
6	or any written document associated with	6	A Approximately.
7	this loan you are describing?	7	Q What is the target return in order to
8	THE WITNESS: Which loan?	8	pay back the investors needed to be on a 44 percent
9	MR. NEWMAN: The loan the	9	loan to NEI the income producer versus the 2 to 3
10	\$700,000 loan or \$250,000 loan.	10	million dollars raised?
11	Excuse me.	11	MR. FRANCESKI: Wait a second.
12	THE WITNESS: If there was, it	12	Slow down. I thought you said a loan to
13	was done in the November 2009 time	13	NEI.
14	frame.	14	MR. RATTINER: Investment in
15	MR. NEWMAN: So you don't	15	NEI.
16	know, again, if it was a loan?	16	MR. FRANCESKI: Yes.
17	THE WITNESS: No, I knew there	17	THE WITNESS: I am not sure I
18	was a loan. I don't know if there was a	18	understand your question.
19	document.	19	BY MR. RATTINER:
20	MR. NEWMAN: That's my	20	Q Well, the loans to yourself, the
21	question. You don't know if there was a	21	30 percent to yourself, Mr. Rogers and Mr. Smith is
22	written loan document?	22	yielding 3 percent a year?
23	THE WITNESS: Correct.	23	A 3 to 6, I don't know where it is.
24	BY MR. RATTINER:	24	Q What was the interest rate associated
25	Q Was there an advisory fee associated	25	with the promissory note to the investors not the

	Page 194		Page 196
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	promissory note, the private placement memorandum?	2	Roughly \$700,000 a year, less
3	A I think it was 13 percent.	3	less the accrual of 50,000. Still
4	Q Okay. So 13 percent to the	4	675 to 700,000 dollars a year.
5	investors?	5	BY MR. RATTINER:
6	A Right.	6	Q So that's 70-something percent of the
7	Q What does NEI need to produce to	7	amount loaned per year?
8	cover that 13 percent plus whatever costs that are	8	A Well, it you can use whatever
9	associated with this deal?	9	denominator you choose. But if you use the typical
10	A NEI needed to produce \$390,000 a year	10	experience in the alarm industry, where EBITDA
11	of interest plus principal of perhaps another I	11	margins are roughly 70 percent of revenue, this is a
12	would say that the total return from the portfolio	12	portfolio that would generate and was forecast to
13	had to be somewhere around \$700,000 a year.	13	generate roughly \$800,000 a year in cash flow.
14	Q You are basing that on a \$3 million	14	- · · · · · · · · · · · · · · · · · · ·
15	investment	15	Q Percentage-wise, how many deals
16	A Yes.	16	and let's take year by year, I guess, 2009, how many deals would have had a similar structure where there
17	Q or a \$1.6 million investment that	17	
18	they actually received?	18	was a raise in excess of what was needed or given to
19	A 3 million.	19	the entity and a loan given to one or more principals of McGinn Smith?
20		20	
21	Q Right. So now how do you base that on 1.6 they didn't receive 3 million?	21	MR. FRANCESKI: Let me object
22	A You've asked me what the return had	22	to that question. The part after the
23	to be	23	"or" I am okay with. The reference to
24		1	"needed" is inappropriate.
25	Q Right. A to service the capital raise of \$3	24 25	MR. RATTINER: Why?
23	A to service the capital raise of \$3	23	MR. FRANCESKI: Because that's
	Page 195		Page 197
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	million at 13 percent.	2	a judgment, that's not a question.
3	Q Right.	3	MR. RATTINER: Well, I guess
4	And, I'm sorry, just to interrupt you	4	the McGinn Smith and Mr. McGinn and
5	for a second.	5	his knowledge of the industry obviously
6	We said that 44 percent of that money	6	comes up with a need base on what's
7	went to NEI, approximately?	7	needed to the raise, which is why they
8	A Right, right.	8	would have a minimum and a maximum in
9	Q The other remaining, the advisory	9	each deal. So I don't know that I agree
10	fee, obviously there's no return on?	10	with your disagreement.
11	A Right.	11	MR. FRANCESKI: Well, I don't
12	Q The underwriting fee there's no	12	know. It's a compound question.
13	return on. That's 16 percent?	13	MR. RATTINER: Right. And
14	A Right.	14	that I could apologize for.
15	Q And the 300,000 or the 900,000 or	15	MR. FRANCESKI: If you can
16	so that went to the three individuals is yielding	16	parse it out give it a try.
17	something where between 3 and 6 percent?	17	BY MR. RATTINER:
18	A Right.	18	Q In 2009, were there similar deals
19	Q So we are at a significant deficit.	19	structured as this?
20	So NEI's money would have to return what to get the	20	A In 2009 in 2009 the only deal that
21	customer, the principal and interest back?	21	would have been comparable but not entirely
22	MR. FRANCESKI: Do you	22	synonymous would be the TDMM Cable Funding
23	understand the question?	23	transaction.
24	THE WITNESS: I do. I am just	24	Q Walk us through some of the details
25	doing some mental arithmetic.	25	on that, if you could.

Page 198 Page 200 1 TIMOTHY MCGINN **TIMOTHY MCGINN** 1 2 2 TDMM Cable Funding was a transaction transactions ---3 that was created to acquire some 22 contracts for the 3 Where you would have taken a loan O 4 provision of cable TV, internet, telephone, security that were not affiliated with -- NEI, well, there's 4 5 in Florida. 5 an affiliation through MS Holdings. 6 6 The acquisition price of those assets Yeah. Α 7 was roughly two-and-a-half mil -- two-and-a-quarter 7 Q TDMM, obviously is an affiliation? million dollars. There were underwriting spreads of 8 8 Right. Right. Right. 6 percent as is normal. And there were advisory fees 9 9 When we did the TDM Verifier 10 paid to McGinn Smith & Company. I don't know if transactions where we have a nominal equity 10 there were any loans out of that transaction. I just 11 11 ownership, we may have taken loans on those 12 transactions, I don't recall. don't remember. 12 13 Advisory fee would also be Okay. So let's go back to 2007. 13 14 10 percent, or approximately? 14 What would we have in that year? 15 Yeah. 10 or 15 percent. 15 2007, we had -- we had the First Line transactions. And I don't believe there are any 16 I think the other transactions done 16 17 in 2009 did not have any loans. And there were only 17 loans taken from that First Line transaction. 18 -- there was only one other transaction, the cable 18 What else did we do in '07? We did 19 space that was called TDMM Benchmark, and there were 19 -- we did a Verifier transaction in January '07. And a couple of rollovers for maturity for previous 20 20 we did a Luxury Cruise transaction in, I think, the 21 transactions of Verifier Capital, for one. I think 21 second quarter of '07. 22 that may have been the only one. And any loans taken out of those 22 23 Have you taken any loans off of any 23 transactions would have been -- you remember 24 rollover deals? yesterday I used the term "conduit," we used TDM 24 25 25 Cable Funding as the conduit. It would show up on Α No. Page 199 Page 201 1 TIMOTHY MCGINN 1 TIMOTHY MCGINN 2 2 Have any similar situations in 2010? the TDM Cable Funding balance sheet. Q 3 3 So when we are looking at Exhibit Α No. 4 0 How about 2008? 4 Number 2 -- I apologize, Exhibit Number 1, and we had 5 5 seen other loans throughout the document --I think it was just the NEI Α 6 6 Α transaction. 7 7 O Okay. And why would you do it in one -- those would have been related to 0 transaction and not another? What would be the --8 8 Verifier or --9 9 Well, certain transactions have --Α That's correct. have more -- have better spreads, have more earned 10 How about in 2006? 10 11 income, have more operating cash flow and could 11 I guess you started towards the end support those -- those events. Some can't. of the year in 2006? 12 12 13 How is it disclosed to the entity? 13 Yes. Α 14 NEI is owned by who, for instance? 14 The only thing that was done in '06 15 I think NEI is owned by MS Holdings. 15 was this first cable transaction, TDM Cable Funding. 16 And that may well be disclosed in the offering MR. RATTINER: We are going to 16 document, but I am not certain of that. 17 17 introduce the next exhibit. 18 Okay. Have you done any of these MR. PAULSEN: One last 18 19 similar transactions where there was an entity not 19 question on NEI. Where are the 20 affiliated with McGinn Smith? financial books and records maintained 20 21 for that entity? Α No. 21 22 O So 2008 as far --22 THE WITNESS: 99 Pine Street. 23 A Well, wait a second. Let me back up 23 MR. PAULSEN: In what format 24 24 there. are they maintained? 25 Have we done any other 25 THE WITNESS: I am not sure

TIMOTHY MCGINN  what you mean by "what format."  MR. PAULSEN: Accounting software, hard copy, manual?  THE WTINESS: I am sure it's on the accounting software on the Quicken books or some other software platform.  MR. PAULSEN: Do you receive  MR. PA				Page 204
2 What you mean by "what format." 3 MR. PAULSEN: Accounting 4 software, hard copy, manual? 5 THE WITNESS: I am sure it's 6 on the accounting software on the 7 Quicken books or some other software 8 platform. 9 MR. PAULSEN: Do you receive 9 pour freed them? 10 pooks and records for NEI from that 11 books and records for NEI from that 12 Quicken software? 13 THE WITNESS: I do not. 14 MR. RATTINER: We are going to 15 introduce the next exhibit will be 16 number 4. 17 (Whereupon Exhibit 4 is 18 Marked.) 19 BY MR. RATTINER: 10 Q Mr. McGinn, I am handing you Exhibit 11 Number 4. And this is a series of promissory notes 11 the will read into the record in a moment. 12 Q All right. Mr. McGinn, in front of 13 TIMOTHY MCGINN 14 Exhibit Number 4 comprises of sevenal 15 January 30, 2007 in the amount of \$92,000 with your 16 mame on it, Mr. McGinn. 17 Timothy McGinn 18 January 30, 2007 is the third one for 19 July 12, 2007 is the third one for 20 Q And down that it is: Exhibit Number 21 August 7, 2007 for \$95,000, also addressed to 21 yourself. 22 August 6th. 23 A August 6th. 24 August 7, 2007 for \$75,000. 25 A Yes. 26 Q And you had mentioned Mr. Carr 27 created them? 28 A Correct. 29 Q Mre did Mr. Carr start with the 21 nanuary 2007. 20 La 2006, who would have been done 21 creating these documents? Or similar documents? 21 Not these specific, but promissory 22 not been done would have been done 23 and warked.) 24 When did Mr. Carr start with the 25 received hem? 26 A Well, 2006, who would have been done 27 contact them? 28 A Well, as 1 Lestified earlier I 29 And who wall this is Exhibit Number 29 And what started the process of this 20 And who wall dive been the one 20 And what started the process of this 21 promissory notes come October 2006? 22 And all of the remaining notes are 23 A R. Ceviewing. 24 Cook we did not have general 25 Prace Vell with the idea of hard. 26 A Well, as 1 Lestified earlier I 27 rejoined the firm in that time frame, 28 October/November 2006, and we began to do 29 transcition, which was brought		_	,	•
MR. PAULSEN: Accounting software on the software platform.  MR. PAULSEN: Do you receive reports, periodic reports of financial books and records for NEI from that 11 books and records for NEI from that 12 Quicken software reports, periodic reports of financial books and records for NEI from that 13 THE WITNESS: I do not. MR. RATTINER: We are going to introduce the next exhibit will be mamber 4.  (Whereupon Exhibit 4 is Marked.)  BYMR. RATTINER: We are going to introduce the next exhibit will be mamber 4.  (Whereupon Exhibit 4 is Marked.)  Marked.)  When did Mr. Carr start with the firm?  A January 2007.  Q In 2006, who would have been doe one creating these documents? Or similar documents? Not these specific, but promissory notes done by either an outside law firm or at our own hand.  A (Well, 2006 we did not have general connect. So anything that was done would have been done by either an outside law firm or at our own hand.  A (Reviewing).	1			
4 software, hard copy, manual? 5 THE WITNESS: I am sure it's 6 on the accounting software on the 7 Quicken books or some other software 9 platform. 9 MR. PAULSEN: Do you receive 10 reports, periodic reports of financial 11 books and records for NEI from that 12 Quicken software? 13 THE WITNESS: I do not. 14 MR. RATIINER: We are going to 15 introduce the next exhibit will be 16 number 4. 17 (Whereupon Exhibit 4 is 18 Marked.) 19 BY MR. RAITINER: 10 Q M. M. McGinn, I am handing you Exhibit 21 Number 4. And this is a series of promissory notes 22 that I will read into the record in a moment. 23 A (Reviewing). 24 Q All right. Mr. McGinn, in front of 25 you I am going to read what it is: Exhibit Number 26 purissory notes, the first of which is dated 27 January 30, 2007 in the amount of \$92,000 with your name on it, Mr. McGinn. 28 A August fib. 29 And all of the remaining notes are 20 And all of the remaining notes are 21 A August fib. 21 August fib. 22 A August fib. 23 And all of the remaining notes are 24 A August fib. 25 July 12, 2007 is the third one for 26 Signon, and all of the remaining notes are 27 A August fib. 28 A August fib. 29 And who came up with the idea of having these promissory notes? 30 And March 13, 2009 for \$25,000. 31 August fib. 32 August fib. 33 The received by Mr. McGinn. 34 Echabit Number 4 comprises of several 35 Ferbavary 9, 2007 for \$96,000, also addressed to youse! 36 A August fib. 37 Cotober/November 2006, and we began to do transactions. The first transaction being the First transaction being the birst cable transaction, which was brought to us by Mr. Septony onces; the tremaining notes are 38 August fib. 39 Cotober 10, 2007 for \$35,000. 30 And March 13, 2009 for \$35,000. 31 And ach one of these is for value 30 And ach one of these is for value 31 February 9, 2007 for \$35,000. 32 And ach one of these is for value 34 Francekia a moment to review those. 35 A Roc. 36 August fib. 37 A No. 38 Cotober 10, 2007 for \$35,000. 39 And March 13, 2009 for \$35,000. 30 And March 13, 2009 for \$3	,	•		
THE WITNESS: I am sure it's on the accounting software on the platform.  MR. PAULSEN: Do you receive reports, periodic reports of financial books and records for NEI from that 12 Quicken software?  THE WITNESS: I do not. MR. RATTINER: We are going to introduce the next exhibit will be number 4.  MR. RATTINER: We are going to introduce the next exhibit will be number 4.  Marked.)  BYMR. RATTINER: We are going to introduce the next exhibit will be number 4.  Marked.)  BYMR. RATTINER: We are going to introduce the next exhibit will be number 4.  Marked.)  BYMR. RATTINER: We are going to introduce the next exhibit will be number 4. And this is a series of promissory notes that I will read into the record in a moment.  A (Reviewing).  A (Reviewing).  A (Reviewing).  The second one we have is March 27, anae on it, Mr. McGinn.  The second one we have is March 27, anae on it, Mr. McGinn.  And all of the remaining notes are on yourself.  And all of the remaining notes are for Mr. McGinn.  And all of the remaining notes are for Mr. McGinn.  A August 7, 2007 for \$56,000.  A August 6h.  A August 6h.  A August 6th.  A August 6th.  A August 7, 2007 for \$55,000.  And March 13, 2009 for \$25,000.  And Ma	1 .	<u> </u>	į.	· -
on the accounting software on the pucken books or some other software platform.  MR. PAULSEN: Do you receive MR. PAULSEN: Do you receive ports, periodic reports of financial books and records for NEI from that Quicken software?  THE WITNESS: I do not. MR. RATTINER: We are going to introduce the next exhibit will be number 4.  (Whereupon Exhibit 4 is Marked.)  MR. RATTINER:  MR. RATTINER:  We are going to introduce the next exhibit will be number 4.  MR. RATTINER:  MR. RATTINER:  MR. RATTINER:  We are going to introduce the next exhibit will be number 4.  MR. RATTINER:  A Correct.  MR. Manuary 30,007 for \$30,000.  MR. RATTINER:  MR. RATTINER:  MR. RATTINER:  MR. RATTINER:  MR. RATTINER:  A Melia January 30, 2007 for \$30,000.  MR. RATTINER:  MR. RATTINER:  MR. RATTINER:  A Manuary 30, 2007 for \$30,000.  MR. RATTINER:  MR. RATTI	i	= 7		
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19 BY MR. RATTINER: 20 Q Mr. McGinn, I am handing you Exhibit 21 Number 4. And this is a series of promissory notes 22 that I will read into the record in a moment. 23 A (Reviewing). 24 Q All right. Mr. McGinn, in front of 25 you — I am going to read what it is: Exhibit Number 26 promissory notes, the first of which is dated 27 promissory notes, the first of which is dated 28 promissory notes, the first of which is dated 3 Exhibit Number 4 comprises of several 4 promissory notes, the first of which is dated 5 January 30, 2007 in the amount of \$92,000 with your 6 name on it, Mr. McGinn. 7 The second one we have is March 27, 8 2007 — March 28, 2007 for \$96,000, also addressed to 9 yourself. 9 July 12, 2007 is the third one for 10 Sa0,000, also for Mr. McGinn. 11 Sa0,000, also for Mr. McGinn. 12 And all of the remaining notes are 13 for Mr. McGinn. 14 August 7, 2007 for \$55,000. 15 A August 6th. 16 Q I apologize. August 6th. 17 October 10, 2007 for \$50,000. 18 January 30, 2009 for \$25,000. 20 And March 13, 2009 for \$35,000. 21 And March 13, 2009 for \$35,000. 22 And March 13, 2009 for \$35,000. 23 A No. 24 Well, as I testified earlier I rejoined the firm in that time frame, 25 October/November 2006, and we began to do transactions. The first transaction being the First Cable transaction, which was brought to us by Mr. Rogers. 26 Q And who came up with the idea of having these promissory notes? 27 A No. 28 A No. 29 And who tastarted the process of this promissory note come October 2006? 20 And who that started the process of this promissory note come October 2006? 21 A Well, as I testified earlier I rejoined the firm in that time frame, 22 Cable transactions. The first transaction being the First 29 Cable transaction, which was brought to us by Mr. Rogers. 4 Q And who came up with the idea of having these promissory notes? 4 I think it was a collective decision between myself and Mr. Smith. 4 October 10, 2007 for \$50,000. 4 A August 6th. 5 Q And did you have a similar practice for transactions that we had done of the	1		1	
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	Page 206	***************************************	Page 208
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	BY MR. RATTINER:	2	wanted to be careful with the record.
3	Q Sure.	3	MR. RATTINER: Correct. And I
4	Who would have been the parties or a	4	think the Quicken files also reflect
5	party to those transactions with the promissory	5	loan not promissory note.
6	notes?	6	MR. FRANCESKI: Correct.
7	MR. FRANCESKI: Let me	7	MR. RATTINER: However the
8	MR. RATTINER: I could	8	document reflects promissory note which
9	rephrase.	9	correlates to the loan.
10	MR. FRANCESKI: No. That's	10	MR. FRANCESKI: Can we
11	okay. It's not that, Chris. I thought	11	concentrate on loans for now? If you
12	I heard the same thing in a question	12	want to ask about how they were
13	about three questions ago. And I was	13	documented
14	going to ask the court reporter to	14	MR. RATTINER: Okay.
15	repeat it.	15	MR. FRANCESKI: Is that how
16	There was a question earlier,	16	you understood the question?
17	Chris, in which you asked about	17	THE WITNESS: Yes. And let me
18	transactions earlier in time. I am	18	correct my previous answer.
19	forgetting the date. But I think you	19	In all of the transactions
20	characterized the transaction as	20	done between '81 and '02, they weren't
21	promissory notes, when it should have	21	there were no loans. The payments
22	been characterized as loans.	22	were made as fees and were recognized as
23	And I think the witness	23	such.
24	answered as though you were asking him	24	BY MR. RATTINER:
25	"Did you engage in these loans back at	25	Q Okay. Were there any promissory
	Page 207		Page 209
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	that time?" Whether or not there were	1	•
1 4	mai time: whether of not there were		notos? Co
	promissory notes. Low not supplied	2	notes? So
3	promissory notes, I am not sure the	3	A No loans, so no notes.
3 4	witness was asked.	3 4	A No loans, so no notes. Q So from '81 to 2003 the process was
3 4 5	witness was asked. You see the difference?	3 4 5	A No loans, so no notes.  Q So from '81 to 2003 the process was you'd have a PPM and you'd have a fee, an
3 4 5 6	witness was asked. You see the difference? MR. RATTINER: Yes. I am	3 4 5 6	A No loans, so no notes. Q So from '81 to 2003 the process was you'd have a PPM and you'd have a fee, an underwriting fee and advisory fee?
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	witness was asked.  You see the difference?  MR. RATTINER: Yes. I am going by the document title. But I don't know that I in my own viewpoint, I don't know that I differ promissory note from loan, other than  MR. FRANCESKI: It does  MR. RATTINER: the documentation.  MR. FRANCESKI: But that's important  MR. RATTINER: Okay.  MR. FRANCESKI: because we're looking at an exhibit here.  MR. RATTINER: Right.  MR. FRANCESKI: that is different from a loan is a transaction, a promissory note's a	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A No loans, so no notes. Q So from '81 to 2003 the process was you'd have a PPM and you'd have a fee, an underwriting fee and advisory fee? A Correct. Q What was raised, minus those two fees, would be sent to the issuer? A Correct. Q Since then, 2006, the process has changed on some of these deals A That is correct. Q as we've discussed. In TDM's case X amount was raised, minus the fees, minus the advisory fee, if there was one, minus the loans and the remainder was given to the issuer? A Correct. Q But that process didn't exist prior to 2006? A That's correct?

	Page 210	Π	Dama 212
	•		Page 212
	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	was in 2006?	2	Number 4. And that was received from Mr. Brian Shea.
3	A Correct.	3	That was dated November 16, 2009.
4	Q And there were discussions between	4	Mr. McGinn, have you seen this
5	yourself, Mr. Smith and Mr. Rogers?	5	letter?
6	A Mostly myself and Mr. Smith.	6	A No.
7	Q And how did those discussions take	7	Q And if you turn to page number 2,
8	place?	8	question number 5, this 8210 request had requested
9	How did this concept come to be?	9	specifically in connection with the entities listed
10	A Well, it came to be as a result of	10	in item number 1.
11	tax planning as well as looking at the spreads in	11	"Please provide all documentation
12	these particular transactions.	12	related to loans made payable to the following
13	Q If we look through these documents	13	individuals: David Smith, Lynn Smith, Tim McGinn,
14	and put them all together to save some exhibits, were	14	Matt Rogers, Mario Bustamante; including, but not
15	all of these documents as you see them in front of	15	limited to, loan origination documents, promissory
16	you in Exhibit Number 4 all signed on November 2009?	16	notes, repayment information and any other documents.
17	A Yes.	17	Additionally, please identify whether there were any
18	Q Okay. How was it determined which	18	other loans made payable to other individuals or
19	loans needed promissory notes?	19	entities not previously identified."
20	What did you review to tie out, if	20	MR. FRANCESKI: You're reading
21	you will?	21	item 5, page 2?
22	A Well, we reviewed the books and	22	MR. RATTINER: Yes.
23	records. And to the extent that it's indicated in	23	BY MR. RATTINER:
24	Exhibit 1, there were loans on the books. We	24	Q Were these loans that we discussed in
25	memorialized that by way of these promissory notes.	25	Exhibit Number 4 provided in response to number 5 on
	Page 211		Page 213
1	TIMOTHY MCGINN	_	
		1	TIMOTHY MCGINN
1		1 2	TIMOTHY MCGINN Exhibit Number 5?
2	And we did so on an as-of basis and, unfortunately,	2	Exhibit Number 5?
2	And we did so on an as-of basis and, unfortunately, that's not what the document reflects.	1	Exhibit Number 5?  A I would assume so.
2 3 4	And we did so on an as-of basis and, unfortunately, that's not what the document reflects.  (Whereupon FINRA Staff are	2 3 4	Exhibit Number 5?  A I would assume so. Q And now, why was NEI not provided as
2 3	And we did so on an as-of basis and, unfortunately, that's not what the document reflects.  (Whereupon FINRA Staff are conferring.)	2 3 4 5	Exhibit Number 5?  A I would assume so.  Q And now, why was NEI not provided as part of that request?
2 3 4 5 6	And we did so on an as-of basis and, unfortunately, that's not what the document reflects.  (Whereupon FINRA Staff are conferring.)  MR. RATTINER: We are going to	2 3 4 5 6	Exhibit Number 5?  A I would assume so. Q And now, why was NEI not provided as part of that request? A I don't know.
2 3 4 5	And we did so on an as-of basis and, unfortunately, that's not what the document reflects.  (Whereupon FINRA Staff are conferring.)  MR. RATTINER: We are going to take a 10-minute break, and we will	2 3 4 5 6 7	Exhibit Number 5?  A I would assume so. Q And now, why was NEI not provided as part of that request? A I don't know. MR. FRANCESKI: Wait a minute.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	And we did so on an as-of basis and, unfortunately, that's not what the document reflects.  (Whereupon FINRA Staff are conferring.)  MR. RATTINER: We are going to take a 10-minute break, and we will resume when we get back.  (Whereupon a recess is taken.)  MR. RATTINER: Back on the record.  We are going to introduce  Exhibit Number 5.  (Whereupon Exhibit 5 is marked.)  BY MR. RATTINER:  Q And, Mr. McGinn, in front of you is Exhibit Number 5. And Exhibit Number 5 consists of two separate documents; the first of which is dated September 30, 2009 and is a letter to Mr. David Franceski.  And the second document behind was received by FINRA on November I believe it was	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Exhibit Number 5?  A I would assume so. Q And now, why was NEI not provided as part of that request? A I don't know. MR. FRANCESKI: Wait a minute. Did you have I've forgotten whether we have a record whether NEI was not provided or if Mr. McGinn knows it wasn't provided. Do we know that? THE WITNESS: I'm sorry? MR. FRANCESKI: Do you know NEI was not provided? THE WITNESS: I don't know. MR. NEWMAN: We are representing we have not received any documentation from either your counsel or your firm directly pertaining to that entity.  MR. FRANCESKI: Assuming that response is correct, and we don't know
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	And we did so on an as-of basis and, unfortunately, that's not what the document reflects.  (Whereupon FINRA Staff are conferring.)  MR. RATTINER: We are going to take a 10-minute break, and we will resume when we get back.  (Whereupon a recess is taken.)  MR. RATTINER: Back on the record.  We are going to introduce  Exhibit Number 5.  (Whereupon Exhibit 5 is marked.)  BY MR. RATTINER:  Q And, Mr. McGinn, in front of you is  Exhibit Number 5. And Exhibit Number 5 consists of two separate documents; the first of which is dated September 30, 2009 and is a letter to Mr. David Franceski.  And the second document behind was	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Exhibit Number 5?  A I would assume so. Q And now, why was NEI not provided as part of that request? A I don't know. MR. FRANCESKI: Wait a minute. Did you have I've forgotten whether we have a record whether NEI was not provided or if Mr. McGinn knows it wasn't provided. Do we know that? THE WITNESS: I'm sorry? MR. FRANCESKI: Do you know NEI was not provided? THE WITNESS: I don't know. MR. NEWMAN: We are representing we have not received any documentation from either your counsel or your firm directly pertaining to that entity. MR. FRANCESKI: Assuming that

		1	
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	If it wasn't, do you know why	2	offices at about that time frame.
3	it wouldn't have been?	3	And Chris, I think it was you
4	THE WITNESS: No.	4	who asked me what the nature of these
5	This is a letter that was	5	payments was. And I told you they were
6	dated sent to Mr. Franceski with a	6	loans. And you then asked me if we had
7	copy to Mr. Smith. I didn't see this	7	documentation. And I said, yeah, I
8	letter until two minutes ago. And I	8	think we do.
9	don't know why it wasn't included.	9	Well, as it turns out, we
10	BY MR. RATTINER:	10	didn't. So we created the documentation
11	Q When you were signing the documents	11	to memorialize the transaction that had
12	identified in Exhibit Number 4, did you know why you	12	been previously posted to our books as
13	were signing them?	13	loans.
14	A I was signing those documents to	14	I didn't see this document.
15	memorialize the transaction that had occurred on the	15	So
16	particular dates as indicated on each of the	16	MR. FRANCESKI: This document,
17	promissory notes.	17	meaning Exhibit 5?
18	Q Had it been indicated to you that it	18	THE WITNESS: Exhibit 5. So I
19	was based on a request from FINRA?	19	was not familiar with any requests for
20	MR. FRANCESKI: I'm sorry.	20	information that pertained to Lynn
21	Say that one again.	21	Smith, Matthew Rogers or Mario
22	MR. RATTINER: Had there	22	Bustamante in an expanded version.
23	been	23	MR. NEWMAN: So is it your
24	MR. FRANCESKI: Had	24	testimony when you were signing these
25	MR. RATTINER: I forgot what I	25	documents before you as Exhibit 4
	Page 215		Page 217
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	said.	2	Exhibits 4 and 3, that you were unaware
3	(Whereupon the question was	3	that those documents would be turned
4	read.)	4	over to FINRA Staff in response to a
5	THE REPORTER: Question, had	5	request for information?
6	it been indicated to you that it was	6	THE WITNESS: No. I was
7	based on a request from FINRA?	7	totally aware that they were going to be
8	BY MR. RATTINER:	8	turned over to Staff. That was that
9	Q Had anyone indicated to you that this	9	was not unclear at all.
10	was being requested by FINRA, Exhibit Number 4?	10	MR. NEWMAN: And I want to
11	MR. FRANCESKI: You have to do	11	find out the process in terms of how you
12	better than that. Because it is a	12	first became aware there were no loan
13	pretty important question.	13	documents who conveyed that to you,
14	MR. NEWMAN: Let me step in	14	approximately when that was conveyed to
15	for this.	15	you, the context.
16	Were you aware FINRA had	16	MR. FRANCESKI: Take it down a
17	requested loan documentation pertaining	17	little bit.
18	to you, Mr. Rogers, Mr. Smith, Lynn	18	MR. NEWMAN: Explain to us how
19	Smith and Mario Bustamante?	19	you became aware that there was no
20			
120	MR. FRANCESKI: Where? When?	20	documentation, loan documentation for
21	MR. FRANCESKI: Where? When? MR. NEWMAN: Were you aware	20 21	documentation, loan documentation for the transactions that were being
	MR. NEWMAN: Were you aware	21	the transactions that were being
21	MR. NEWMAN: Were you aware that FINRA had requested on or about	21 22	the transactions that were being requested.
21 22	MR. NEWMAN: Were you aware	21 22 23	the transactions that were being requested.  THE WITNESS: I am not certain
21 22 23	MR. NEWMAN: Were you aware that FINRA had requested on or about September 2009 that information?	21 22	the transactions that were being requested.

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	after receipt of this letter.	2	THE WITNESS: Mr. Carr.
3	They asked me if I had any	3	MR. NEWMAN: Did you have any
4	idea where these documents might be	4	concerns about the fact there was no
5	located. I threw my hands in the air.	5	loan documentation?
6	And at that point we we	. 6	THE WITNESS: No.
7	proceeded to create the notes as we see	7	MR. NEWMAN: Why is that?
8	here in Exhibit 3 and Exhibit 4.	8	THE WITNESS: Because the
9	MR. NEWMAN: Did you make any	9	loans were duly recorded on the books
10	effort to search for the notes?	10	and records. There was no reason to
11	THE WITNESS: Yes.	11	think that those books and records
12	MR. NEWMAN: What was that	12	wouldn't be conclusive. And so no, I
13	effort?	13	didn't have any particular concerns.
14	THE WITNESS: Well, I looked	14	MR. NEWMAN: Did Mr. Smith
15	in my files. I looked in other files	15	express any concerns about the fact
16	around the office that I thought would	16	there were no loan documentation
17	be a logical place for these things to	17	there were no loan documents?
18	<b>U</b> 1	18	•
18	have been put into. Unable to find	19	MR. FRANCESKI: Let me caution
20	them. And I said, "I don't have them.	l .	the witness here. Any conversations in
21	I can't find them."	20	which Mr. McGinn and Mr. Smith spoke
B.	Others looked for them. They	21	together in front of counsel would be
22	couldn't find them. And so we created	22 .	privileged.
23	these notes to memorialize the	23	Outside of those outside of
24	transaction.	24	any counsel present, he's free to
25	MR. NEWMAN: Who else was	25	answer.
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	looking for the notes?	2	Go ahead.
3	THE WITNESS: I suspect Shea	. 3	THE WITNESS: Repeat the
4	was looking for them as well as Smith	4	question, please.
5	and perhaps a fellow who works for Shea	5	MR. NEWMAN: Did Mr. Smith
6	by the name of Brian Cooper.	6	I will repeat it.
7	MR. NEWMAN: How long did the	7	Other than any conversations
8	search take place?	8	with counsel, did you have any
9	THE WITNESS: I don't know.	9	conversations with Mr. Smith in which he
10	MR. NEWMAN: Approximately?	10	expressed any concern about the fact
11	THE WITNESS: Couple of days.	11	that you or anyone else within McGinn
12	MR. NEWMAN: What discussions	12	Smith was unable to locate these loan
13	did you have with Mr. Smith about the	13	documents?
14	fact that you were unable to locate the	14	THE WITNESS: No.
15	loan documents.	15	MR. NEWMAN: So the process
16	THE WITNESS: It wasn't an	16	through which you executed these
17	involved discussion. I just said "I	17	different notes, that was all done, I
18	can't find them. Can you? No. I can't	18	
19	find them."	19	think you testified, the same day; is that correct?
20	And so we conferred with	20	
		1	THE WITNESS: I don't know if
21	counsel and we decided to create the	21	it was done on the same day, but it was
22	notes that would document these loans.	22	done in the same general time frame.
23	MR. NEWMAN: When you say you	23	MR. NEWMAN: Now, were you the
24	conferred with counsel, can you be more	24	only person who was signing loan
25	specific who?	25	documents at this time? Or were there

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	other people at McGinn Smith doing the	2	of these documents on an as-of basis for
3	same thing?	3	each and every one of the loans in
4	THE WITNESS: I was signing	4	question.
5	documents. I believe Mr. Smith was	5	MR. NEWMAN: Did you ever
6	signing documents. And I know that we	6	consider the possibility FINRA may be
7	sent these notes to Mr. Rogers for him	7	confused or misled about the actual
8	to execute. I don't know if there was	8	execution dates of these documents?
9	anyone else who was executed documents.	9	MR. FRANCESKI: Objection.
10	MR. NEWMAN: Were you present	10	MR. NEWMAN: Based on the way
11	when Mr. Smith was signing these	11	they were provided or presented to the
12	documents?	12	Staff?
13	THE WITNESS: I don't	13	MR. FRANCESKI: Objection.
14	remember.	14	But you may answer.
15	MR. NEWMAN: Now, we have	15	THE WITNESS: No.
16	already established that the dates on	16	MR. NEWMAN: Do you have any
17	the loan documents don't comport with	17	concerns sitting here today about that
18	the dates in which these were executed.	18	fact?
19	THE WITNESS: That is correct.	19	MR. FRANCESKI: Objection.
20	MR. NEWMAN: That is correct?	20	But you may answer.
21	THE WITNESS: We have	21	THE WITNESS: No.
22	established, I think, that these dates	22	MR. NEWMAN: You don't believe
23	comport with the timing at which the	23	this was a misleading document?
24	entry was made into the books and	24	THE WITNESS: No.
25	records of TDM Cable Funding LLC.	25	MR. FRANCESKI: Objection.
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. NEWMAN: Did you ever	2	
3	•	3	You may answer. MR. RATTINER: Can I ask a
4	consider or discuss the possibility of	3	
5	telling FINRA staff that you or the firm did not have these loan documents?	1 -	follow-up there, Mike? Are you finished?
6	THE WITNESS: No.	5 6	BY MR. RATTINER:
7		7	
i .	MR. NEWMAN: Why is that?	1	Q I guess, looking at Exhibit 3 or 4,
8	THE WITNESS: I didn't think	8	how would you tell when it was signed?
9	it was material.	9	A You wouldn't looking at these
10	MR. NEWMAN: Did you tell	10	exhibits. But you would if you read my testimony.
$\begin{vmatrix} 1 & 1 \\ 1 & 2 \end{vmatrix}$	let me rephrase that. Are you aware of	11	Q Did you intentionally not date the
13	anyone within McGinn Smith, including	12	document when you signed it?
14	yourself, informing FINRA staff when	13	Mr. FRANCESKI: Sorry. Did he
1	these loan documents were provided that	14	BY MR. RATTINER:
15	the dates on those document did not	15	Q Did you intentionally not date the
16	reflect the dates in which they were	16	document when you signed it?
17	executed?	17	A No.
18	THE WITNESS: No.	18	MR. FRANCESKI: No, he did not
19	MR. NEWMAN: Why wasn't FINRA	19	intentionally not date the document.
20	Staff informed of that fact?	20	Okay. A lot of negatives in
21	THE WITNESS: Because the	21	there. But that is the question and
22	loans were entered into the books and	22	answer.
23	records on those dates, were identified	23	MR. RATTINER: You want to
24	as such, and what we have done here is	24	clarify it?
25	to complete the memorialization by way	25	MR. FRANCESKI: Yeah. May I?

1			
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Mr. McGinn, with respect to	2	provided to Mr. Rees at that time.
3	the transactions that are memorialized	3	Q What would you have evidenced of what
4	by the notes that have been discussed in	4	you provided to Mr. Rees at that time?
5	Exhibits 3 and 4	5	A I don't know.
6	MR. NEWMAN: Right.	6	Q Would you normally communicate via
7	MR. FRANCESKI: did McGinn	7	e-mail indicating to Mr. Rees what the loan's terms
8	Smith & Company provide to FINRA the	8	were?
9	underlying data regarding the	9	A I would normally communicate with Mr.
10	transactions in your books and records?	10	Rees verbally. His office was 10 yards from mine,
11	THE WITNESS: Yes.	11	and wouldn't be too difficult to walk out of one
12	BY MR. RATTINER:	12	office and go into another.
13	Q If I could, did the data provided in	13	Q Prior to September 2009 when the
14	those books and records indicate maturity, the	14	Staff first asked the question, had you indicated to
15	payment, any detail regarding the loan itself?	15	Mr. Rees at any point in time the terms of loans that
16	A Probably not.	16	you have taken from any entity?
17	Q Probably not?	17	MR. FRANCESKI: Hold on.
18	A Yes.	18	First asked what? Staff asked what
19	Q Is there a potential that it could	19	question?
20	have identified that information within Quicken?	20	BY MR. RATTINER:
21	MR. FRANCESKI: That's a	21	Q With regard to the promissory notes,
22	different question. You just narrowed	22	whether or not they existed; whether or not the firm
23	it down to Quicken.	23	maintained promissory notes for the loans made.
24	BY MR. RATTINER:	24	MR. FRANCESKI: You're
25	Q Exactly. Just Quicken?	25	referring to this verbal conversation?
·····	Page 227		Page 229
7			
1 1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
1 2	TIMOTHY MCGINN  A Lam not the accounting officer, so I	1	TIMOTHY MCGINN  MR. RATTINER: Correct, When
2	A I am not the accounting officer, so I	2	MR. RATTINER: Correct. When
2	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It	2 3	MR. RATTINER: Correct. When we came up to the firm in September.
2 3 4	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am	2 3 4	MR. RATTINER: Correct. When we came up to the firm in September. (Reporter Clarification.)
2 3 4 5	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am not sure.	2 3 4 5	MR. RATTINER: Correct. When we came up to the firm in September. (Reporter Clarification.) MR. FRANCESKI: I was just
2 3 4 5 6	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am not sure.  You would have to raise that issue	2 3 4 5 6	MR. RATTINER: Correct. When we came up to the firm in September. (Reporter Clarification.) MR. FRANCESKI: I was just asking Mr. Rattiner what he meant by
2 3 4 5 6 7	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am not sure.  You would have to raise that issue with the accounting people.	2 3 4 5 6 7	MR. RATTINER: Correct. When we came up to the firm in September. (Reporter Clarification.) MR. FRANCESKI: I was just asking Mr. Rattiner what he meant by "this conversation." And he and I
2 3 4 5 6 7 8	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am not sure.  You would have to raise that issue with the accounting people.  Q And at the time that that loan was	2 3 4 5 6 7 8	MR. RATTINER: Correct. When we came up to the firm in September. (Reporter Clarification.) MR. FRANCESKI: I was just asking Mr. Rattiner what he meant by "this conversation." And he and I agreed that he was asking about the
2 3 4 5 6 7 8 9	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am not sure.  You would have to raise that issue with the accounting people.  Q And at the time that that loan was booked into the financial records of the firm, who	2 3 4 5 6 7 8	MR. RATTINER: Correct. When we came up to the firm in September. (Reporter Clarification.) MR. FRANCESKI: I was just asking Mr. Rattiner what he meant by "this conversation." And he and I agreed that he was asking about the this conversation meant, the verbal
2 3 4 5 6 7 8 9	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am not sure.  You would have to raise that issue with the accounting people.  Q And at the time that that loan was booked into the financial records of the firm, who would have booked that?	2 3 4 5 6 7 8 9	MR. RATTINER: Correct. When we came up to the firm in September. (Reporter Clarification.) MR. FRANCESKI: I was just asking Mr. Rattiner what he meant by "this conversation." And he and I agreed that he was asking about the this conversation meant, the verbal conversation that Mr. McGinn referred to
2 3 4 5 6 7 8 9	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am not sure.  You would have to raise that issue with the accounting people.  Q And at the time that that loan was booked into the financial records of the firm, who would have booked that?  A Well, in the earlier time frames it	2 3 4 5 6 7 8 9 10	MR. RATTINER: Correct. When we came up to the firm in September.  (Reporter Clarification.)  MR. FRANCESKI: I was just asking Mr. Rattiner what he meant by "this conversation." And he and I agreed that he was asking about the this conversation meant, the verbal conversation that Mr. McGinn referred to earlier that occurred up at McGinn Smith
2 3 4 5 6 7 8 9 10 11	A I am not the accounting officer, so I don't know what Quicken has in its note fields. It may have a note field that has some description, I am not sure.  You would have to raise that issue with the accounting people.  Q And at the time that that loan was booked into the financial records of the firm, who would have booked that?  A Well, in the earlier time frames it would have been Mr. Rees or his assistant, Mr.	2 3 4 5 6 7 8 9 10 11	MR. RATTINER: Correct. When we came up to the firm in September.  (Reporter Clarification.)  MR. FRANCESKI: I was just asking Mr. Rattiner what he meant by "this conversation." And he and I agreed that he was asking about the this conversation meant, the verbal conversation that Mr. McGinn referred to earlier that occurred up at McGinn Smith offices back in September.
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		1	
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	information is not a state secret. And so there	2	in September 2009, did you have counsel
3	would have been no reason for me not to share that	3	present to advise you how to answer
4	information. However, if you're asking me if I can	4	those questions when the investigative
5	definitively tell you who I may have shared that	5	staff was asking you those questions?
6	information with, when I shared that information,	6	THE WITNESS: No.
7	what that information was, I can't do that.	7	MR. FRANCESKI: Did the
8	Q Did you share that information?	8	investigative staff suggest to you that
9	A More than likely, yes.	9	you were entitled to have counsel
10	Q Every loan?	10	present while those questions were being
11	A I don't know.	11	asked?
12	Q So how would I mean, in today's	12	THE WITNESS: No.
13	date and then November 2nd or thereabouts these loan	13.	MR. FRANCESKI: Were you given
14	documents were created, how did Mr. Carr know who	14	an opportunity to bring counsel in while
15	informed Mr. Carr what the terms of the notes were?	15	being asked those questions?
16	A I did.	16	THE WITNESS: No.
17	Q How did you know what those terms	17	MR. FRANCESKI: That's all.
18	were?	18	MR. NEWMAN: Well, did you ask
19	A Because I remember what the terms of	19	to have counsel present for that
20	the note was.	20	conversation?
21	Q What did you refer to?	21	THE WITNESS: No.
22	A My memory.	22	MR. NEWMAN: Or involved in
23	Q So in your memory from October 2006	23	that conversation?
24	through August 2009 you remembered each loan, the	24	THE WITNESS: No.
25	value, the maturity, the percentage?	25	MR. FRANCESKI: Could I make a
	Page 231		Page 233
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	A I didn't recall necessarily the	2	statement for the record? I just want
3	amount, but I did recall the maturities and the	3	the record to reflect that on a number
4	interest rate.	4	of occasions in the course of this
5	Q Is that because there's no	5	investigation I have advised the Staff
6	differences? I'm asking.	6	that clients who are represented by
7	A They are pretty consistent, yeah.	7	counsel and any substantive discussions
8	There aren't a lot of differences there.	8	between the Staff and my clients should
9	Q And was there anything memorializing	9	take place only with counsel present.
10	the details of the notes prior?	10	MR. NEWMAN: All right. We
11	A No. And that's exactly why we did	11	are not going to obviously, I know
12	these, is to memorialize those things.	12	where you are headed with that
13	Q Right.	13	statement. We are not going to address
1 1 0	<b>~</b> • • • • • • • • • • • • • • • • • • •	l	~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~
14	But in order to get to these, other	14	that at this time in this OTR.
1	But in order to get to these, other than what you had in your mental status, was there	14	that at this time in this OTR.  MR. FRANCESKI: I understand.
14	than what you had in your mental status, was there	1	MR. FRANCESKI: I understand.
14 15		15	
14 15 16	than what you had in your mental status, was there any documentation that you used to create those?  A No.	15 16	MR. FRANCESKI: I understand.  I just want to make it clear on the
14 15 16 17	than what you had in your mental status, was there any documentation that you used to create those?  A No. Q Okay.	15 16 17	MR. FRANCESKI: I understand.  I just want to make it clear on the record.
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	Page 234		Page 236
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2		2	TIMOTHY MEGINN THE WITNESS: No.
3	what these numbers represented?	3	MR. PAULSEN: You referred to
1	A No.	l	
4	Q Okay. You don't recall that you had	4	these monies borrowed or as noted in the
5	mentioned they were fees at the time?	5	promissory notes as a secondary source
6	A I just testified that I didn't	6	to you said I believe you just
7	remember.	7	said a moment ago that in the event that
8	Q I was wondering if I can help you	8	proceeds were not fully returned to the
9	recall.	9	investors that you can turn to these
10	A No.	10	notes as a secondary source?
11	Q Okay.	11	THE WITNESS: Correct.
12	MR. NEWMAN: Mr. McGinn,	12	MR. PAULSEN: Can you explain
13	looking at the various notes, Exhibit	13	that?
14	Number 4, the package there, if you look	14	THE WITNESS: Yes.
15	at the maturity dates on those notes,	15	MR. PAULSEN: Please do.
16	they have for all of these notes,	16	THE WITNESS: If we have a
17	they appear to mature approximately one	17	transaction in the security alarm space,
18	day less than six years for each note.	18	as an example, and the flow of funds is
19	Do you see that?	19	not sufficient within the prescribed
20	THE WITNESS: I do.	20	amortization period to totally discharge
21	MR. NEWMAN: Is there any	21	the obligations pursuant to that
22	reason for that?	22	offering, then these notes become a
23	THE WITNESS: In most of these	23	secondary source of cash to the entity
24	instances the underlying capital raise	24	TDM Cable Funding, which would be used
25	would have been fully discharged within	25	to pay off that deficiency.
	Page 235		Page 237
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	the six-year time frame.	2	MR. PAULSEN: So in the event
3	MR. NEWMAN: I am not	3	that they are fully amortized within
4	following that. You are saying the	4	that six-year period
5	offering proceeds would have been	5	THE WITNESS: Yes.
6	THE WITNESS: Fully amortized.	-6	MR. PAULSEN: do you have
7	MR. NEWMAN: Within the	7	i i i i i i i i i i i i i i i i i i i
8	THE WITNESS: Six years.	8	any intention of repaying the loan?
9	· · · · · · · · · · · · · · · · · · ·	9	THE WITNESS: Well,
10	MR. NEWMAN: Is that specified within the offering memorandum?	10	absolutely. But the entity that we
11	THE WITNESS: Yes.	11	would be paying it to would essentially be ourselves. So we would make a
12	MR. NEWMAN: How does that	12	
13			payment from the right pocket to the
14	pertain to the loan, that concept? What	13	left pocket.
1	does that have to do with when the loan	14	BY MR. RATTINER:
15	gets repaid?	15	Q Can we walk through that slower, be
16	THE WITNESS: Well, to the	16	more clear maybe?
17	extent the asset that the loan notes	17	A Yeah, sure.
18	issued by the capital raise have not	18	Who owns the equity of TDM Cable
19	been repaid, that there is a secondary	19	Funding?
20	source of repayment, which is the value	20	Q TDM. The three individuals.
21	of each of these notes.	21	A Right. So who has the loans?
22	MR. NEWMAN: Are you aware of	22	Q Those three individuals.
23	any tax implications in having a loan	23	MR. FRANCESKI: Rather than
24	that has not been paid within six years?	24	rhetorical questions
25	MR. FRANCESKI: Objection.	25	THE WITNESS: Right.

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	If if the three owners of	2	answer is probably yes.
3	the entity, McGinn, Smith, and Rogers,	3	MR. PAULSEN: So is it
4	now own the always owned, but own the	4	convenient that they are dated one day
5	LLC, that LLC has fully discharged its	5	prior to that six-year period, so as to
6	obligations pursuant to the capital	6	never have to repay the loans?
7	raise.	7	MR. FRANCESKI: Objection to
8	What is left on the balance	8	the form.
9	sheet? The balance sheet has assets of	9	But you may answer.
10	these notes, right, and the no other	10	THE WITNESS: It is not the
11	liabilities. So the equity on the	11	intention of creating the maturity to
12	balance sheet would be the value of	12	never repay the loans. It is the
13	these notes. Since we own the equity,	13	intention, as I have testified, to have
14	it's effectively a wash.	14	the maturity correspond to a point in
15	BY MR. RATTINER:	15	time at which the capital raised notes
16	Q And at that point it's not income?	16	were fully amortized.
17	Why?	17	BY MR. RATTINER:
18	A I didn't say it's not income.	18	Q Are there any loan documents that
19	Q I'm asking. At that point is it	19	currently exist today that mature before the
20	income?	20	amortization schedule concludes?
21	A It's only income if it's forgiven.	21	A I don't know. I don't think so.
22	If it's repaid, it is not income.	22	Q How does attrition take place with
23	Q Right.	23	TDM regarding the amount raised?
24	A So here is what we do: Six years	24	Maybe you could explain it: How does
25	goes by, right? All of the capital raise has been	25	the attrition rate take fact, not in the promissory
	Page 239		Page 241
1	TIMOTHY MCGINN	1	-
1		1	TIMOTHY MCGINN
2 3	discharged, fully amortized. We still have the cash flow from the underlying assets that were purchased.	2	notes, but the raise itself and the return to investors?
3	That cash flow from the underlying assets can be paid	)	Investors?
1 1		i 1	
4 5		4	MR. FRANCESKI: When you say
5	to us as ordinary income. We take those proceeds and	5	MR. FRANCESKI: When you say the "attrition rate," you mean the
5	to us as ordinary income. We take those proceeds and we pay down the loan.	5 6	MR. FRANCESKI: When you say the "attrition rate," you mean the attrition rate on
5 6 7	to us as ordinary income. We take those proceeds and we pay down the loan.  Q On a going-forward basis?	5 6 7	MR. FRANCESKI: When you say the "attrition rate," you mean the attrition rate on BY MR. RATTINER:
5 6 7 8	to us as ordinary income. We take those proceeds and we pay down the loan.  Q On a going-forward basis?  A Right.	5 6 7 8	MR. FRANCESKI: When you say the "attrition rate," you mean the attrition rate on BY MR. RATTINER: Q Of the cable contracts.
5 6 7 8 9	to us as ordinary income. We take those proceeds and we pay down the loan.  Q On a going-forward basis?  A Right.  Q At the six-year maturity?	5 6 7 8 9	MR. FRANCESKI: When you say the "attrition rate," you mean the attrition rate on BY MR. RATTINER: Q Of the cable contracts. A Well, the cable contracts don't
5 6 7 8 9	to us as ordinary income. We take those proceeds and we pay down the loan.  Q On a going-forward basis?  A Right.  Q At the six-year maturity?  A So you extend the loan. You roll the	5 6 7 8 9	MR. FRANCESKI: When you say the "attrition rate," you mean the attrition rate on BY MR. RATTINER: Q Of the cable contracts. A Well, the cable contracts don't attrit. They are long-term contracts. The obligor
5 6 7 8 9 10	to us as ordinary income. We take those proceeds and we pay down the loan.  Q On a going-forward basis?  A Right. Q At the six-year maturity? A So you extend the loan. You roll the loan. You renegotiate the loan. You do a hundred	5 6 7 8 9 10	MR. FRANCESKI: When you say the "attrition rate," you mean the attrition rate on BY MR. RATTINER: Q Of the cable contracts. A Well, the cable contracts don't attrit. They are long-term contracts. The obligor is a homeowners association, and they don't attrit.
5 6 7 8 9 10 11	to us as ordinary income. We take those proceeds and we pay down the loan.  Q On a going-forward basis? A Right. Q At the six-year maturity? A So you extend the loan. You roll the loan. You renegotiate the loan. You do a hundred different things with the loan. Maybe you go to the	5 6 7 8 9 10 11	MR. FRANCESKI: When you say the "attrition rate," you mean the attrition rate on BY MR. RATTINER: Q Of the cable contracts. A Well, the cable contracts don't attrit. They are long-term contracts. The obligor is a homeowners association, and they don't attrit. Q So I guess that would be different
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	to us as ordinary income. We take those proceeds and we pay down the loan.  Q On a going-forward basis? A Right. Q At the six-year maturity? A So you extend the loan. You roll the loan. You renegotiate the loan. You do a hundred different things with the loan. Maybe you go to the bank and you borrow the money. Maybe you take it out of your brokerage account. Maybe you take it out of your other assets and pay off the loan. But it doesn't become ordinary income unless it's forgiven.  MR. PAULSEN: If the loan was to mature prior to that six-year disbursement period, wouldn't those monies need to be returned as capital back to the investors?  THE WITNESS: If the loan was	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. FRANCESKI: When you say the "attrition rate," you mean the attrition rate on BY MR. RATTINER: Q Of the cable contracts. A Well, the cable contracts don't attrit. They are long-term contracts. The obligor is a homeowners association, and they don't attrit. Q So I guess that would be different than the Alarm Contracts, which would? A Yes. Q Let's go with the Alarm Contract piece actually, we will hold off on that. That's fine. I am going to introduce the next exhibit. (Whereupon Exhibit 6 is marked.) BY MR. RATTINER:

	Page 242		Page 244
,	·	_	-
1.	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	record what it is. It's promissory notes all related	2	A Well, it would have been reflected as
3	to Cruise Charter Ventures. We have multiple notes.	3	a repayment of the note repayment of the loan.
4	The first one is in the amount of \$5,200 with the	4	Q Would you communicate that to Mr.
5	date of October 8, 2009.	5	Rees or Mr. Shea, depending on their tenure?
6	The second is a \$5,000 note with the	6	A Yes.
7	date of August 11, 2009.	7	Q And who would you submit the check
8	The third one is \$7,000 note dated	8	to?
9	December 17, 2008.	9	A Mr. Rees, Mr. Shea or Mr. Cooper.
10	The fourth one is \$3,000 note dated	10	MR. FRANCESKI: Chris, when
11	September 2, 2008.	11	you use the term "created," and Mr.
12	And the next one is \$50,000 note	12	McGinn has answered that Mr. Carr
13	dated June 6, 2008.	13	created, I assume your understanding
14	And the final one is a \$25,000 note	14	that means drafted, produced the
15	dated May 14, 2008.	15	document?
16	A (Reviewing).	16	MR. RATTINER: Versus?
17	Q Similar to the questions in Exhibit	17	MR. NEWMAN: Physically doing
18	Number 4 that we had, were these notes also signed	18	it himself.
19	around November of 2009?	19	MR. FRANCESKI: Yeah. Or
20	A I would guess so, yes.	20	or was involved in the transaction.
21	Q And, again, who created the notes?	21	MR. RATTINER: Oh, yeah,
22	A Mr. Carr.	22	absolutely.
23	Q These were all for CCV as we said.	23	MR. FRANCESKI: The cleaner
24	What were these for instance,	24	way would be to say: Who drafted the
25	let's take the first one, October 8, 2009; what was	25	note? But I am okay. In a perfect
	Page 243		Page 245
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	the \$5200 for?	2	world.
3	A I don't know. I don't remember.	3	MR. NEWMAN: Those documents
4	Q Was it common to take small	4	were provided to FINRA Staff, those
5	denominational loans?	5	exhibits?
6	A No, it wasn't particularly it	6	THE WITNESS: Well, given the
7	wasn't common as we have seen in Exhibits 3 and 4,	7	fact that you just handed them to me, I
8	but and I don't know how many of these notes have	8	assume that they were, indeed, given to
9	been repaid. I suspect many of them have.	9	FINRA Staff, yes.
10	Q I guess which ones I mean, these	10	MR. NEWMAN: Okay.
11	all have maturity dates in excess of today's date.	11	BY MR. RATTINER:
12	A Right.	12	Q Based on seeing these notes, both in
13	Q But you believe that some of these	13	Exhibits Number 3, 4 and 6, can you recall now how
14	have been repaid?	14	many others exist, other than these notes?
15	A I think that may be the case, yes.	15	A No.
16	Q And what sort of evidence would you	16	Q Are there others, other than NEI we
17	have of that?	17	discussed?
1			
18	A As I sit here today?	18	A I GODT KNOW.
	<b>,</b>	18 19	A I don't know.  MR. NEWMAN: Same questions
19	Q Or as you sit in your office	19	MR. NEWMAN: Same questions
19 20	Q Or as you sit in your office tomorrow?	19 20	MR. NEWMAN: Same questions regarding Exhibit 6 that I asked you
19 20 21	Q Or as you sit in your office tomorrow?  A I would go back into the books and	19 20 21	MR. NEWMAN: Same questions regarding Exhibit 6 that I asked you earlier, did you did you have any
19 20 21 22	Q Or as you sit in your office tomorrow?  A I would go back into the books and records and go back into my personal disbursement	19 20 21 22	MR. NEWMAN: Same questions regarding Exhibit 6 that I asked you earlier, did you did you have any concerns when those loan documents were
19 20 21 22 23	Q Or as you sit in your office tomorrow?  A I would go back into the books and records and go back into my personal disbursement journal.	19 20 21 22 23	MR. NEWMAN: Same questions regarding Exhibit 6 that I asked you earlier, did you did you have any concerns when those loan documents were provided to FINRA Staff that it may be
19 20 21 22	Q Or as you sit in your office tomorrow?  A I would go back into the books and records and go back into my personal disbursement	19 20 21 22	MR. NEWMAN: Same questions regarding Exhibit 6 that I asked you earlier, did you did you have any concerns when those loan documents were

1	Page 246		Page 248
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
1 2		1 2	
3	they were executed?	3	Q Even away from this e-mail, other monies similar to the notes that we discussed
	THE WITNESS: No.	1	
4	MR. NEWMAN: Sitting here	4	previously, was Mr. Smith Mr. Smith owed money to
5	today, do you have any concerns about	5	TDM based on promissory notes?
6	that issue?	6	A This was money owed to Mr. Smith by
7	THE WITNESS: Same answer as	7	TDM.
8	before: No.	8	Q Away from that. Mr. Smith owes TDM
9	MR. NEWMAN: How would anyone	9	money prior to this e-mail?
10	we will put FINRA aside. How would	10	A That's correct.
11	any person looking at that document know	11	Q Okay. So and then he well, how
12	that it was executed in 2009 rather than	12	did the determination come to have Mr. Smith lend
13	2006, any of those documents?	13	\$366,000 to TDM?
14	THE WITNESS: They wouldn't.	14	A Because we had a transaction that had
15	MR. NEWMAN: Okay.	15	closed in June, I think, June or July, early July.
16	MR. RATTINER: I am going to	16	We had not sold out a sufficient number of dollars in
17	introduce Exhibit Number 7.	17	the capital raise. We needed a bridge financing.
18	(Whereupon Exhibit 7 is	18	And this was the provision of that bridge financing.
19	marked.)	19	Q And was this financing from Mr. Smith
20	BY MR. RATTINER:	20	or Mrs. Smith?
21	Q Exhibit Number 7 is an e-mail from	21	A I don't know.
22	David Smith to Mr. Timothy McGinn dated July 29,	22,	Q And
23	2009.	23	A In this e-mail he says "I," so that
24	Mr. McGinn, did you receive this	24	would suggest to me it was Mr. Smith.
25	e-mail?	25	Q And there was an offer around the
	Page 247		D 040
1	3		Page 249
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
1 2	•	1 2	•
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	TIMOTHY MCGINN  A Yes.  Q And I believe previously you stated	2	TIMOTHY MCGINN same time?
2 3	TIMOTHY MCGINN A Yes.	2	TIMOTHY MCGINN same time?  A Yes.
2 3 4	TIMOTHY MCGINN  A Yes.  Q And I believe previously you stated TDM was current in their payments to investors?	2 3 4	TIMOTHY MCGINN same time?  A Yes.  Q And what was that offering?
2 3 4 5	TIMOTHY MCGINN  A Yes. Q And I believe previously you stated  TDM was current in their payments to investors?  A Correct. Q What is this e-mail?	2 3 4 5	TIMOTHY MCGINN same time?  A Yes.  Q And what was that offering? A TDMM Cable Senior and TDMM Cable
2 3 4 5 6	TIMOTHY MCGINN  A Yes. Q And I believe previously you stated  TDM was current in their payments to investors?  A Correct. Q What is this e-mail?  If you could, summarize the e-mail if	2 3 4 5 6	TIMOTHY MCGINN same time?  A Yes. Q And what was that offering? A TDMM Cable Senior and TDMM Cable Junior.
2 3 4 5 6 7	TIMOTHY MCGINN  A Yes. Q And I believe previously you stated  TDM was current in their payments to investors? A Correct. Q What is this e-mail? If you could, summarize the e-mail if you could?	2 3 4 5 6 7	TIMOTHY MCGINN same time?  A Yes. Q And what was that offering? A TDMM Cable Senior and TDMM Cable Junior. Q How much when did that offering
2 3 4 5 6 7 8	TIMOTHY MCGINN  A Yes. Q And I believe previously you stated  TDM was current in their payments to investors? A Correct. Q What is this e-mail? If you could, summarize the e-mail if you could? A This is an inquiry by my partner,	2 3 4 5 6 7 8	TIMOTHY MCGINN  same time?  A Yes.  Q And what was that offering?  A TDMM Cable Senior and TDMM Cable  Junior.  Q How much when did that offering  close?  A This could have been the Benchmark
2 3 4 5 6 7 8 9	TIMOTHY MCGINN  A Yes. Q And I believe previously you stated  TDM was current in their payments to investors? A Correct. Q What is this e-mail? If you could, summarize the e-mail if you could?	2 3 4 5 6 7 8 9	TIMOTHY MCGINN same time?  A Yes. Q And what was that offering? A TDMM Cable Senior and TDMM Cable Junior. Q How much when did that offering close?
2 3 4 5 6 7 8 9	TIMOTHY MCGINN  A Yes. Q And I believe previously you stated  TDM was current in their payments to investors? A Correct. Q What is this e-mail? If you could, summarize the e-mail if you could? A This is an inquiry by my partner,  Mr. Smith, relative to a bridge loan that he extended	2 3 4 5 6 7 8 9	TIMOTHY MCGINN  same time?  A Yes. Q And what was that offering? A TDMM Cable Senior and TDMM Cable  Junior. Q How much when did that offering  close? A This could have been the Benchmark  deal. This could have been TDMM Benchmark, not TDMM
2 3 4 5 6 7 8 9 10	TIMOTHY MCGINN  A Yes. Q And I believe previously you stated  TDM was current in their payments to investors? A Correct. Q What is this e-mail? If you could, summarize the e-mail if you could? A This is an inquiry by my partner,  Mr. Smith, relative to a bridge loan that he extended to TDM Cable Funding LLC. And at that point he had	2 3 4 5 6 7 8 9 10	TIMOTHY MCGINN  same time?  A Yes. Q And what was that offering? A TDMM Cable Senior and TDMM Cable  Junior. Q How much when did that offering  close? A This could have been the Benchmark  deal. This could have been TDMM Benchmark, not TDMM  Junior or Senior, I think it was TDMM Benchmark.
2 3 4 5 6 7 8 9 10 11	TIMOTHY MCGINN  A Yes. Q And I believe previously you stated  TDM was current in their payments to investors? A Correct. Q What is this e-mail? If you could, summarize the e-mail if you could? A This is an inquiry by my partner,  Mr. Smith, relative to a bridge loan that he extended to TDM Cable Funding LLC. And at that point he had been paid back 160,800 and was looking to understand what the rest of the repayment would be.	2 3 4 5 6 7 8 9 10 11	TIMOTHY MCGINN  same time?  A Yes.  Q And what was that offering?  A TDMM Cable Senior and TDMM Cable  Junior.  Q How much when did that offering  close?  A This could have been the Benchmark  deal. This could have been TDMM Benchmark, not TDMM  Junior or Senior, I think it was TDMM Benchmark.  Q When did that close? I'm sorry.
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	they have in or around June 5, 2009?	2	I don't think I don't think it's very
3	A Well, obviously not quite enough to	3	large as a percentage of Pine Street
4	get that deal closed or we wouldn't have borrowed	4	Capital's assets.
5	\$366,000.	5	MR. NEWMAN: What other
6	Q Was Mr. Smith the only one to lend	6	ventures besides Pine Street Capital?
7	money to TDM?	7	THE WITNESS: For Mrs. Smith?
8	A Yes.	8	MR. NEWMAN: Yeah.
9	Q How did that come into play versus	9	THE WITNESS: I don't know.
10	the other two partners?	10	MR. NEWMAN: You said she is
11	A Mr. Smith had the liquidity in his	11	involved in a number of ventures.
12	account and was happy to provide that.	12	THE WITNESS: I said she was
13	Q What is the current status of that	13	involved in Pine Street Capital. I
14	loan first of all, was there any loan	14	don't know if she is involved in
15	documentation drawn up?	15	anything else.
16	A Probably not. What is the current	16	MR. NEWMAN: You don't know,
17	position of the loan? I think the loan has been paid	17	sitting here today, if she was involved
18	down to approximately \$30,000.	18	in any other transaction?
19	Q And who authorized the repayments?	19	THE WITNESS: She is not my
20	À I did.	20	wife. She is not my client.
21	Q And were those repayments made to Mr.	21	MR. NEWMAN: I know she is not
22	or Mrs. Smith?	22	your wife; but I'm asking you if you
23	A Whomever provided the loan.	23	know if she was involved in any other
24	As I said earlier, this would suggest	24	transaction?
25	it was Mr. Smith. If, however, I was wrong and it	25	MR. FRANCESKI: Objection.
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	was Mrs. Smith, then the loan proceeds or the	2	Asked and answered.
3	repayment proceeds would have gone to Mrs. Smith.	3	THE WITNESS: I don't know.
4	Q What sort of interest rate was	4	MR. NEWMAN: I thought you
5	associated with this loan?	5	said a moment ago she was involved with
6	A 5 percent, 6 percent.	6	a number of things.
7	MR. NEWMAN: Are you aware of	7	THE WITNESS: Would you read
8	Mrs. Smith being involved in any other	8	back what I said a moment ago?
9	McGinn Smith transactions?	9	MR. FRANCESKI: I am not sure
10	THE WITNESS: I'm sorry?	10	that's what he said. Why don't you read
11	MR. NEWMAN: Are you aware of	11	it back.
12	Mrs. Smith being involved in any other	12	(Whereupon the answer is read
13	McGinn Smith transactions?	13	back.)
14	THE WITNESS: I know	14	THE REPORTER: Question, are
15	Mrs. Smith is an investor in a number of	15	you aware of Mrs. Smith being involved
16	transactions. One that comes to mind is	16	in any other McGinn Smith transactions?
17	a thing called Pine Street Capital.	17	Answer, I know Mrs. Smith is
18	MR. NEWMAN: What is her	18	an investor in a number of transactions.
19	interest in Pine Street Capital?	19	One that comes to mind is a thing called
20	THE WITNESS: She is a limited	20	Pine Street Capital.
21	partner, bond holder, whatever.	21	MR. NEWMAN: So a number of
22	MR. NEWMAN: What is her	22	transactions.
23	actual ownership interest?	23	What else besides Pine Street
	• • • • • • • • • • • • • • • • • • •	I	THE OLD COURSE I HIS DUCCE
1	THE WITNESS: Oh. it's quite	24	Capital?
24 25	THE WITNESS: Oh, it's quite small. I don't know the exact number.	24 25	Capital? THE WITNESS: Let's make that

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,		1	TIMOTHY MCGINN
1	TIMOTHY MCGINN	1 2	
2	"transactions" read "transaction."	ı	A He was paid back with proceeds of the
3	Singular.	3	capital raise. He was not paid back with those
4	MR. NEWMAN: So you're	4	proceeds.
5	changing your answer?	5	Q Prior to the proceeds being raised
6	THE WITNESS: I don't know	6	and I understand the whole fungibility piece of this;
7	what other investments Mrs. Smith has.	7	but prior to the proceeds being raised, couldn't
8	I know she is an investor in Pine Street	8	Mr. Smith be paid back on June 6th?
9	Capital. I don't know what else she	9	A No.
10	has.	10	Q So what monies came in to pay
11	MR. NEWMAN: Has she been	11	Mr. Smith back?
12	involved in any other loans besides this	12	A Monies from the capital raised.
13	one?	13	Q So that so he was paid back from
14	MR. FRANCESKI: This one	14	monies from the capital raised?
15	meaning?	15	A Right. But not necessarily the 1.3
16	MR. NEWMAN: TDM.	16	or 1.4 that had been raised by June 5th. Obviously
17	MR. FRANCESKI: Did we	17	if we borrowed the money we needed that incremental
18	establish she was involved in the TDM	18	capital to make purchases.
19	loan?	19	Q Right.
20	THE WITNESS: I mean, we	20	A Subsequent to that, to the extent
21	didn't establish.	21	that we raised incremental dollars, we paid back Mr.
22	This says "I, David." And I	22	or Mrs. Smith, I believe, 335,000-plus-or-minus
23	testified I didn't know whether it was	23	dollars.
24	David or Lynn. So I don't know whether	24	Q And how what is the time frame
25	it's David or Lynn.	25	here?
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	And what time frame are you	2	We have the e-mail from July 29th
3	referring to, Mr. Newman?	3	saying it was paid back, you know, a little less than
4	MR. NEWMAN: In the last seven	4	half.
5	years.	5	When was he paid back almost fully
6	THE WITNESS: No. That I know	6	minus the \$30,000 or so that's outstanding?
7	of.	7	A I would say within the next 90 days.
8	MR. NEWMAN: How about loans,	8	MR. NEWMAN: You don't
9	any other loan transactions involving	9	remember about a transaction that
10	Mrs. Smith?	10	occurred in the fall of last year, who
11	MR. FRANCESKI: Objection.	11	• * *
12	Asked and answered.	12	was repaid, whether it was Mr. and Mrs. Smith?
13	THE WITNESS: In terms of the	13	
14		l	MR. FRANCESKI: That was kind
1	last seven years?	14	of a compound question.
15	MR. NEWMAN: Yes.	15	MR. NEWMAN: You said the
16	THE WITNESS: I know of none.	16	money was repaid to Mr. or Mrs. Smith,
17	BY MR. RATTINER:	17	correct?
18	Q I apologize if I asked this already:	18	THE WITNESS: That's correct.
19	How much was raised as part of this deal that we are	19	MR. NEWMAN: And this
20	talking about in or around June through	20	presumably happened, based on your
21	December 2009?	21	testimony, in the fall of 2009?
22	A It would be a million-three,	22	THE WITNESS: Or the summer.
23	million-four.	23	MR. NEWMAN: Okay. You are
24	Q Was Mr. Smith paid back with those	24	sitting here today telling us you don't
25	proceeds?	25	know who was repaid?

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	THE WITNESS: I am sitting	2	A Yes.
3	here today, and I am reading Exhibit 7,	3	Q Advisory fees?
4	which was handed to me, which says:	4	A Yes.
5	"Tim, on 6/5 I" I, David Smith, "lent	5	Q And what were those?
6	TDM \$366,000."	6	A The underwriting fees were probably
7	What I am telling you here and	7	the normal 6 percent. And the advisory fees may have
8	what I am tening you here and what I've told you repeatedly is when	8	been 4 or 5 hundred thousand dollars.
9	asked if "I" referred to David Smith or	9	Q You mean in percentage?
10	he mistyped that and it should have been	10	A You want a percentage?
11		11	- <del>-</del>
i .	Lynn Smith, I don't know. I don't know	12	
12	what their division of capital is.	ŀ	1.4 raised. So if you are saying advisory
13	MR. NEWMAN: I am not asking	13	A As of that date. That's not the
14	you what if you know what their	14	total raise.
15	division of capital is. I'm asking you	15	Q What was the total raise?
16	about this specific loan and who was	16	A The total raise was \$3 million.
17	involved and what knowledge you have of	17	Q And that happened sometime prior to
18	that involvement.	18	December '09?
19	This is a transaction that	19	A Correct.
20	occurred in the summer and fall of 2009.	20	Q So \$3 million was raised. There's a
21	MR. FRANCESKI: Objection.	21	6 percent underwriting fee?
22	Asked and answered.	22	A Yes.
23	MR. NEWMAN: You don't know	23	Q And then there was a 15 percent
24	you don't know if you're dealing with	24	approximate
25	Lynn Smith or David Smith?	25	A Approximate.
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. FRANCESKI: Objection.	2	Q advisory fee?
3	Asked and answered.	3	A Right.
4	MR. NEWMAN: Is that what you	4	Q Any loans?
5	are telling us?	5	A I don't believe so.
6	THE WITNESS: That's what I	6	Q What happens if the bridge loan is
7	have told you repeatedly.	7	not made?
8	MR. NEWMAN: You have a good	8	A If the bridge loan was not made?
9	enough memory to remember loan terms	9	Q Right.
10	from four or five years ago and prepare	10	A We would have had to renegotiate the
11	15 note documents, but you can't tell us	11	terms of the acquisition timing with the seller.
12	about a loan transaction that occurred	12	Q The PPM? Did that identify the
13	in the summer of 2009?	13	•
14		l	bridge loan?  A I don't think so.
1	MR. FRANCESKI: Objection;	14	
15	that's argumentative.	15	Q Was the bridge loan made prior to the
16	MR. NEWMAN: Is that what you	16	PPM production or after?
17	are telling us?	17	A After.
18	MR. FRANCESKI: Objection;	18	Q Prior to the first sale?
19	argumentative.	19	A After.
20	THE WITNESS: I have answered	20	Q After the first sell.
21	your question.	21	How many people invested at the time
22	BY MR. RATTINER:	22	of the bridge loan, approximately?
23	Q The raise that was done in June	23	A 25.
24	through December, were there underwriting fees	24	Q How much raised at that point?
25	associated with that?	25	A Million-three, million-four.

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ŀ	Page 262		Page 264
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Q Okay. So a million-three or a	2	MR. NEWMAN: Thank you.
3	million-four was raised in June?	3	BY MR. ROWEN:
4	A Right.	4	Q Speaking of the four income note
5	Q Okay. Good.	5	deals, the four funds I will call them here, did
6	Did TDM have any issues paying	6	those income funds purchase Alarm Contract bundles?
7	interest to investors at any point in time?	7	A Yes.
8	A Not, not through that date, no.	8	Q And what was your involvement with
9	Q At any point in time. During your	9	those purchases?
10	tenure, let's say, from November '06 when you	10	A At the time the purchases were made,
11	returned.	11	I was running the public company, Integrated Alarm
12	A We are current within 60 days and	12	Services Group. I was involved in the servicing of
13	always have been.	13	those accounts; which is to say, the monitoring, the
14	Q Have you been so without any loans?	14	billing, the collections. Not I personally, but the
15	A Yes.	15	company that I ran performed these functions; the
16	MR. RATTINER: I want to	16	physical service of sending trucks to houses when
17	introduce the next exhibit.	17	there were problems and so forth. And that was the
18	We can take a break.	18	extent of my involvement.
19	(Whereupon a recess is taken.)	19	Q Who else was involved in the
20		20	purchasing of those Alarm Contract bundles?
21	EXAMINATION	21	A Well, it would have been Mr. Smith
22	BY MR. ROWEN:	22	who was running the funds at that time.
23	Q We will go back on the record.	23	Q Anyone else?
24	Mr. McGinn, yesterday we talked about	24	A I doubt it.
25	four funds: First Independent, First Excelsior,	25	Q Who priced and valued the contracts
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Third Albany and First Advisory, and I wanted to	2	at the time they were purchased?
3	delve into those a little more.	3	A The pricing and value of the
4	A Excuse me. May I interrupt for a	4	contracts was discussed by myself and Mr. Smith.
5	second?	5	Typically these types of assets traded at different
6	Q Sure.	6	multiples of revenue. And I I can cite several
7	A Before we go on to new questions, I	7	examples of transactions occurring in the marketplace
8	would like to correct some of the testimony I gave	8	that had a high multiple of mid 60s and a low
9	earlier.	9	multiple of high 30s, so that the normal or the
10	Q Go ahead.	10	average multiple for acquisitions was probably in the
11	A I spoke to Mr. Smith at lunch today	11	mid to low forties.
12	and got some clarity on this matter as well as	12	Q When were these for the four
13	MR. RATTINER: Exhibit 7?	13	funds, when were the contracts valued and priced?
14	THE WITNESS: Exhibit 7.	14	A I don't know. I don't know
15	as well as Mrs. Smith's	15	specifically when.
16	investment in other transactions. So I	16	Q How were revenues tracked for the
17	would like to put that on the record.	17	Alarm Contracts?
18	The \$366,000 was lent by	18	MR. FRANCESKI: The Alarm
19	Mrs. Smith not Mr. Smith.	19	Contracts?
20	In addition to the Pine Street	20	BY MR. ROWEN:
21	Capital Partners investment, she also	21	Q Purchased by any of the four income
22	has purchased \$300,000 of TDMM benchmark	22	note programs?
1 2 2	in various maturities. So that's the	23	MR. FRANCESKI: The LLCs?
23			
24 25	correction. Thank you.	24 25	BY MR. ROWEN: Q Yes.

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	A They were tracked daily through lock	2	reports given to the people at McGinn Smith by
3	box reports?	3	Keenholts and his group who worked for me.
4	MR. NEWMAN: By who?	4	Q At what point would the Alarm
5	THE WITNESS: By the staff	5	Contracts be written off?
6	well, first of all, by the staff of	6	A Well they're really never written
7	Integrated Alarm Services Group who had	7	off because there's a sequence of collection
8	performed the function of billing and	8	protocols that we go through. And that sequence of
9	collections. It was Integrated Alarm	9	collection protocols included an in-house collection
10	Services Group that maintained the	10	protocol as well as turning them over to collection
11	general ledger for that business. And	11	agencies on an out-house basis, and filling that, and
12	that information was provided to Mr.	12	selling them to scavengers, for want of a better
13	Rees at that time.	13	term, at 10 cents on the dollar. So there was a
14	BY MR. ROWEN:	14	process that was an iterative process, and it had at
15	Q At that time being the time of	15	least three distinct components.
16	purchase?	16	Q When you say ten cents on the dollar,
17	A Beyond the time of purchase, post	17	are you using that as an example?
18	time of purchase.	18	A Yes, I am using that as an example.
19	Q The daily tracking?	19	Q How does that affect the valuation in
20	A I don't know if Rees got a daily	20	the books and records of the funds?
21	report. Integrated Alarm created a daily report	21	A Well, I don't know how the books and
22	but from the lock box. But I don't know if Rees	22	records of the funds would reflect the value.
23	wanted or required a daily dump of data. I'm sure he	23	Clearly in the alarm industry
24	got a monthly dump of data.	24	attrition is a fact of life and it's you know, you
25	Q What was the expected profit margin	25	know you're going to have attrition, what you want to
	Page 267		Page 269
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	for the four funds investments in Alarm Contracts?	2	do is control that attrition, minimize it.
3	A Somewhere in the order of 8 to	3	How that was reflected on the books
4	12 percent.	4	and records, I don't know.
5	Q Who was responsible for amortizing	5	MR. NEWMAN: Who was
6	the contracts?	6	Integrated Alarm Services? Who is that;
7	A Who was responsible for amortizing	7	what entity is that?
8	the contract. I am not sure I understand what you	8	THE WITNESS: Integrated Alarm
9	are trying to get at.	9	Services Group is a company that went
10	Q Within the four funds' books and	10	public in July July 23rd, to be
11	records?	11	exact, 2003. It was a company where I
12	A Well, that would be Rees and his	12	was the chairman and CEO. We were the
13	staff.	13	largest third-party monitoring company
14	Q What involvement, if any, did you	14	in the country, perhaps the world.
15	have in that?	15	In addition to that, we owned
16	A None.	16	"we," IASG, owned roughly 115,000
17	Q Who is responsible for tracking	17	residential accounts. And we owned
18	contracts that were in default?	18	we had a loan portfolio of roughly \$25
19	A That would have been done by the	19	million. It was traded on NASDAQ.
20	staff of Integrated Alarm Services Group and	20	MR. NEWMAN: Do you know how
21	supervised by Mr. Keenholts, the name I mentioned	21	much the four LLCs invested in
22	yesterday.	22	Integrated Alarm Services?
23	Q And how was that communicated to	23	THE WITNESS: I don't know if
24	anyone at McGinn Smith?	24	they invested anything in Integrated.
25	A My assumption, there were monthly	25	MR. NEWMAN: I'm sorry. How

		1	
	Page 270		Page 272
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	much money was used to purchase the	2	which is defined as the price divided by
3	Alarm Contracts, approximately?	3	the recurring monthly revenue in that
4	THE WITNESS: I do not know.	4	particular portfolio. And to the extent
5	MR. NEWMAN: What involvement	5	that that price or that multiple was
6	did you have in dealing with the advice	6	equal to or less than what was occurring
7	or Mr. Smith or the LLCs in terms of the	7	in the marketplace at that time, one
8	purchase of the Alarm Contracts?	8	would reach the conclusion that it was a
9	MR. FRANCESKI: Objection.	9.	fair and equitable price. If it was a
10	Asked and answered.	10	large departure from normal and
11	As I said, Integrated Alarm	11	customary tradition not tradition,
12	Services Group provides certain	12	but activities in that market, then you
13	servicing functions to the portfolios,	13	would reach a different conclusion.
14	which included billing, collection,	14	MR. NEWMAN: Did you provide
15	monitoring and physical service.	15	the price of the Alarm Contracts to
16	We prepared "we," IASG,	16	Mr. Smith?
17	prepared monthly reports that we	17	THE WITNESS: No.
18	provided to Mr. Rees. And that's	18	MR. NEWMAN: So how did
19	that was the extent of our interaction.	19	Mr. Smith know how much to pay for the
20	MR. NEWMAN: Now, who puts the	20	Alarm Contract?
21	value on the Alarm Contract?	21	THE WITNESS: Mr. Smith and I
22	THE WITNESS: Well, the person	22	had worked in the alarm industry since
23	who puts the value on the Alarm	23	1992. We had done roughly \$750 million
24	Contracts is the person who's buying or	24	of financing over that period of time.
25	selling said contracts.	25	In July of 2003, as I
			Page 273
,	Page 271	4	-
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. NEWMAN: Okay. So to the	2	mentioned, we took IASG public. We
3	extent that the Alarm Contracts are	3	raised \$225 million of equity.
4	being sold to the LLCs, there's a value	4	Mr. Smith sat on the board of IASG. He
5	ascribed by both the purchaser and	5	was intimately aware and familiar with
6	seller?	6	the industry and with practices within
7	THE WITNESS: Correct.	7	the industry. So there was a body of
8	MR. NEWMAN: So negotiable	8	knowledge that existed between Mr. Smith
9	amount, correct?	9	and myself relative to that business,
10	THE WITNESS: Correct.	10	relative to valuations, relative to
11	MR. NEWMAN: What	11	operating considerations and operating
12	negotiable	12	protocols.
13	MR. FRANCESKI: There's a	13	MR. NEWMAN: And he was on the
14	price range.	14	board of directors of Integrated?
15	MR. NEWMAN: Right. There's a	15	THE WITNESS: That's correct.
16	price that you reach between the	16	MR. NEWMAN: So I understand
17	parties.	17	he has a knowledge of the industry and
18	THE WITNESS: Right.	18	so forth, but I am still trying to
19	MR. NEWMAN: How in this case	19	determine in these particular instances
20	was the price arrived at for the sale of	20	how the price was arrived at for to
21	the Alarm Contracts to the LLCs?	21	sell to the LLC the Alarm Contracts?
22	THE WITNESS: Well, I don't	22	MR. FRANCESKI: Do we have who
23	know specifically. But what I would	23	the seller is, Mike, on the record of
24	suggest the process was is a market	24	these typical transactions? I don't
25	saggest are process was to a market		know if we have that.

1	Page 274		Page 276
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. NEWMAN: Who is the seller	2	BY MR. ROWEN:
3	if it's not Integrated?	3	Q What's the typical documentation of
4	THE WITNESS: Integrated was	4	this analysis you speak of in determining the value
5	not the seller. My guess is the seller	5	and the price of Alarm Contracts?
6	was previously created trusts that owned	6	A What is the typical documentation?
7	the accounts. And those trusts were on	7	The documentation is generally an asset purchase
8	the sell side. And the funds were on	8	agreement. And that asset purchase agreement would
9		9	specify by schedule the accounts being conveyed and
10	the buy side.	10	the consideration being paid for those accounts.
11	MR. NEWMAN: Okay. But,	11	Q Well, what would the documentation be
12	again, how I'm still trying to	12	for the source of the price of those accounts, of how
13	determine how the sale price was arrived	13	they were valued?
14	at. I understand who the parties are.	14	· ·
15	I understand your knowledge. I	15	A I don't know that the asset purchase
16	understand Mr. Smith's knowledge. I	16	agreement would go into any detail as to how that price was determined, what metrix were used. It
17	understand your relationship.	17	•
	But what I want to learn is	18	typically does not include such such description.  O But there would be if there would
18	how whatever price that was ascribed to	19	<b>2</b>
19	those Alarm Contracts was arrived at		be an analysis, where would that be documented?
20	between the two of you, or if there was	20	MR. FRANCESKI: I'm sorry,
21	any discussion? If you tell them, "This	21	"would be an analysis"?
22	is what we have. This is what we'll	22	BY MR. ROWEN:
23	sell." And he said "Fine"?	23	Q If there would be an analysis, which
24	MR. FRANCESKI: Objection.	24	I think he spoke of the analysis, where would that be
25	THE WITNESS: First of all, it	25	documented?
	Page 275		Page 277
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	wasn't "we," it wasn't Integrated Alarm.		
3		2	A The analysis would most likely be
. –		2	A The analysis would most likely be resident in the notes of the buyer.
4	Integrated Alarm was not a party to the		resident in the notes of the buyer.
4	Integrated Alarm was not a party to the buy-sell transaction.	3	resident in the notes of the buyer.  Q Are you aware of specific
4 5	Integrated Alarm was not a party to the buy-sell transaction.  Integrated Alarm was merely a	3 4	resident in the notes of the buyer.  Q Are you aware of specific documentation for the purchases in the specific cases
4 5 6	Integrated Alarm was not a party to the buy-sell transaction.  Integrated Alarm was merely a servicing agent.	3 4 . 5	resident in the notes of the buyer.  Q Are you aware of specific documentation for the purchases in the specific cases of the contracts being purchased by the four funds?
4 5 6 7	Integrated Alarm was not a party to the buy-sell transaction.  Integrated Alarm was merely a servicing agent.  MR. NEWMAN: I understand that	3 4 . 5 . 6	resident in the notes of the buyer.  Q Are you aware of specific documentation for the purchases in the specific cases of the contracts being purchased by the four funds?  A No.
4 5 6 7 8	Integrated Alarm was not a party to the buy-sell transaction.  Integrated Alarm was merely a servicing agent.  MR. NEWMAN: I understand that now.	3 4 5 6 7	resident in the notes of the buyer.  Q Are you aware of specific documentation for the purchases in the specific cases of the contracts being purchased by the four funds?  A No.  MR. FRANCESKI: When you
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4 5 6 7 8 9 10 11 2 13 14 15 16 17 18 9 20 21 22	Integrated Alarm was not a party to the buy-sell transaction.  Integrated Alarm was merely a servicing agent.  MR. NEWMAN: I understand that now.  THE WITNESS: And paid a fee.  MR. NEWMAN: Right.  THE WITNESS: So to the extent there was an agreement reached at a certain pricing level, that agreement was reached by Mr. Smith with his knowledge of the industry, with his knowledge of current transactions in the industry, and I would submit that you'd have to pose those questions to him.  MR. NEWMAN: Were you involved in the sale of the Alarm Contracts to the LLCs?  THE WITNESS: No.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	resident in the notes of the buyer.  Q Are you aware of specific documentation for the purchases in the specific cases of the contracts being purchased by the four funds?  A No.  MR. FRANCESKI: When you said  THE WITNESS: Let me elaborate on that.  No, I was not party to those negotiations. I was at a different entity running that entity and providing services to these portfolios. That was my involvement.  MR. FRANCESKI: Mr. McGinn, when you said this information would be in the notes of the buyer, were you talking about like handwritten notes  THE WITNESS: Yes.  MR. FRANCESKI: or capital

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. MCCARTHY: Help me out	2	into a pool, and we would calculate what
3	here because I want to make sure I	3	we consider to be the likely attrition
4	understand your testimony.	4	factor on that beginning number of a
5	Were many of these packages,	5	thousand accounts. The only thing you
6	if you will, of contracts that were	6.	really know in the alarm business is
7	being purchased, previous packages that	7	that a year from now if you start with a
8	were that money had been raised	8	thousand, you are going to have less,
9	through McGinn Smith entities?	9	you never have more, you never have a
10	THE WITNESS: Yes.	10	thousand. It's going to go south. The
11	MR. MCCARTHY: So these	11	question is: How far south? And when
12	packages, these bundles, if you will,	12	does it go south?
13	had a value that McGinn Smith had	13	So we had data for years and
14	previously put on them when they bought	14	years and years. We had data for
15	these for the private placement?	15	hundreds of thousands of accounts. So
16	THE WITNESS: Correct.	16	we had a pretty good insight,
17	MR. MCCARTHY: Can you walk me	17	proprietary insight into what that
18	through a transaction as far as	18	attrition might be.
19	pretend, if you will, analysis. I want	19	Then we did a present value
20	to understand how the thinking goes.	20	calculation. We knew that the cost of
21	THE WITNESS: Yes.	21	servicing those accounts was roughly 5
22	MR. MCCARTHY: Let's use a	22	to \$6 a month. So when we started with
23	dollar because a dollar is nice and	23	\$30,000 of revenue on month one, we
24	round. I have a dollar and I'm going to	24	would have 5 or \$6,000 of expenses;
25	want to buy these contracts. And	25	consequently, we'd have 24, \$25,000 of
	Page 279		Page 281
1	TIMOTHY MCGINN	1 .	TIMOTHY MCGINN
2	there's going to be an interest amount	2	available cash flow.
3	that I'm going to be looking at.	3	
4	• •	4	And that would go down every
5	Can you walk me through that analysis.	1 7	month because the number of live
6	allalysis.	1 h	agazinta wasild diminiah ayami manth. Ca
	THE WITNESS. Come Dod ledle	5	accounts would diminish every month. So
1	THE WITNESS: Sure. But let's	6	we would run that out over time. We
7	not use a dollar.	6 7	we would run that out over time. We would discount that to a present value,
7 8	not use a dollar.  MR. MCCARTHY: Let's use	6 7 8	we would run that out over time. We would discount that to a present value, based upon cost of capital and other
7 8 9	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.	6 7 8 9	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up
7 8 9 10	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number. THE WITNESS: Humor me.	6 7 8 9 10	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.
7 8 9 10 11	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number. THE WITNESS: Humor me. Let's say that we are	6 7 8 9 10 11	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the
7 8 9 10 11 12	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand	6 7 8 9 10 11	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some
7 8 9 10 11 12 13	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those	6 7 8 9 10 11 12 13	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four,
7 8 9 10 11 12 13	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in	6 7 8 9 10 11 12 13 14	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the
7 8 9 10 11 12 13 14 15	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying	6 7 8 9 10 11 12 13 14 15	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple,
7 8 9 10 11 12 13 14 15	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the	6 7 8 9 10 11 12 13 14 15 16	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same
7 8 9 10 11 12 13 14 15 16	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the price that we would pay for that	6 7 8 9 10 11 12 13 14 15 16	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same multiple for terminal value purposes as
7 8 9 10 11 12 13 14 15 16 17	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the price that we would pay for that recurring revenue would be somewhere	6 7 8 9 10 11 12 13 14 15 16 17	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same multiple for terminal value purposes as we use to purchase the accounts on day
7 8 9 10 11 12 13 14 15 16 17 18	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the price that we would pay for that recurring revenue would be somewhere between 38 times and 48 times. So let's	6 7 8 9 10 11 12 13 14 15 16 17 18	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same multiple for terminal value purposes as we use to purchase the accounts on day one. And that too would be brought back
7 8 9 10 11 12 13 14 15 16 17 18 19 20	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the price that we would pay for that recurring revenue would be somewhere between 38 times and 48 times. So let's take the mid-point, let's take 43 times.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same multiple for terminal value purposes as we use to purchase the accounts on day one. And that too would be brought back to a present value. And to the extent
7 8 9 10 11 12 13 14 15 16 17 18 19 20	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the price that we would pay for that recurring revenue would be somewhere between 38 times and 48 times. So let's take the mid-point, let's take 43 times.  And if we were buying these	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same multiple for terminal value purposes as we use to purchase the accounts on day one. And that too would be brought back to a present value. And to the extent that those two components divided by the
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the price that we would pay for that recurring revenue would be somewhere between 38 times and 48 times. So let's take the mid-point, let's take 43 times.  And if we were buying these contracts of 43 times recurring revenue,	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same multiple for terminal value purposes as we use to purchase the accounts on day one. And that too would be brought back to a present value. And to the extent that those two components divided by the RMR was greater than the multiple that
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the price that we would pay for that recurring revenue would be somewhere between 38 times and 48 times. So let's take the mid-point, let's take 43 times.  And if we were buying these contracts of 43 times recurring revenue, we would then pay \$1.29 million, right;	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same multiple for terminal value purposes as we use to purchase the accounts on day one. And that too would be brought back to a present value. And to the extent that those two components divided by the RMR was greater than the multiple that we paid was a good deal. That's how we
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	not use a dollar.  MR. MCCARTHY: Let's use whatever. You can make up the number.  THE WITNESS: Humor me.  Let's say that we are interested in buying a thousand accounts, round number, and those accounts generate roughly \$30 a month in recurring revenue. So we are buying \$30,000 of recurring revenue. And the price that we would pay for that recurring revenue would be somewhere between 38 times and 48 times. So let's take the mid-point, let's take 43 times.  And if we were buying these contracts of 43 times recurring revenue,	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	we would run that out over time. We would discount that to a present value, based upon cost of capital and other considerations, and we would come up with a number.  And then we would have the terminal value. There would be some number of accounts left after four, five, six years. And we would apply the same multiple, not an expanded multiple, not a shrunken multiple, but the same multiple for terminal value purposes as we use to purchase the accounts on day one. And that too would be brought back to a present value. And to the extent that those two components divided by the RMR was greater than the multiple that

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	average, what attrition value would you	. 2	THE WITNESS: Correct.
3	attribute to these contracts?	3	MR. MCCARTHY: So before 2007
4	THE WITNESS: Depending on the	4	you still had to account for some
5	type of contract, commercial versus	5	attrition rates that could be as high as
6	residential, on the commercial side we	6	17.8?
7	would use an attrition rate of anywhere	7	THE WITNESS: Well, there were
8	from 6 to 8 percent. On the residential	8	seasonal there were seasonal factors.
9	side, in normal times, we would use an	9	I think one quarter we had a pretty high
10	attrition rate of anywhere between 10	10	attrition rate. But by and large our
11	and 14 percent.	11	attrition rates at the public company
12	MR. MCCARTHY: And those are	12	ran in the 12 to 14 percent rate on a
13	the legitimate figures for the purposes	13	steady state, smooth basis.
14	of these notes?	14	MR. MCCARTHY: Walk me
15	THE WITNESS: Yes. Those had	15	through, if you will, the life of these
16	been legitimate figures for the dozen	16	contracts. I bought these to market in
17	years that we had been involved in this	17	a private placement. And the private
18	business.	18	placement has been fulfilled. It is a
19	The attrition rate in the	19	six-year contract or so, and you've paid
20	residential portfolio jumped up after	20	the interest through that.
21	middle of 2007 when we began to see	21	How do you pay back the
22	delinquency rates on mortgages go up	22	customers through principal? What
23	substantially. And as you see	23	mechanism? If there's not enough money
24	delinquency rates on mortgages and other	24	in there, all you have are contracts and
25	consumer credit going up, you're	25	those contracts, while they may or may
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	officially going to be affected because	2	not have some value, do not have enough
3	this is a consumer item. And we saw	3	value per se at one point to pay back
4	ramp up in attrition after that point.	4	the customers, how do you get them out?
5	MR. MCCARTHY: To what figure?	5	THE WITNESS: Well, first of
6	How high was the attrition?	6	all, in all of these transactions there
7	THE WITNESS: The figure,	7	was amortization. So to the extent
8	depending on the type of portfolio,	8	to the extent that the contracts stayed
9	could run as high as 20 percent.	9	within our prescribed band of
10	MR. MCCARTHY: Was that	10	performance, that principal amount was
11	unheard of before 2007?	11	amortized over four, five, six years.
12	THE WITNESS: Yeah, pretty	12	The other way that you would
13	much. Unless you are really talking	13	take out principal would be in terminal
14	about junk stuff, which we never bought.	14	valuation. To the extent you didn't
15	But when you saw the delinquency rate on	15	amortize initial debt, you still had a
16	primary mortgages go from 1 percent to	16	pool of assets, shrunken pool
17	6 percent, you could imagine what	17	nonetheless, but you still had a pool of
18	happened to alarm paper.	18	assets which was which had value.
19	MR. MCCARTHY: Did your public	19	These things are relatively fungible.
20	company ever have attrition rates as	20	There has been some disruption in the
21	high as 15, 16, 17 rates?	21	liquidity in that particular
22	THE WITNESS: Yes.	22	marketplace. But by and large, there
23	MR. MCCARTHY: It wasn't that	23	was always capital around to buy these
24	unheard of? That was before 2007,	24	pools of assets.
25	right?	25	You may recall that Tyco just

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
1 2		2	created but could not intervene in the marketplace,
	bought Brinks in a \$2.5 million	3	- · · · · · · · · · · · · · · · · · · ·
3	transaction. Stanley Works bought		in the commercial marketplace by going to any dealers
4	Sonitrol in a \$600 million transaction.	4	in the marketplace and buying their contracts.
5	Stanley Works also bought Honeywell	5	Q So would they be buying resales
6	Monitoring Services for \$600 million.	6	buying a pre-qualified bundle?
7	So there's always capital around to buy	7	A Yes.
8	these things.	8	Q Versus creating their own bundle?
9	So to the extent that you	9	A That's correct.
10	don't amortize from operating cash flow,	10	Q Okay.
11	you do have the terminal value of the	11	MR. MCCARTHY: These bundles
12	portfolio to address that.	12	just happen to always be McGinn Smith's
13	MR. MCCARTHY: And how would	13	previously-put-together products?
14	McGinn Smith & Company normally address	14	MR. FRANCESKI: That were
15	that? Would that be done through an	15	purchased by the LLCs, you mean, Bob?
16	additional capital raise?	16	MR. MCCARTHY: Yeah.
17	THE WITNESS: When McGinn	17	THE WITNESS: Yes.
18	Smith & Company was in that business,	18	MR. MCCARTHY: And were
19	which it was in from 1992 to 2003, I	19	there any of these bundles that would
20	would say 90 percent of the capital	20	not have had the amortization put away
21	raise was repaid by way of amortization.	21	to pay off their customers without
22	MR. MCCARTHY: After 2003?	22	adding additional funds from these
23	THE WITNESS: Well, after 2003	23	loans?
24	McGinn Smith no longer was in that	24	THE WITNESS: Well, at the
25	business. Because I and Mr. Smith had	25	time of these acquisitions by the funds,
	Page 287		Page 289
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	to sign noncompetes with the public	2	as I recall, the acquisition was made at
3	company.	3	a pricing level, a multiple that would
4	MR. MCCARTHY: So you're	4	have delivered the funds, a targeted
5	raising capital through private	5	rate of return which the fund manager
6	placements for those Alarm Contracts.	6	found to be compelling.
7	-	7	• •
1	You were only raising capital through	ł	BY MR. RATTINER:
8	buying bundles of those contracts?	8	Q And what was that?
9	THE WITNESS: McGinn Smith &	9	A Double digits, 10, 12 percent.
10	Company as of July 23, 2003 was	10	Q That's based on the amortization or
11	precluded by contract with IASG, with	11	based on the price of the contract at the time of
12	the board of directors of IASG, from	12	purchase?
13	playing an active role in that business.	13	A Based upon the entire matrix of the
14	PW AN (INTA TRIAN)	14	dynamics for that particular pool.
15	EXAMINATION	15	THE ACTION OF THE PROPERTY OF
16	BY MR. RATTINER:	16	EXAMINATION
17	Q Could they use the four funds to buy	17	BY MR. ROWEN:
18	contracts?	18	Q Maybe we can tie this back to my
19	A They could not go out into the	19	earlier question.
20	marketplace and buy contracts from an alarm dealer in	20	Where would that matrix be
21	Woodbridge, New Jersey.	21	documented?
22	Q But how could they? What was the	22	A To the extent that it is documented,
23	workaround, if you will?	23	that would be documented in the notes of the buyer.
24	A Well, the funds could buy existing	24	Q What form does that take?
25	contracts from existing trusts that may have been	25	We are not experienced with the Alarm

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1	TIMOTHY MCGINN	1	
1 2	Contracts.	1	TIMOTHY MCGINN
3	What form would that take?	2	did.
4		_	THE WITNESS: What I think
5		4	what happened globally, and I would cite
	form of a legal pad with notes and calculations. It	5	a recent book that was published,
6	may have taken the form of a spreadsheet. It may have taken the form of some other mechanism. I don't	6 7	written by a fellow named Ira (sic) Ross
L			Sorkin, who writes for the New York
8	know.	8	Times. The name of the book is Too Big
9	EVAMBIATIONI	9	To Fail. It did a very good job, in a
1	EXAMINATION  DV ND DATEDER.	10	sort of narrative manner, talking about
11	BY MR. RATTINER:	11	what happened to the credit markets and
12	Q How does the negotiation work on a	12	to the economy in this country from
13	deal that was brought to place by McGinn Smith and	13	August of 2007 through today. And what
14	then re-bought, or however we want to term it, post	14	happened was the world basically fell
15	2003?	15	apart. We had Fannie Mae, Freddie Mac,
16	Who is on who's the buyer, who's	16	Washington Mutual, Lehman Brothers, Bear
17	the seller?	17	Stearns, Merrill Lynch, Wachovia, and
18	A Well, the buyer is the funds.	18	other large financial institutions that
19	Q Okay.	19	failed or that went out of business or
20	A And so the representative of the	20	were chased into the hands of an
21	funds would be Mr. Smith.	21	acquirer; i.e., Merrill Lynch into Bank
22	Q Right.	22	of America, Wachovia into Wells Fargo.
23	A And the seller would be presumably	23	In addition to which the
24	the trustee for the accounts in that particular pool?	24	funds, the FIINs, the FEINs, the FAINs
25	Q Is that also going to be Mr. Smith?	25	and the TAINs were effectively a
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	A I would guess so, yes.	2	specialty finance company.
3	MR. MCCARTHY: So what	3	And I would think that the
4	happened, you are doing this, you are	4	closest model to what the funds were was
5	making all this money, how come it all	5	CIT. And CIT was a company with a
6	fell apart?	6	balance sheet of \$80 billion, had a
7	MR. FRANCESKI: What is the	7	stock price as high as \$87 and went
8	"this"?	8	bankrupt. And went bankrupt because by
9	MR. MCCARTHY: I mean,	9	and large they could not roll over their
10	apparently you had a good plan of	10	debt. They had they had defaults in
11	business and you were making money for	11	their portfolio because the businesses
12	all this time. And a couple of years	12	that they lent to could not roll over
13	ago, it all started to all fall apart.	13.	their paper. Their business went south.
14	What happened?	14	I think that by and large
15	MR. FRANCESKI: Again, I need	15	people forget just how treacherous the
16	to know what the "this" is. All of what	16	markets were between September 15th of
17	fell apart?	17	'08, when Lehman filed, and today.
18	MR. MCCARTHY: What happened	18	And you know, Paulson, Hank
19	with McGinn Smith? Why is McGinn Smith	19	Paulson, former Secretary of the
20	looking at a BDW? Why are there	20.	Treasury, just released a book on Monday
21	delinquent payments on these notes?	21	called At The Brink. And that, too,
22	Give me what happened.	22	discusses this period of time. And I
23	MR. FRANCESKI: That's	23	think that there were large, very
24	different. That's not just the Alarm	24	difficult macroeconomic trends that
25	Contracts. That's everything the LLCs	25	caused disruptions, not only in these

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1		1	•
1 2	TIMOTHY MCGINN	1 2	TIMOTHY MCGINN
3	funds, and they did, but in many other	3	the aggregate totaled \$85 million were
1	institutions that were thought to be	i -	in distinct businesses that had their
4	sacrosanct.	4	own set of circumstances. So I would
5	MR. MCCARTHY: In this Too Big	5	not accept that thesis.
6	To Fail book that you've described,	6	BY MR. RATTINER:
7	didn't they also blame a lot of this on	7	Q What do you mean by "they didn't have
8	the greed?	8	any fees"?
9	THE WITNESS: Yeah. You read	9	Did you say that the funds did not
10	the book?	10	have any fees?
11	MR. MCCARTHY: Wasn't it	11	MR. FRANCESKI: No. He said
12	mostly blamed on greed?	12	"those fees," referencing Mr. McCarthy's
13	THE WITNESS: Some of it was.	13	reference to 25 percent fees.
14	MR. MCCARTHY: High fees?	14	BY MR. RATTINER:
15	THE WITNESS: No. Some of it	15	Q So, again, elaborate on how the
16	was basically the leverage that was	16	funds
17	created. In particular they referenced	17	A Sure they had fees. But the fees
18	AIG. And AIG had a unit called	18	were reasonably nominal given the size of the funds
19	Financial Products Unit that wrote	19	and and that really had nothing to do with the
20	literally trillions of trillions, 10th	20	in my opinion, with the difficulties that the funds
21	to the 12th trillions of dollars of	21	ultimately got into.
22	credit default swaps. And they did this	22	
23	off the back off the balance sheet of	23	EXAMINATION
24	the holding company, AIG. And that was	24	BY MR. ROWEN:
25	that was the largest single bailout	25	Q What is RTC Trust?
	Page 295		Page 297
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	by the United States Government.	2	A RTC Trust was a trust created in
3	And yes, there was an element	3	maybe 2002 which was designed to acquire a central
4	of greed there, and that people were	4	station at a place called Roseville, California. RTC
5	taking out to 20, 30 million dollar	5	was stood for the Roseville Telephone Company.
6	bonuses, and they were doing that	6	There was also a component of that
7	because they could they could get	7	trust that had some residential accounts, as I
8	these credit default swaps done, and no	8	recall.
9	one ever thought they were going to come	9	Q You say "stands for telephone
10	back and they would have to pay on them.	10	company," what was purchased by RTC Trust?
11	Well, they did have to pay on them. And	11	A It was a central station, a
12	that's why the government pumped	12	third-party monitoring central station.
13	\$80 billion into AIG.	13	Q What is your involvement with RTC
14	MR. MCCARTHY: So the case of	14	Trust?
15	McGinn Smith, do you think any part of	15	A What is my involvement? Or what was
16	this breakdown that's occurred was due	16	my involvement?
17	to the fact that in many of these cases	17	Q Start with "was."
18	that you just cited today, that 20, 25,	18	A In 2002 I ran the investment banking
19	30 percent was taken off the top?	19	business of McGinn Smith & Company. It was a
20	THE WITNESS: The answer is	20	transaction that was sourced by my by a partner of
21	no. And the reinforcement to that	21	ours in a different business, a fellow by the name of
22	answer is the investments that were made	22	Thomas Few, the father of Jeffrey Few.
23		23	Tom few was in the central station
l	by the funds did not have any of those	23	
124			
24 25	fees. The investments that were made by the funds and the funds probably in	25	alarm business. He owned 80 percent of a company called King Acquisition Corp, which was in northern

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	New Jersey. I owned 10 percent of that company and	2	don't know whether it's at either of those places.
3	David Smith owned 10 percent of the company.	3	Q What is the status of RTC Trust
4	Tom came to us and said that he	4	today?
5	wanted to buy this particular asset from the	5	A I don't know that either.
6	Roseville Telephone Company. We put together the	6	MR. RATTINER: What is your
7	capital to affect that transaction.	7	current role? You mentioned what was
8	Q Can you elaborate on putting together	8	your role, but what is your role?
9	the capital?	9	THE WITNESS: Relative to RTC
10	A We did a capital raise, which we	10	Trust?
11	referred to as RTC Trust. I don't recall the amount.	11	MR. RATTINER: Right.
12	I do recall it was in the spring sometime of 2002.	12	THE WITNESS: I don't have a
13	And I do recall that we completed the transaction.	13	role.
14	MR. NEWMAN: Do you remember	14	MR. RATTINER: Does it still
15	approximately how much was raised?	15	exist, the trust?
16	THE WITNESS: I don't. But I	16	THE WITNESS: I don't know.
17	would I don't recall specifically how	17	MR. RATTINER: Did you a
18	much was raised, but I would guess it to	18	abolish your interest?
19	be I'd rather not even guess. I just	19	THE WITNESS: No. The
20	don't know.	20	ownership interest, I believe, that was
21	BY MR. ROWEN:	21	at ISAI was morphed into Integrated
22	Q Who are the owners of RTC Trust?	22	Alarm Services Group.
23	A Well, it is a grantor trust. And	23	MR. RATTINER: So once IASG
24	the under the terms of the grantor trust, the	24	went public, you no longer held an
25	residual interest in the assets would revert to the	25	interest in the trust?
	Page 299		Page 301
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	grantor. And the grantor was a combination of King	2	THE WITNESS: That's correct.
3	Acquisition Corp and a thing called IASI, Integrated	3	MR. RATTINER: How about any
4	Alarm Services Inc., which then became part of the	4	of the McGinn Smith entities, do they
5	public company.	5	still own an interest?
6	Q Who is the trustee for RTC?	6	THE WITNESS: I don't believe
7	A I would I would think it was	7	so.
8	either McGinn Smith Holdings, McGinn Smith Capital	8	MR. RATTINER: Are they still
9	Holdings or McGinn Smith and Co, Inc. I'm not sure.	9	deriving fees from the trust?
10	Q What fees were raised during the	10	THE WITNESS: I don't think
11	offering in 2002?	11	so.
12	A I don't know. I don't recall.	12	BY MR. ROWEN:
1 4 2		l	
13	Q Were there underwriting fees?	13	Q What was your involvement in the
	<ul><li>Q Were there underwriting fees?</li><li>A Of course.</li></ul>	13	Q What was your involvement in the management of the trust?
13		Į.	- · · · · · · · · · · · · · · · · · · ·
13 14	A Of course.	14	management of the trust?
13 14 15	<ul><li>A Of course.</li><li>Q Were there advisory fees?</li></ul>	14 15	management of the trust?  A My involvement was fairly de minimis
13 14 15 16	<ul><li>A Of course.</li><li>Q Were there advisory fees?</li><li>A I don't know.</li></ul>	14 15 16	management of the trust?  A My involvement was fairly de minimis between the closing of the trust and the first
13 14 15 16 17	<ul><li>A Of course.</li><li>Q Were there advisory fees?</li><li>A I don't know.</li><li>Q Did you take out any personal fees</li></ul>	14 15 16 17	management of the trust?  A My involvement was fairly de minimis between the closing of the trust and the first quarter I think it was the first quarter of '02;
13 14 15 16 17 18	A Of course. Q Were there advisory fees? A I don't know. Q Did you take out any personal fees after the offering was completed? A I don't recall.	14 15 16 17 18	management of the trust?  A My involvement was fairly de minimis between the closing of the trust and the first quarter I think it was the first quarter of '02; and '03 when when ISG went public. The operations
13 14 15 16 17 18 19	A Of course. Q Were there advisory fees? A I don't know. Q Did you take out any personal fees after the offering was completed? A I don't recall.	14 15 16 17 18 19	management of the trust?  A My involvement was fairly de minimis between the closing of the trust and the first quarter I think it was the first quarter of '02; and '03 when when ISG went public. The operations of the trust were handled by a group of people who
13 14 15 16 17 18 19 20	A Of course. Q Were there advisory fees? A I don't know. Q Did you take out any personal fees after the offering was completed? A I don't recall. Q Where would it be documented if you	14 15 16 17 18 19 20	management of the trust?  A My involvement was fairly de minimis between the closing of the trust and the first quarter I think it was the first quarter of '02; and '03 when when ISG went public. The operations of the trust were handled by a group of people who worked for this entity, IASI, which became part of
13 14 15 16 17 18 19 20 21	A Of course. Q Were there advisory fees? A I don't know. Q Did you take out any personal fees after the offering was completed? A I don't recall. Q Where would it be documented if you did?	14 15 16 17 18 19 20 21	management of the trust?  A My involvement was fairly de minimis between the closing of the trust and the first quarter I think it was the first quarter of '02; and '03 when when ISG went public. The operations of the trust were handled by a group of people who worked for this entity, IASI, which became part of IASG, under the direction, again, of Mr. Keenholts.
13 14 15 16 17 18 19 20 21 22	A Of course. Q Were there advisory fees? A I don't know. Q Did you take out any personal fees after the offering was completed? A I don't recall. Q Where would it be documented if you did? A It may be documented at McGinn Smith	14 15 16 17 18 19 20 21 22	management of the trust?  A My involvement was fairly de minimis between the closing of the trust and the first quarter I think it was the first quarter of '02; and '03 when when ISG went public. The operations of the trust were handled by a group of people who worked for this entity, IASI, which became part of IASG, under the direction, again, of Mr. Keenholts.  Q Starting in '03 what was your

1	Page 302		Page 304
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	'03 after IASI was rolled into IASG and you became	2	grid note between First Advisory and RTC?
3	part of IASG?	3	A No.
4	A As I said, I was the chairman and CEO	4	Q Were you made aware at any point of
5	of IASG. And my involvement there in that role was	5	all the investments of First Advisory?
6	basically to pursue large acquisitions, to pursue	6	A No repeat that question, please.
7	incremental financing for the company, to supervise	7	Q Were you made aware at any point of
8	and direct senior staff on things such as	8	all the investments of First Advisory Income Notes?
9	Sarbanes-Oxley and other corporate matters.	9	A Of all the investments, no.
10	Q How about specific to RTC?	10	Q Never provided a list?
11	A I had no specific function relative	11	A I was aware of the larger investments
12	to RTC.	12	made by the funds. And I may have testified to this
13	Q Who was who was managing RTC after	13	earlier, but there may have been four or five or six
14	you became part of Integrated Alarm?	14	names. This was not one of the names that I was
15	THE WITNESS: To the extent	15	familiar with.
16	that there was a continuing involvement	16	Q But you were familiar with RTC Trust
17	on the residential portfolio side, that	17	in itself?
18	business was the line manager was a	18	A I was familiar with RTC Trust from
19	fellow by the name of Douglas Keenholts	19	2002. The assets of the funds that I was familiar
20	who had worked for us since being a	20	with were larger assets, as I described earlier.
21	co-op in college. And he, in turn,	21	This is not something that I was familiar with.
22	reported to Brian Shea, who was the	22	Q Does it surprise you today to see
23	President, Chief Operating Officer, of	23	there was a grid note between First Advisory and RTC?
24	IASI, which was a division of IASG.	24	MR. FRANCESKI: Objection.
25	MR. ROWEN: Let's mark this	25	You may answer.
		23	
	Page 303		. Page 305
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Exhibit 8.	2	THE WITNESS: Does it surprise
3	(Whereupon Exhibit 8 is	3	me? This is news to me. And this is
4	marked.)	4	something I haven't seen before.
5	BY MR. ROWEN:	5	So under that definition of
6	Q Mr. McGinn, you have been handed	6	"surprise," yes. Does it surprise me to
7	Exhibit 8 in this matter.	7	the extent that I am going to jump out
8	A Hm-hm.	8	of my skin, no. I wasn't aware of this
1 a	Q Exhibit 8 is a total of five pages.	9	
9	1 0	1	until you handed it to me. I have no
10	These were provided to FINRA by the broker-dealer as	10	knowledge of this. I did have knowledge
10 11	These were provided to FINRA by the broker-dealer as documentation of First Advisory's use of customer	10 11	knowledge of this. I did have knowledge of 2002s acquisition of the Roseville
10 11 12	These were provided to FINRA by the broker-dealer as documentation of First Advisory's use of customer proceeds. First two pages stamped MGS 0020096 and 97	10 11 12	knowledge of this. I did have knowledge of 2002s acquisition of the Roseville Telephone Company, as I testified ten
10 11 12 13	These were provided to FINRA by the broker-dealer as documentation of First Advisory's use of customer proceeds. First two pages stamped MGS 0020096 and 97 are copy of a register report of transactions between	10 11 12 13	knowledge of this. I did have knowledge of 2002s acquisition of the Roseville
10 11 12 13 14	These were provided to FINRA by the broker-dealer as documentation of First Advisory's use of customer proceeds. First two pages stamped MGS 0020096 and 97 are copy of a register report of transactions between First Advisory and RTC.	10 11 12 13 14	knowledge of this. I did have knowledge of 2002s acquisition of the Roseville Telephone Company, as I testified ten minutes ago.  MR. ROWEN: Were you aware
10 11 12 13 14 15	These were provided to FINRA by the broker-dealer as documentation of First Advisory's use of customer proceeds. First two pages stamped MGS 0020096 and 97 are copy of a register report of transactions between First Advisory and RTC.  The last three pages stamped MGS	10 11 12 13	knowledge of this. I did have knowledge of 2002s acquisition of the Roseville Telephone Company, as I testified ten minutes ago.
10 11 12 13 14 15 16	These were provided to FINRA by the broker-dealer as documentation of First Advisory's use of customer proceeds. First two pages stamped MGS 0020096 and 97 are copy of a register report of transactions between First Advisory and RTC.  The last three pages stamped MGS 0020098 through 0020100 are copies of a grid note	10 11 12 13 14 15 16	knowledge of this. I did have knowledge of 2002s acquisition of the Roseville Telephone Company, as I testified ten minutes ago.  MR. ROWEN: Were you aware
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		1	
	Page 306		Page 308
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. NEWMAN: Do you know what	2	MR. NEWMAN: And the trustee
3	a grid note is?	3	is paid a fee for that service?
4	THE WITNESS: Yes.	4	THE WITNESS: I don't I
5	MR. NEWMAN: Can you give us a	5	don't think in any of these instances
6	brief description of that.	6	the trustee was paid a fee.
7	THE WITNESS: Yes. A grid	7	MR. NEWMAN: What is the
8	note is merely an open commitment for	8	financial benefit to being a trustee in
9	some level of capital, where that	9	these circumstances?
10	capital can be drawn down over a certain	10	THE WITNESS: To facilitate
11	period of time and added to the	11	the transaction.
12	outstanding principal of the note. And	12	MR. NEWMAN: So is your
13	it basically is a convenient and	13	experience that the trustees in the
14	efficient way of handling a credit	14	Alarm Contract structures did not
15	facility which is expected to have a	15	receive fees
16	drawdown schedule over time.	16	THE WITNESS: That's correct.
17	MR. NEWMAN: If I	17	MR. NEWMAN: for that
18	understand and correct me if this	18	particular function?
19	is my description as inaccurate, but	19	THE WITNESS: Yes.
20	the trust itself owns the Alarm	20	MR. NEWMAN: The trustee for
21	Contracts, RTC Trust owns a pool of	21	the RTC was McGinn Smith Capital
22	Alarm Contracts?	22	Holdings?
23	THE WITNESS: That's correct.	23	THE WITNESS: Are you telling
24	MR. NEWMAN: Is that correct?	24	me or asking?
25	Is RTC Trust an operating company?	25	MR. NEWMAN: I'm asking you.
1	Page 307.		Page 309
1	Page 307	1 ,	Page 309
1 2	TIMOTHY MCGINN	1 '	TIMOTHY MCGINN
2	TIMOTHY MCGINN THE WITNESS: No. No. The.	2	TIMOTHY MCGINN THE WITNESS: I don't know.
2 3	TIMOTHY MCGINN THE WITNESS: No. No. The operating elements of the business are	2 3	TIMOTHY MCGINN THE WITNESS: I don't know. MR. NEWMAN: If you look at
2 3 4	TIMOTHY MCGINN THE WITNESS: No. No. The operating elements of the business are outsourced. In this instance they were	2 3 4	TIMOTHY MCGINN THE WITNESS: I don't know. MR. NEWMAN: If you look at the last page of the grid note, signed
2 3 4 5	TIMOTHY MCGINN THE WITNESS: No. No. The operating elements of the business are outsourced. In this instance they were outsourced to Integrated Alarm Services.	2 3 4 5	TIMOTHY MCGINN THE WITNESS: I don't know. MR. NEWMAN: If you look at the last page of the grid note, signed by Mr. Smith, President, on behalf of
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2 3 4 5 6 7	TIMOTHY MCGINN THE WITNESS: No. No. The operating elements of the business are outsourced. In this instance they were outsourced to Integrated Alarm Services. MR. NEWMAN: So there's a contract between RTC Trust and	2 3 4 5 6 7	TIMOTHY MCGINN THE WITNESS: I don't know. MR. NEWMAN: If you look at the last page of the grid note, signed by Mr. Smith, President, on behalf of McGinn Smith Capital Holdings Corp. Trustee
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	You weren't actively involved in the	2	an agreement between a borrower and a
3	operations of the corporation?	3	lender. The borrower is RTC Trust 02.
4	THE WITNESS: That's correct.	4	And the lender is First Advisory Income
5	MR. FRANCESKI: Wait a minute.	5	Notes. Correct?
6	What corporation are we talking about?	6	THE WITNESS: Correct.
7	MR. NEWMAN: McGinn Smith	7	MR. NEWMAN: And Mr. Smith was
8	Capital Holdings Corp.	8	the investment advisor for First
9	MR. FRANCESKI: Well, no. If	9	Advisory Income Notes, correct?
10	I understand, correct me if I am wrong.	10	THE WITNESS: Yes.
11	I don't mean to mess up the record here,	11	MR. NEWMAN: And Mr. Smith was
12	but I thought that your ownership was in	12	the president of McGinn Smith Capital
13	Mr. McGinn's ownership was in McGinn	13	Holdings Corporation?
14	Smith Holdings, which then is	14	THE WITNESS: Yes.
15	100 percent owner of the McGinn Smith	15	MR. NEWMAN: This is an
16	Capital Holdings. Is that right?	16	agreement between Mr. Smith wearing one
17	THE WITNESS: I think that's	17	hat and Mr. Smith wearing another hat?
18	correct.	18	MR. FRANCESKI: Objection.
19	MR. NEWMAN: So you had an	19	MR. NEWMAN: He's negotiating
20	interest in the parent company of McGinn	20	the agreement between himself; is that
21	Smith Capital Holdings Corp.? You had	21	what is happened here?
22	an ownership interest in that	22	MR. FRANCESKI: Objection. I
23	corporation?	23	think the borrower is RTC trust, isn't
24	THE WITNESS: Yes.	24	it?
25	MR. NEWMAN: 30 percent	25	MR. NEWMAN: Who is acting on
	Page 311		Page 313
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	interest in the parent company?	2	behalf of the trust? Who signs on
3	THE WITNESS: Yes.	3	behalf of the trust? Mr. Smith,
4	MR. NEWMAN: There's a holding	4	correct?
5	company?	5	THE WITNESS: That's correct.
6	THE WITNESS: Yes.	6	MR. NEWMAN: This is an
7	MR. NEWMAN: This was one of	7	agreement between Mr. Smith and
8	the companies within the holding	8	Mr. Smith in different capacities?
9	company?	9	THE WITNESS: Yes.
10	THE WITNESS: Yes.	10	MR. NEWMAN: Do you know why
11	MR. NEWMAN: But your	111	your name appears on the first page of
12	testimony is you had no involvement in	12	the grid note under the Advances
13	the operations of McGinn Smith Capital	13	Authorized Representative paragraph,
14	Holdings Corp.?	14	fourth line.
15	THE WITNESS: Yes.	15	THE WITNESS: I don't know.
16	MR. FRANCESKI: Yes, you had	16	MR. NEWMAN: It's your
17	no involvement?	17	testimony you had no involvement with
18	THE WITNESS: My testimony	18	RTC Trust on April 2006?
19	I think the question was: Your	19	THE WITNESS: That's my
20	testimony was that you had no	20	testimony.
21	involvement?	21	MR. NEWMAN: So you had no
22	My answer to that question is	22	idea why your name would appear on this
			rasa wiry your name would appear on this
1	•	I .	• • • • • • • • • • • • • • • • • • • •
23	yes.	23	document?
1	•	I .	• • • • • • • • • • • • • • • • • • • •

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	30 percent owner of the parent company	2	employee" and blah-blah. And we
3	of the trustee.	3	said "Fine, we will attempt to do that."
4	MR. PAULSEN: Couple of	4	MR. FRANCESKI: Who is the
5	clarifying questions, if I may. I	5	"we"?
6	believe you testified you are a	6	THE WITNESS: McGinn Smith &
7	10 percent owner in King Acquisition	7	Company.
8	Corp?	8	So McGinn Smith & Company,
9	THE WITNESS: Correct.	9	largely myself, did procure that
10	MR. PAULSEN: Mr. Smith also a	10	financing for Mr. Few. And the deal was
11	10 percent interest	11	closed. The transaction was closed in,
12	THE WITNESS: Yes.	12	I believe, January 2001.
13	MR. PAULSEN: Who had the	13	Post that transaction, the
14	who owned the remaining 80 percent?	14	name changed to King Acquisition Corp,
15	THE WITNESS: Thomas Few, Sr.	15	which company was owned 80-10-10.
16	MR. PAULSEN: And was there	16	
17	any capital raised for that entity?	17	EXAMINATION
18	THE WITNESS: We did an	18	BY MR. RATTINER:
19	acquisition we procured an	19	Q The funding came from which bank?
20	acquisition loan from Key Corp in	20	A Key Bank, Cleveland, Ohio.
21	roughly January of 2001 to buy the	21	Q What was your affiliation with Key
22	business from a fellow by the name of	22	Bank?
23	Charlie Fisher, who is a New Jersey	23	A I had no affiliation with Key Bank.
24	resident. And that that capital was,	24	Q Did you say you were chairman of a
25	I think, \$17 million.	25	bank at one point?
	Page 315		Page 317
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. PAULSEN: I'm sorry. That	2	A Yes.
3	was by through Key Bank?	3,	Q What bank was that?
4	THE WITNESS: Key Bank was the	4	A Pointe Bank, P-O-I-N-T-E.
5	lender. We arranged that loan.	5	Headquartered in Boca Raton, Florida.
6	MR. PAULSEN: So I am not sure	6	
7	I understand. King Acquisition Corp	7	EXAMINATION
8	took a loan through Key Bank? Let me	. 8	BY MR. ROWEN:
9	ask you to clarify that.	9	Q What is SAI?
10	THE WITNESS: The name of the	10	A SAI was another public company that
11	company prior to the conveyance in	11	was in the monitoring space, and we did an we did
12	January 2001 was King Alarm. King Alarm	12	a financing for SAI.
13	at that time was owned 80 percent by a	13	MR. FRANCESKI: "We"?
14	fellow by the name of Charlie Fisher and	14	THE WITNESS: McGinn Smith &
15	20 percent by Thomas Few.	15	Company. I'm sorry.
16	Tom Few came to us and said "I	16	When? Maybe 1999.
17	would like to buy this company. Can you	17	BY MR. ROWEN:
18	guys arrange the financing?" We said,	18	Q Is that SAI Trust or is that a
19	"We'll try." He said, "Well, if you can	19	different entity?
20	arrange the financing, I will afford	20	A SAI was the name of the public
21	you, Tim, a 10 percent ownership	21	company, Securities Associates International. SAI
22	interest; and David a 10 percent	22	Trust was the name of the vehicle that we used to
23	ownership; Mr. Smith a 10 percent	23	raise the capital for SAI.
24	ownership interest; and I will own	24	Q How much money was raised?
25	80 percent and run the company and be an	25	A Roughly \$23 million.

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Q What fees were collected for that	2	THE WITNESS: Mr. Smith was
3	raise.	3	involved in, I think, a round of
4	A I think we earned a fee of a million	4	negotiation modification of the
5	and a half dollars.	5	agreement, sometime in the 2004-2005
6	Q And what was that fee classified as?	6	time frame.
7	A Fee income.	7	MR. NEWMAN: Tell us about
8	Q Underwriting, advisory?	8	that.
9	A Loan placement fee.	9	THE WITNESS: SAI had been
10	Q Do you know who the trustee of SAI	10	having difficulties. They came to us to
11	Trust is?	11	McGinn Smith & Company and said, "We
12	A I don't.	12	would like to revisit the terms of our
13	Q And have investors been paid back in	13	relationship."
14	full for SAI Trust?	14	MR. FRANCESKI: This is SAI,
15	A No.	15	the public company.
16	Q Is it in default?	16	THE WITNESS: SAI, the public
17	A Yes.	17	company. We "we," David, from McGinn
18	Q How much in default?	18	Smith & Company, negotiated with a
19	A I'm sorry?	19	fellow by the name of Tom Salvatore who
20	•	20	was the Chairman and CEO of SAI. And
21	•	21	
22	J	22	they came to an agreement whereby SAI
i i	outstanding balance of 3 or 4 million dollars.	I	would have the benefit of some reduction
23	MR. RATTINER: When did it go	23	in coupon if they would make some
24	into default?	24	principal payments. They agreed to do
25	THE WITNESS: Sometime in '08,	25	that. They did that for a number of
	Page 319		Page 321
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	maybe the middle or latter part of '08.	2	years, until they hit a brick wall. And
3	MR. NEWMAN: What happened?	3	by that time there were lenders to SAI
4	THE WITNESS: SAI had quality	4	who were senior to our position. And
5	problems with their services. They lost	5	those senior lenders basically
6	a lot of business. They had previously	6	foreclosed on the collateral.
7	done a number of residential alarm	7	MR. NEWMAN: So the
8	acquisitions where they ended up paying	8	relationship between McGinn Smith and
9	too much. Those accounts performed	9	SAI was a lending relationship?
10	poorly and they couldn't any longer	10	THE WITNESS: The relationship
11	continue to stay in business.	11	between McGinn Smith and SAI began as an
12	MR. NEWMAN: When did it first	12	advisory cum loan procurement
13	begin experiencing what we'll call	13	facilitator.
14	financial hardship?	14	MR. NEWMAN: You are going to
15	THE WITNESS: I don't know	15	have to explain that one.
16	when they first began to experience	16	MR. FRANCESKI: Objection.
17	hardship.	17	Asked and answered.
18	MR. NEWMAN: What involvement	18	
19		19	THE WITNESS: What would you
20	did you have in the operations of SAI	1	like to be explained?
	Trust once the money was raised?	20	MR. NEWMAN: You will have to
21	THE WITNESS: None.	21	provide some more details on what you
22	MR. NEWMAN: What involvement	22	mean by that.
23	did Mr. Smith have either individually	23	MR. FRANCESKI: He already
24	or through another entity in the operations of SAI Trust?	24	explained the financing side of that.  Do you need him to explain

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1	TIMOTHY MCGINN	. 1	TIMOTHY MCGINN
2	that again, too?	2	of that transaction?
3	MR. NEWMAN: Yes.	3	THE WITNESS: I was a
4	THE WITNESS: Okay.	4	director. I don't know if I was
5 .	MR. FRANCESKI: Go ahead.	5	chairman at that time, but I was a
6	Objection; asked and answered.	6 .	director. I obviously recused myself
7	THE WITNESS: SAI was a public	7	from any deliberations relative to that
8	company. They had debt that was owed to	8	particular asset.
9	a lender who wanted to get repaid, they	9	MR. NEWMAN: Did you have an
10	wanted some incremental capital to	10	ownership interest in Pointe Bank?
11	expand their operations. They were	11	THE WITNESS: Yes.
12	headquartered in Arlington, Illinois,	12	MR. NEWMAN: What was your
13	outside of Chicago. They came to McGinn	13	ownership interest?
14	Smith & Company. McGinn Smith & Company	14	THE WITNESS: Pointe Bank was
15	was known at that time as a major player	15	a public company. It went public in
16	in the financing of that particular	16	June 1998, and I owned stock in the
17	sector. They came to me and said "Here	17	company.
18	is our here is our here is our	18	MR. NEWMAN: What was your
19	problem. What can you do? We'd like to	19	ownership interest?
20	get a we'd like to take out the	20	THE WITNESS: Oh, I probably
21	existing lender and we'd like some	21	owned a couple, \$300,000 worth of stock.
22	incremental capital.	22	MR. NEWMAN: Do you know what
23	I spent a fair amount of time	23	percentage of the overall outstanding
24	with their operating people in terms of	24	shares that represented?
25	due diligence. Came to the conclusion	25	THE WITNESS: 2.
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	it was something that could be financed.	2	MR. PAULSEN: Were you
3	And put together a two-tranche	3	associated with another broker-dealer at
4	financing.	4	that point in time besides McGinn &
5	That two-tranche financing	5	Smith?
6	consisted of a senior tranche, which I	6	THE WITNESS: No.
7	think was something in the 17,	7	MR. PAULSEN: Have you ever
8	18 million dollar range. And a	8	heard of a firm known as Point Capital?
9	subordinate tranche which became the SAI	9	THE WITNESS: Oh, yes, I was.
10	trust, which was in the 5 or 6 million	10	Pointe Capital was a I'm not sure it
11	dollar range. The senior tranche was	11	was that time. I don't know if the time
12	placed 80 percent with Key Bank out of	12	lines were coincident. But Point
13	Cleveland Ohio, and 20 percent with	13	Financial Corp. Was the holding company,
14	Pointe Bank in Boca Raton, Florida.	14	was the public company of Pointe Bank.
15	They were on the same level.	15	And Pointe Bank at that time was roughly
16	The Junior tranche was raised	16	a \$250 million institution. And the
17	by way of a trust offering by McGinn	17	board of directors of Pointe Financial
18	Smith & Company. And that's how the	18	wanted to have some direct involvement
19	financing came together.	19	with the capital markets, and so we
20	MR. NEWMAN: Pointe Bank, was	20	created "we," meaning Pointe
21	that the bank you testified earlier that	21	Financial Corp., created a broker-dealer
22	you had some involvement with?	22	by the name of Pointe Capital. We
23	THE WITNESS: Yes.	23	staffed it with a fellow who had come
24	MR. NEWMAN: What was your	24	out of Nomura and Key Bank. And he came
25	involvement with Pointe Bank at the time	25	to Florida and ran that. I was I was
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	probably a principal you can look on	2	There's not a lot that can surprise
3	the records to make sure, but there was	3	me anymore, as I sit here today.
4	virtually no revenue that came out of	4	MR. RATTINER: You said is
5	Pointe Capital to speak of. And Pointe	5	the public company bankrupt, SAI?
6	Capital was closed some number of years	6	THE WITNESS: SAI, yeah.
7	later.	7	MR. RATTINER: So why has
8	MR. PAULSEN: You were just a	8	has SAI, the trust, been written off on
9	principal, not an owner?	9	the books of McGinn Smith?
10	THE WITNESS: No. The owner	10	THE WITNESS: Why has it?
11	was the owner of Pointe Capital was	11	MR. RATTINER: Well, has it,
12	Pointe Financial as well as another	12	number one?
13	company called First Integrated Capital	13	THE WITNESS: Has it?
14	Corp. And I was a shareholder of First	14	MR. RATTINER: Has it.
15	Integrated Capital Corp.	15	THE WITNESS: I don't know.
16	MR. PAULSEN: What was your	16	It was not an asset that was
17	role in Pointe Financial again; what	17	owned by McGinn Smith & Company. So I
18	capacity?	18	am not sure that it would appear on our
19	THE WITNESS: Pointe Financial	19	balance sheet as an asset, which
20	was the public company. I was a board	20	wouldn't require any write-downs per se.
21	member. I believe I was also vice	21	MR. RATTINER: So it would
22	chairman of that board. And I later	22	appear on the LLCs books?
23	became chairman of its primary	23	THE WITNESS: To the extent
24	subsidiary, which was Pointe Bank.	24	that there are loans to SAI, yes.
25	MR. PAULSEN: So was there an	25	MR. RATTINER: Okay. As far
	Page 327		Page 329
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	indirect ownership, Pointe Financial	2	as you know, those have not been written
3	through to Pointe Capital, by yourself?	3	down off the LLC books?
4	THE WITNESS: As I said, I own	Δ	THE WITNESS: I don't even
5	stock in Pointe Financial, roughly	5	· · · · · · · · · · · · · · · · · · ·
6	2 percent. Pointe Financial owned, I	6	know that they are there.  MR. RATTINER: All right.
7	think, 50 percent of Pointe Capital.	7	Let's take a break.
8	So, yes, there was an indirect ownership	8	(Whereupon a recess is taken.)
9	interest.	9	MR. RATTINER: Back on the
10	By the way, there's another	10	record.
11	company which also had a dismal history	11	record.
12	called on line Capital Corp. And it too	12	EXAMINATION
13	was a broker-dealer. I had a	13	BY MR. ROWEN:
14	broker-dealer license but did no	14	Q We were talking about SAI Trust and
15	business. And I'm pretty sure I was a	15	its status over time.
16	principal of on line Capital Corp.	16	Were you aware of the status of SAI
17	MR. PAULSEN: Thank you.	17	Trust in early 2006?
18	BY MR. ROWEN:	18	A I don't have any specific awareness
19	Q Are you aware of any of the four	19	of the trust in early 2006. I would guess it was
20	funds we've discussed loaning money to SAI Trust?	20	performing at that time.
21	A No.	21	Q Do you know when it became
22	Q Would you be surprised to hear that	22	nonperforming?
23	those any of the four note entities loaned money	23	A Not specifically. But I would have
24	to?	24	thought it would have been much later than early
1 - 1		25	2006.
25	A No.		

			_
	Page 330		Page 332
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Q I guess at what point were they a	2	time that I was not at the firm.
3	creditable entity, one that you would be comfortable,	3	MR. RATTINER: And then you
4	one of the four funds, loaning a million dollars to?	4	return in November '06?
5	A I was not involved in the SAI Trust	5	THE WITNESS: Right.
6	from January of 2003 on, so I have no particular	6	MR. RATTINER: What duties do
7	knowledge of what that curve looks like in terms of	7	you take on at that point and continue
8	their credit worthiness and where the inflection	8	today?
9	point on that curve would be. I can't help you with	9	THE WITNESS: Basically I
10	that.	10	reverted to my former business practice.
111	MR. RATTINER: From 2003 to	11	And the first transaction I did was TDM
12	2006 when you were not there, who	12	Cable Funding. And have done in concert
13	performed the daily duties that you	13	with a fellow by the name of Matthew
14	performed prior to 2003, prior to	14	Rogers, who I think you will meet in the
15	leaving?	15	next week or two. Various transactions:
16	THE WITNESS: The business	16	Verifier, Luxury Cruise, TDM, TDMM, so
17	model at McGinn Smith & Company changed	17	forth.
18	after I left. And the business model	18	MR. RATTINER: I guess what
19	was previously that I would, you know,	19	are you aware of Mr. Livingston's role
20	run around and source transactions. And	20	with regard to the four notes? What
21	we would execute those transactions.	21	role did he play?
22	When I left in January 2003	22	THE WITNESS: He had two
23	followed by the successful IPO in July,	23 .	roles. The first role was that he was
24	a number of clients of McGinn Smith &	24	
25	Company received vast amounts of capital	25	sort of an adjunct to Mr. Smith relative to the investment decisions in the
	Company received vast amounts of capital	4.5	to the investment decisions in the
	Page 331		Page 333
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	back to them because the public company	2	funds.
3	basically bought the assets that were in	3	Secondly he became a principal
4	those trusts. And the clients of the	4	in a company called alseT, which was a
5	firm took in roughly a hundred million	5	borrower of capital from the funds, and
6	dollars.	6	pursued an intellectual property
7	At that point Mr. Smith and	7	monetization business model which didn't
8	Mr. Livingston and at that time	8	work.
9	Mr. Smith owned 50 percent, Tom	9	MR. RATTINER: You're also a
10	Livingston didn't own any, decided they	10	registered investment advisor?
11	would pursue a different business model,	11	THE WITNESS: I don't know.
12	and that business model would be to	12	MR. RATTINER: Okay. Did you
13	become advisors to a series of mezzanine	13	maintain
14	funds that they would establish.	14	MR. FRANCESKI: "You're"
15	And so they went about the	15	meaning?
16	business of writing a document, putting	16	MR. RATTINER: You, Mr.
17	together a business plan, talking to	17	McGinn.
18	clients and raising the capital that	18	Whether or not
19	became the capital source for FIIN,	19	MR. FRANCESKI: No. An
20	FAIN, TAIN and FEIN.	20	individual cannot be a registered
21	And then subsequent to that,	21	investment advisor.
22	they spent their efforts sourcing	22	MR. RATTINER: Is there an RIA
23	business for those funds and taking an	23	entity McGinn Smith?
24	active role and running the funds. And	24	THE WITNESS: I believe so.
25	they continued to do that for all of the	25	MR. RATTINER: You're

	Page 334	i	Page 336
1	·	1	TIMOTHY MCGINN
1	TIMOTHY MCGINN	2	this e-mail?
2	affiliated with that entity?	3	I
3	THE WITNESS: Well, I think	4	A Well, the circumstances were that, as
4	the entity that's the RIA is MS	5	I testified earlier, TDM Cable Funding LLC bought two
5	Advisors. And MS Advisors has four	6	properties from a group called Primevision Communications LLC. I also testified that
6	clients, and those are the: FIIN, FEIN,		
7	FAIN and TAIN.	7	Primevision Communications LLC went out of business.
8	MR. FRANCESKI: There are	8	And when they did that, we had to expend a
9	actually two.	9	significant amount of dollars to get them to wrap
10	THE WITNESS: Two?	10	things up. They sort of extorted money from us. We
11	MR. FRANCESKI: MSC, I	11	had to invest some money in in plant at both of
12	believe, is duly registered as an	12	these locations.
13	advisor.	13	And so that consequently used capital
14	MR. RATTINER: And while you	14	that we would otherwise have used to pay investor
15	were at IASG from '03 to '06 did you	15	interest.
16	maintain your registrations with the	16	So apparently what we did here was
17	broker-dealer?	17	borrowed money from FEIN, \$25,000, to make up that
18	THE WITNESS: Yes. I also	18	shortfall.
19	retained my physics books. I'm an	19	Q Was First Excelsior paid back?
20	engineer by education. So just in case,	20	A You know what I don't know. This
21	I've still got my physics books.	21	would suggest I don't know.
22	MR. RATTINER: We will not	22	Q Okay. Was there a raise subsequent
23	need those. And we will not request	23	to this borrowing?
24	those.	24	A A capital raise.
25	We will request you to answer	25	Q Correct?
	2.00		
	Page 335	ŀ	Page 337
1	TIMOTHY MCGINN	1	Page 337   TIMOTHY MCGINN
1	TIMOTHY MCGINN	i	TIMOTHY MCGINN
1 2 3	TIMOTHY MCGINN questions about the next exhibit. We	1 2 3	TIMOTHY MCGINN A No.
2	TIMOTHY MCGINN questions about the next exhibit. We are going to introduce Exhibit Number 9.	2	TIMOTHY MCGINN
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	TIMOTHY MCGINN questions about the next exhibit. We are going to introduce Exhibit Number 9.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	TIMOTHY MCGINN  A No.  Q When was the last capital raise for TDM Cable Funding?  A For TDM Cable Funding was October 2006, I believe.  Q Okay.  MR. RATTINER: I'm going to introduce Exhibit Number 10.  (Whereupon Exhibit 10 is marked.)  BY MR. RATTINER:  Q Mr. McGinn, in front of you is Exhibit Number 10. It's an e-mail from yourself to Mr. David Smith on Tuesday, January 20, 2009. And the subject is "Thoughts."  If you have a moment, take a look through that. It is a total of five pages. My comments will be regarding the first page and, really, the first e-mail on the first page.  A (Reviewing).  MR. FRANCESKI: Just to be

		r	
<u> </u>	Page 338		Page 340
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Q I guess the first question is: Who	2	that question again?
3	is BO?	3	MR. ROWEN: Do you have sales
4	A I would think it's a fellow by the	4	practice-related concerns over a comment
5	name of Barack Obama.	5	about keeping the pressure on registered
6	Q And what deal is ongoing at this time	6	representatives about selling private
7	that we are implying here?	7	placements?
8	A You know, I don't know. It could	8	MR. FRANCESKI: Does he have
9	have been a roll. It could have been cleaning up the	9	that concern today about having made
10	CMS offering and the repayment to the funds and to a	10	that statement then?
11	fellow by the name of	11	MR. ROWEN: Sure, yes.
12	specific. So I am not sure what it refers to.	12	THE WITNESS: No.
13	Q And did you know what you meant by	13	MR. ROWEN: Did you have any
14	the third sentence, "We need to keep the pressure	14	concern at the time?
15	on"; pressure on who?	15	THE WITNESS: If I did, I
16	A Pressure on sales people to get them	16	wouldn't have written it.
17	to sell whatever it was we were trying to sell.	17	MR. PAULSEN: What was the
18	Q And "I need \$2 million by 1/30"; what	18	call about?
19	was meant by that?	19	THE WITNESS: I have no idea.
20	A Well, obviously we were looking to	20	We typically did a sales call every
21	procure another \$2 million for some purpose by the	21	Monday. I would as I look at the
22	end of that month. And I am not as I said, I am	22	dates, I think Monday, January 19, 2009
23	not sure exactly what that was for.	23	was Martin Luther King day. And we
24	Q Was there an open CMS deal at the end	24	probably didn't do that call that day
25	of 2008?	25	because the markets were closed. So we
	Page 339		Page 341
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	A I don't believe there was an open CMS	2	may may have done that call earlier
3	deal. I don't think there was an open CMS deal.	3	in the morning on Tuesday, the very next
4	Q Was there a TDM Cable or any TDM deal	4	day, January 20th.
5	open in that time frame?	5	MR. PAULSEN: In writing, "Not
6	A There may have been TDMM TDMM deal	_	THE THOUSEN. IN WITHING, THE
		6	a lot of enthusiasm," could that have
7	open at that time. But I don't I can't say that	6 7	<u> </u>
8	specifically without looking at the members.	7 8	a lot of enthusiasm," could that have been about whatever deal you may have been discussing at the time?
8	specifically without looking at the members.  Q Okay. What sort of pressure do you	7 8 9	a lot of enthusiasm," could that have been about whatever deal you may have been discussing at the time? THE WITNESS: It could have
8 9 10	specifically without looking at the members.  Q Okay. What sort of pressure do you keep on the reps to sell the deals?	7 8 9 10	a lot of enthusiasm," could that have been about whatever deal you may have been discussing at the time?  THE WITNESS: It could have been about any deal. It could have been
8 9 10 11	specifically without looking at the members.  Q Okay. What sort of pressure do you keep on the reps to sell the deals?  A You know: Stay at work. Come in	7 8 9 10 11	a lot of enthusiasm," could that have been about whatever deal you may have been discussing at the time?  THE WITNESS: It could have been about any deal. It could have been about market conditions in general. It
8 9 10 11 12	specifically without looking at the members.  Q Okay. What sort of pressure do you keep on the reps to sell the deals?  A You know: Stay at work. Come in early. Make your phone calls. Go home. You know,	7 8 9 10 11	a lot of enthusiasm," could that have been about whatever deal you may have been discussing at the time?  THE WITNESS: It could have been about any deal. It could have been about market conditions in general. It could have been about the swearing in of
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	Page 342		Page 344
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	that Mr. Obama did not participate have	2	what the \$2 million being referred to
3	any impact?	3	here was.
4	MR. PAULSEN: I think your	4	MR. NEWMAN: So having looked
5	testimony just was you referred	5	at this string of e-mails, your memory
6	can you read the last response back,	6	is not refreshed as to what the \$2
7	including Mr. Obama in there.	7	million was in reference to?
8	(Whereupon the answer is read	- 8	THE WITNESS: No. Because I
9	back.)	9	don't recall doing an offering for CMS
10	MR. NEWMAN: Is it your	10	or any of its subsidiaries at that time.
11	testimony you don't know what this \$2	11	MR. NEWMAN: So you have no
12	million was in reference to?	12	idea sitting here today what "I need \$2
13	THE WITNESS: Yes.	13	million by 1/30" means?
14	MR. FRANCESKI: Objection;	14	THE WITNESS: That's correct.
15	asked and answered.	15	MR. NEWMAN: You're able to
16	MR. NEWMAN: That's fine.	16	describe for us or explain to us that
17	This is a stream of e-mails,	17	you were able to re-create over 15
18	correct, captioned "Subject, Regarding	18	promissory note agreements four or
19	thoughts."	19	five years after the fact.
20	Do you see that?	20	MR. FRANCESKI: Objection.
21	THE WITNESS: I do.	21	THE WITNESS: Yes. You
22	MR. NEWMAN: All the subject	22	pointed that out earlier.
23	lines say "Thoughts." And it's all in	23	•
24	reference to what? What are all the	24	EXAMINATION
25	e-mails in reference to.	25	BY MR. RATTINER:
	Page 343		Page 345
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	THE WITNESS: Well, the	2	
3	participants in the e-mail string are	3.	Q When did TDMM benchmark close? A December of '09.
4	Bob Haldeman, who is with CMS Financial	4	MR. FRANCESKI: I just want to
5	Services Corp.; David Smith. And David	5	note for the record, not to argue, Mike,
6	then sent it along to a fellow by the	6	with the thrust of your question, but it
7	name of Tim Kolojay and myself.	7	is not unusual to see someone use prior
8	Haldeman is the was at the time the	8	string of e-mails as the a mechanism of
9	co-CEO of CMS, along with Mr. Kolojay.	9	responding which will then carry the
10	David Smith was the chairman of the	10	same re: line but it's not necessarily
11	board of CMS. Any reference to Tim in	11	related to the previous subjects of the
12	these e-mails is a reference to Tim	12	e-mail string.
13	Kolojay, not me. And our involvement	13	I am not suggesting that's
14	with Haldeman over the years had been a	14	what this is, but it's also not unusual.
15	continuing contentious involvement. And	15	BY MR. RATTINER:
16	without reading each of these e-mails, I	16	Q Do you recall any specific deals that
17	would bet that this is further	17	closed on 1/30/2009?
18	discussion of discussion of those	18	A No.
19	contentious matters.	19	MR. RATTINER: Introduce the
20	MR. NEWMAN: Okay. So is it	20	next exhibit. Number 11.
21	possible the \$2 million relates to the	21	(Whereupon Exhibit 11 is
22	Coventry slash CMS offering?	22	marked.)
1	The state of the s	23	BY MR. RATTINER:
23	MIK PKANI PAKI I MEMINI		
23	MR. FRANCESKI: Objection. THE WITNESS: You know as I	1	
23 24 25	THE WITNESS: You know, as I said earlier, I don't know specifically	24 25	Q Mr. McGinn, in front of you is an exhibit, Number 11. It's one page. It's two e-mails

1	Page	346	Page 348
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	in total. The first e-mail is from Timothy McGinn to		the firm. So that I can't answer.
3	Brian Cooper; Tim McGinn and Dave Smith, cc to I		MR. NEWMAN: What was TDM
4	Shea. Subject is Note Terms. And the date is May	ŧ	
5	2009.	5, 4	Cable Funding status on March 19, 2009?
6	A Hm-hm.	6	THE WITNESS: On March 19, 2009?
7	Q Similar to the Exhibit Number 9 we	7	MR. NEWMAN: Yes. \$40,000 was
8	have discussed, is this another loan from one of the	8	sent to TDM Cable Funding March 19th.
9	four LLCs to TDM Cable Funding?	9	THE WITNESS: Oh, I don't
10	A Yes.	10	know.
11	Q And this one you are not aware of	11	MR. NEWMAN: Generally what
12	prior to now?	12	was the firm's financial or the
13	A I didn't remember this one prior to	13	entity's financial condition in the
14	now.	14	
15	Q Okay. What is the current status of	15	first quarter 2009? THE WITNESS: I think in the
16	this loan?	16	first quarter 2009 it was fine. There
17	A I don't know.	17	might have been, you know, timing
18	Q Was it paid back on January 31, 2010?	18	issues. But by and large it was fine.
19	A I don't know.	19	MR. NEWMAN: Did you ask for
20	Q Who would be responsible for ensuring	20	the \$40,000 on behalf of TDM Cable
21	that payment?	21	Funding?
22	A Mr. Smith.	22	THE WITNESS: I may have.
23	Q And what is the current assets of TDM	23	MR. NEWMAN: Why did you ask
24	Cable Funding, liquid assets?	24	for it?
25	A Probably not a lot, probably \$10,000.	25	THE WITNESS: Well, if I asked
	Page	34/	Page 349
1		_	<b></b>
1 -	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	Q So they wouldn't have the 40,000 to	2	for it, there was some need for
3	Q So they wouldn't have the 40,000 to pay?	2 3	for it, there was some need for liquidity.
3 4	Q So they wouldn't have the 40,000 to pay?  A Correct.	2 3 4	for it, there was some need for liquidity.  MR. NEWMAN: What was the
3 4 5	Q So they wouldn't have the 40,000 to pay?  A Correct. Q Do you know if this note was	2 3 4 5	for it, there was some need for liquidity.  MR. NEWMAN: What was the source of capital for TDM Cable Funding
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in March 2009 from a bank or other loan or note agreement that you entered lending facility? loan or note agreement that you entered into on behalf of Mr. McGinn Smith or
21 lending facility? 21 into on behalf of Mr. McGinn Smith or
1
22 THE WITNESS: Do I believe TDM 22 any of its affiliates?
23 could procure such a loan from a 23 THE WITNESS: Mr. Cooper is
24 depository institution? 24 very conscientious in documenting
25 MR. NEWMAN: At this 25 transactions. And to the extent that he
Page 351 Page
1 TIMOTHY MCGINN 1 TIMOTHY MCGINN
2 particular time. 2 is, he maintains a file for these
THE WITNESS: No. 3 financial arrangements.
4 MR. NEWMAN: Was there an 4 MR. NEWMAN: So based on
5 agreement, written loan agreement that 5 practice, if there was a document
was entered into in connection with this 6 associated with a financial arrangement,
7 loan? 7 to use your word, Mr. Cooper would, in
8 THE WITNESS: I don't know. 8 terms of standard practice, usually have
9 MR. NEWMAN: Would Mr. Cooper 9 a copy of that?
have had access to any loan agreements 10 THE WITNESS: I think so, yes.
that were entered into between McGinn 11 MR. NEWMAN: Did Mr. Coope
The state of the s
MR. NEWMAN: So presumably 14 MR. NEWMAN: And prior to that
when he's asking for terms of the loan, 15 he reported to Mr. Rees?
would there be some indication he didn't 16 THE WITNESS: Yes.
have a copy of a loan agreement?  17 MR. NEWMAN: And his duties
THE WITNESS: It would be 18 are to do what, specifically?
indication to me he wanted to enter that 19 THE WITNESS: Mr. Shea is the
into his notes, perhaps in the Quicken 20 chief financial officer of the company.
fields for notes and perhaps have Mr. 21 And Mr. Cooper acts as essentially a
22 Carr draft a note containing those 22 controller.
23 terms. 23 MR. NEWMAN: Is he the one
MR. NEWMAN: Is Mr. Carr 24 that makes the financial entries, Mr.
25 copied on this e-mail? 25 Cooper?

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l l	Page 356
1 TIMOTHY MCGINN 1 TIMOTHY MCGIN	N
2 THE WITNESS: I believe so, 2 THE WITNESS: Mr. S	
3 yes. 3 our personal taxes. He has be	
4 MR. NEWMAN: That would be on 4 engagement partner for the au	
5 behalf of McGinn Smith and all of its 5 McGinn Smith & Company s	
6 affiliates or just certain companies? 6 '80s he may not have been to	
7 THE WITNESS: Correct. 7 engagement partner, but he's	
8 MR. NEWMAN: All its 8 involved in the accounts since	
9 companies? 9 He's had a long history of inv	
THE WITNESS: I think so, yes. 10 with, not only the firm, but th	
11 MR. NEWMAN: Is he involved 11 principal of the firm.	
parallel and the parall	n vou cov "ho
1	
r	
involvement with Mr. Smith's personal  MR. NEWMAN: Does	
accounts or finances? 17 also prepare the tax returns fo	
THE WITNESS: I doubt it. 18 McGinn companies or entities	s or
19 MR. NEWMAN: Does Mr. Shea 19 affiliates?	
20 have any involvement with your personal 20 THE WITNESS: Yes.	
21 accounts or finances? 21 MR. NEWMAN: You	
22 THE WITNESS: No. 22 audited McGinn Smith & Cor	npany since the
MR. NEWMAN: How about 23 late '80s; is that what you said	!?
24 Mr. Smith's? 24 THE WITNESS: Yes.	
25 THE WITNESS: No. 25 MR. NEWMAN: Has	he audited
Page 355	Page 357
1 TIMOTHY MCGINN 1 TIMOTHY MCGINN	
2 MR. NEWMAN: Is that is 2 any other of the McGinn Smith	
3 there anybody within McGinn Smith who 3 entities or affiliates?	i companios,
4 has that function for you? 4 THE WITNESS: First of	fall I
5 THE WITNESS: No. 5 don't think it was he who perfo	
6 MR. NEWMAN: How about 6 audit on McGinn Smith & Cor	
7 Mr. Smith? 7 be the engagement partner, but	
8 THE WITNESS: I doubt it. 8 not do the audit work.	. He did
9 MR. NEWMAN: Does McGinn Smith 9 MR. NEWMAN: His fi	
10 have an outside accounting firm? 10 THE WITNESS: I belie	
13 accounting firm? 13 do that for regulatory purposes	, as you
THE WITNESS: The name of the 14 know.	1
15 firm is Piaker Lyons. They are 15 MR. FRANCESKI: Ho	w do you
domiciled in Binghamton, New York. 16 spell Piaker?	•
17 MR. NEWMAN: Who is the 17 THE WITNESS: Piaker	•
l '	J_S
18 accountant or auditor who has the McGinn 18 P-I-A-K-E-R, Lyons, L-Y-O-N	
18 accountant or auditor who has the McGinn 18 P-I-A-K-E-R, Lyons, L-Y-O-N 19 Smith account? 19 MR. NEWMAN: What	is your
18 accountant or auditor who has the McGinn 19 Smith account? 20 THE WITNESS: I think the 18 P-I-A-K-E-R, Lyons, L-Y-O-N 19 MR. NEWMAN: What 20 involvement in the filing of tax	is your returns
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1	1. Mil	1	
	Page 358		Page 360
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	THE WITNESS: I sign numerous	2	MR. RATTINER: So what are
3	tax returns. I signed a bunch of them	3	they for, what year?
4	last week. I don't sign for the funds	4	THE WITNESS: Probably 2009.
5	for the FIIN, FEIN, TAIN and FAIN.	5	MR. RATTINER: So you think
6	MR. NEWMAN: Who signs those	6	the ones you signed within the last week
7	returns?	7	or so are for 2009?
8	THE WITNESS: Mr. Smith.	8	THE WITNESS: Correct.
9	MR. NEWMAN: Are you given a	9	MR. RATTINER: Do you know
10	copy of those returns?	10	what entities you signed? Are those the
11	THE WITNESS: No.	11	ones that you just discussed?
12	MR. NEWMAN: Tell us what	12	THE WITNESS: I don't. But I
13	returns you sign.	13	can certainly get you a list.
14	THE WITNESS: I sign MS	14	MR. MCCARTHY: Okay. A couple
15	Partners. I may sign McGinn Smith &	15	of times during the course of your
16	Company; McGinn Smith Holdings; M&S	16	testimony, I sense something in your
17	Finance, M&S Financing LLC; McGinn Smith	17	voice when you speak about these four
18	Transaction Funding; Three Rock	18	funds, kind of distancing.
19	Partners; McGinn Smith Acceptance Corp.;	19	Do you have some problem with
20	Seton Hall Associates; JV Associates;	20	the way these four funds were run?
21	Upstate Imaging Associates; TNA	21	MR. FRANCESKI: Objection.
22	Associates. There may be more.	22	You may answer.
23	MR. NEWMAN: Do you want to	23	THE WITNESS: I think that
24	think about it for a second?	24	these funds were run professionally. I
25	THE WITNESS: I am not going	25	think that they were run with thought
20	THE WITNESS. Lam not going	23	unitk that they were run with thought
		L .	
	Page 359		Page 361
1	Page 359 TIMOTHY MCGINN	1	Page 361 TIMOTHY MCGINN
1 2	TIMOTHY MCGINN	1 2	TIMOTHY MCGINN
1	·	I.	-
2	TIMOTHY MCGINN to come up I mean, that's that's	2	TIMOTHY MCGINN and intelligence. And I think the
2 3	TIMOTHY MCGINN to come up I mean, that's that's about what I can recall. There may be	2 3	TIMOTHY MCGINN and intelligence. And I think the results of the funds' investments were
2 3 4	TIMOTHY MCGINN to come up I mean, that's that's about what I can recall. There may be more. I'm just not sure.	2 3 4	TIMOTHY MCGINN  and intelligence. And I think the results of the funds' investments were less than I would have contemplated.
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1	Page 362		Page 364
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	the results of the funds, as is	2	for, that MS Advisors was looking for,
3	Mr. Smith. And I know that he	3	were in the 14-percent range with maybe
4	approached these funds with care, with	4	some equity kickers here and there. And
5	diligence, with integrity; and	5	yet the cost of those funds, unlike
6	unfortunately, we are where we are.	6	other firm's CIT, for instance, who had
7	MR. MCCARTHY: So is it just	7	access to the commercial paper markets,
8	coincidence the entities that you had no	8	the cost of those funds, between
9	part in have appeared to have led to the	9	underwriting, coupons to the three
10	downfall?	10	tranches of the funds, advisory, you
11	MR. FRANCESKI: Objection.	11	know, administerial fees for tax returns
12	Do you understand the	12	and that kind of thing, there was a
13	question?	13	spread there of maybe 250 basis points.
14	THE WITNESS: Is it	14	250 basis points is a great spread if
15	coincidence?	15	you are involved in an asset class
16	MR. FRANCESKI: He's asking,	16	that's of low risk. And clearly the
17	would they have turned out differently	17	asset class that the funds were involved
18	if you were involved?	18	with was not an asset class of low risk.
19	THE WITNESS: I don't think	19	So the higher the risk profile in the
20	so, no. If that's the question, I don't	20	asset class, the greater the spread has
21	think so. Because I would have been	21	to be, because you know you're going to
22	dealing in the same economic environment	22	have some deals that blow up.
23	that Mr. Smith dealt in.	23	So I would have I would
24	I don't think I have any	24	have tempered the activities in that
25	particular insights into the coming	25	particular asset class or or sought
	Page 363		Page 365
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1 I	TIMOTHY MCGINN	1	
1 2	TIMOTHY MCGINN economic events any better than anybody	1 2	TIMOTHY MCGINN
2	economic events any better than anybody	2	TIMOTHY MCGINN significantly higher returns on assets
2 3	economic events any better than anybody else in this room or anybody else on the	2 3	TIMOTHY MCGINN significantly higher returns on assets to grow that spread.
2 3 4	economic events any better than anybody else in this room or anybody else on the street. So no, I don't think it would	2 3 4	TIMOTHY MCGINN significantly higher returns on assets to grow that spread.  MR. MCCARTHY: So the
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	memorandum. I understand the terms. I	2	depending upon the sentiment of the
3	understand the risks. I'm willing to	3	market at the time and the risk aversion
4	assume those risks." 25 times.	4	at the time.
5	The risk factors are complete.	5	MR. MCCARTHY: And the basis
6	They are exhaustive. And when people	6	points spread between a BBB corporate in
7	invest capital and expect a return of	7	2003-2004 in junk would be?
8	ten-and-a-quarter percent when	8	THE WITNESS: BBB is just one
9	completing money market instruments are	9	notch up from junk. So it probably
10	paying two, two-and-a-half percent, you	10	wouldn't have been more than 3- to
11	have to assume that there is a gradient	11	500 basis points. Most of that's
12	not only of return but a gradient of	12	function of liquidity. Because a BBB
13	risk. And that's what we did. And	13	bond and investment grade bond can be
14	that's that's the fact of the matter.	14	purchased by a number of accounts that a
15	Now, getting back to your	15	junk bond can't be purchased by. So
16	question: Would I have done things	16	it's really not a reflection of the
17	differently? Perhaps. But, you know, I	17	credit differential, it's a reflection
18	am not going to speculate what I may	18	of the liquidity differential.
19	have done if I was running these funds.	19	MR. MCCARTHY: So would you
20	I had another job at the time.	20	say that it would be fair to say that a
21	MR. MCCARTHY: During the	21	bond in 2003-2004 that was paying
22	course of the years of 2003 and 2004, do	22	10 percent would have been classified as
23	you recall what what the percentage	23	junk?
24	interest payment for treasury bills was?	24	THE WITNESS: More than
25	THE WITNESS: In 2003 and	25	likely, yes.
-		23	incry, yes.
	Page 367		Page 369
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	2004, short-term bills were trading at 4	2	MR. NEWMAN: Would you
3	1/2 to 5 percent level, maybe 3 1/2 to	3	consider the LLC investments to be
4	5 percent.	4	equivalent of junk bonds?
5	MR. MCCARTHY: What about	5	THE WITNESS: Yes.
6	talk to you about macroeconomics. What	6	MR. NEWMAN: Are you familiar
7	about investment Grade A bond, "A"	7	with suitability suitability
8	corporate bond, do you know what the	8	requirements, generally speaking?
9	interest rate was?	9	THE WITNESS: Generally
10	THE WITNESS: What maturity?	10	speaking, yes.
11	MR. MCCARTHY: Let's go out	11	MR. NEWMAN: What given
12	five years.	12	your experience in the brokerage
13	THE WITNESS: An A-rated bond	13	industry, what type of investor would
14	in 2004 with a five-year maturity was	14	these LLC investments have been suitable
15	probably trading at 6 1/2 percent, 6 to	15	for?
16	6 1/2 percent.	16	THE WITNESS: As stated in the
17	MR. MCCARTHY: Okay. What	17	offering document, they would have been
18	about junk?	18	suitable for a sophisticated investor
19	THE WITNESS: Well, junk bonds	19	who could afford to lose his investment,
20	have had an interesting history in that	20	who didn't have any lifestyle
21	the spread over treasuries has expanded	21	requirement that caused him to depend
22	and contracted quite violently over the	22	upon the return from these investments,
23	years. And that spread has run anywhere	23	who had sufficient liquidity in other
24	from 400 basis points to a thousand	24	aspects of their financial portfolio to
	basis points, depending upon	25	withstand a loss that might be taken on
25	vasis bullis, depending about	140	WILLISTATION A 1088 MAETHIRE DE TAKEN ON

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
	these investments.	2	subordinate tranche and a junior
3	MR. NEWMAN: We have seen a	3	tranche.
ŀ	number of the agreements questionnaires	4	The senior tranche, I believe,
	that were completed by investors who	5	had a maturity of one year. And I would
	were in their 70s, 80s 70s and 80s.	6	characterize that as short term. The
	I think there's even some 90-year old	7	senior subordinate tranche had a
	investors who invested in the LLCs.	8	maturity of three years, and I would
9	Generally speaking, is that	9	characterize that as short to
		10	intermediate term. The junior tranche
	would this be an appropriate investment	11	
	for someone that age?		had a maturity of five years, and I
12	MR. FRANCESKI: Objection. Is	12	would characterize that as intermediate
	that the only factor you're putting in,	13	to long.
	the age? That's a question?	14	MR. NEWMAN: Are you familiar
15	MR. NEWMAN: That's the	15	with McGinn Smith's new account form?
	question.	16	MR. FRANCESKI: Again
17	MR. FRANCESKI: Factor is age.	17	MR. NEWMAN: The clearing
18	THE WITNESS: I understand. I	18	firm.
i	don't think that the matrix of	.19	MR. FRANCESKI: NFS
4	suitability would be a one-element	20	version?
	matrix: age. If a person was 80-years	21	MR. NEWMAN: NFS. The one the
	old and had significant resources and	22	clearing firm provided to McGinn Smith.
23	significant liquidity, sure. If a	23 ·	THE WITNESS: No.
24	person was 60-years old and did not have	24	MR. NEWMAN: Are you familiar
25	significant resources or sophistication	25	with the new account forms in general?
	Page 371		Page 373
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	or other income, then the answer would	2	THE WITNESS: Generally. I
I.	be no.	3	mean, I haven't opened a new account
4	So it's not an answer that's	4	probably since 1998, so I am not I am
5	in my opinion any way dependent solely	5	not enmeshed or involved in that area of
1	upon age or any other one particular	6	the business where, you know, I do
L	item.	7	conduct a retail trade.
8	MR. NEWMAN: Fine. Would you	8	MR. NEWMAN: You're a
	consider this to be a short-term or	9	
	long-term investment, the LLC	10	securities principal? THE WITNESS: I am a
	investment?	11	principal, yes.
12	MR. FRANCESKI: Well, I think	12	
	*	13	MR. NEWMAN: How long have you
	you need to be a little more specific,	!	held your principal's license?
	because there were three tranches with	14	THE WITNESS: Since 1980.
l .	different maturities.	15	MR. NEWMAN: Are you aware
16	MR. NEWMAN: Are you familiar	16	that generally speaking most new account
1	with the three tranches?	17	forms have an investment objective that
18	THE WITNESS: I am.	18	has to be designated on the new account
19	MR. NEWMAN: So what in	19	form?
1	terms of the three tranches, how would	20	THE WITNESS: Of course.
	you characterize each of the tranches	21	MR. NEWMAN: Typically three
	from a short-term, long-term investment	22	of the items or potential objectives are
	, , , ,		
ĺ	perspective, time horizon?	23	growth, income, and speculation?
	,	23 24	

		I	
1	Page 374		Page 376
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	one or two more, but those are the	2	testimony, you seem to acknowledge there
3	typical ones?	3	are a lot of factors that go into a
4	THE WITNESS: Correct.	4	suitability determination
5	MR. NEWMAN: Do you agree with	5	THE WITNESS: Yes.
6	that statement?	6	MR. NEWMAN: of this
7	THE WITNESS: I do.	7	magnitude?
8	MR. NEWMAN: Where in those	8	THE WITNESS: Yes.
9	objective investments would you classify	9	MR. NEWMAN: Someone who
10	the LLC investments?	10	invested a substantial amount of money
11	THE WITNESS: I would say that	11	into an LLC investment like this.
12	the senior tranche is clearly on the	12	THE WITNESS: Yes.
13	income side. The senior subordinate	13	MR. FRANCESKI: You mean like
14	would be also income. And because the	14	the FINRA rules indicate, Mike?
15	junior tranche is junior, I would say	15	MR. NEWMAN: Is that an
16	that would be a mix of income, maybe	16	objection or comment?
17	70 percent. Speculative speculative	17	MR. FRANCESKI: Just a
18	income 30 percent.	18	
19	•	19	Would you like me to site the
20	MR. NEWMAN: Are you familiar	20	Would you like me to cite the
	with the term "accredited investor"?	į.	rule?
21	THE WITNESS: I am.	21	MR. NEWMAN: I'm sorry?
22	MR. NEWMAN: Are you aware	22	MR. FRANCESKI: Do you want me
23	there were non-accredited investors who	23	to cite the rule?
24	invested in the LLC?	24	MR. NEWMAN: Would you agree
25	THE WITNESS: Yes.	25	that from a supervisory standpoint if
	Page 375		Page 377
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. NEWMAN: How do you know	2	somebody has been a principal in the
3	that?	3	securities industry for a number of
4	THE WITNESS: Because I have	4	years, would you agree that it's
5	been told that by Mr. Smith.	5	important to know from a supervisory
6	MR. NEWMAN: That's the source	6	standpoint when you were reviewing an
7	of that knowledge?	7	investment in a product like this, you
8	THE WITNESS: That's right.	8	would want to know as a supervisor, a
9	MR. NEWMAN: Are the LLCs an	9	set of detailed information so you can
10	appropriate investment suitable	10	make an assessment whether or not the
11	investment for a non-accredited	11	investment is suitable for the
12	investment for a non-accredited	12	particular customer who is investing?
13	THE WITNESS: It could be.	13	MR. FRANCESKI: Could I hear
14		13	
15	MR. NEWMAN: Can you explain	15	that read back? That was kind of a long
	that?	i	one.
16	THE WITNESS: Depending upon	16	(Whereupon, question is read
17	the number of dollars being invested;	17	back.)
18	the financial resources of that	18	MR. FRANCESKI: Objection to
19	particular investor away from the funds;	19	form.
20	the income requirements to support a	20	But just to place the
21	lifestyle for that particular investor;	21	objection on the record, I want the
22	I think an unaccredited investor in	22	witness to focus on I think you do,
23	those instances would be a suitable	23	too, Mike the word "supervisor."
24	investment.	24	MR. NEWMAN: That's what I
25	MR. NEWMAN: Just by your	25	said, "as supervisor."

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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. FRANCESKI: As a	2	were reviewed by the appropriate parties
3	supervisor?	3	at McGinn Smith and dealt with
4	MR. NEWMAN: Right. As a	4	accordingly.
5	supervisory person.	5	MR. MCCARTHY: Someone who is
6	THE WITNESS: Yes.	6	retired and is living on their
7	MR. NEWMAN: Would you agree	7	investment income, maybe with a little
8	that in order to supervise the	8	bit of Social Security help, what would
9	suitability of a recommendation made	9	be the percentage of their portfolio
10	involving investments of this nature, an	10	that you would recommend for this type
11	LLC private offering, that the	11	
12	<del>-</del>	12	of investment, specifically investments in LLCs?
13	supervisor needs to have a certain set	13	
14	of information to supervise and assess	14	MR. FRANCESKI: If they're
	the suitability recommendation made by	15	living on the investment income?
15	the broker?	1	MR. MCCARTHY: That's correct.
16	THE WITNESS: Yes.	16	THE WITNESS: Well, if I were
17	MR. NEWMAN: What set of	17	if I were the signatory
18	information would you need to know to	18	MR. MCCARTHY: As principal of
19	supervise that recommendation?	19	McGinn Smith, what would you
20	MR. FRANCESKI: Objection.	20	THE WITNESS: You know what,
21	You can answer.	21	it depends whether or not that investor
22	THE WITNESS: Net worth,	22	had a hundred thousand dollars to invest
23	income, anticipated liquidity needs,	23	or ten million dollars to invest.
24	investment experience; whether or not	24	MR. MCCARTHY: Let's pretend
25	the investor is relying upon an advisor,	25	here. Let's say they have a half a
	Page 379		Page 381
1 1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
1 2	TIMOTHY MCGINN  if so, who that advisor is, what are	1 2	TIMOTHY MCGINN
2	if so, who that advisor is, what are	2	million dollars.
2 3	if so, who that advisor is, what are their credentials; the ability of the	2	million dollars. THE WITNESS: Half a million
2 3 4	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if	2 3 4	million dollars. THE WITNESS: Half a million dollars. Okay. Let me ask you some
2 3 4 5	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.	2 3 4 5	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you
2 3 4 5 6	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk	2 3 4 5 6	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.
2 3 4 5 6 7	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk tolerance?	2 3 4 5 6 7	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.  MR. MCCARTHY: Okay.
2 3 4 5 6 7 8	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk tolerance?  THE WITNESS: Sure.	2 3 4 5 6 7 8	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.  MR. MCCARTHY: Okay.  THE WITNESS: What other
2 3 4 5 6 7 8 9	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk tolerance?  THE WITNESS: Sure.  MR. NEWMAN: You would also	2 3 4 5 6 7 8 9	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.  MR. MCCARTHY: Okay.  THE WITNESS: What other income do they have apart from what the
2 3 4 5 6 7 8 9	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk tolerance?  THE WITNESS: Sure.  MR. NEWMAN: You would also want to know their investment	2 3 4 5 6 7 8 9	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.  MR. MCCARTHY: Okay.  THE WITNESS: What other income do they have apart from what the half a million dollars is going to
2 3 4 5 6 7 8 9 10	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk tolerance?  THE WITNESS: Sure.  MR. NEWMAN: You would also want to know their investment objectives?	2 3 4 5 6 7 8 9 10	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.  MR. MCCARTHY: Okay.  THE WITNESS: What other income do they have apart from what the half a million dollars is going to produce?
2 3 4 5 6 7 8 9 10 11	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk tolerance?  THE WITNESS: Sure.  MR. NEWMAN: You would also want to know their investment objectives?  THE WITNESS: Of course.	2 3 4 5 6 7 8 9 10 11	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.  MR. MCCARTHY: Okay.  THE WITNESS: What other income do they have apart from what the half a million dollars is going to produce?  MR. MCCARTHY: Social
2 3 4 5 6 7 8 9 10 11 12 13	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk tolerance?  THE WITNESS: Sure.  MR. NEWMAN: You would also want to know their investment objectives?  THE WITNESS: Of course.  MR. NEWMAN: Anything else you	2 3 4 5 6 7 8 9 10 11 12	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.  MR. MCCARTHY: Okay.  THE WITNESS: What other income do they have apart from what the half a million dollars is going to produce?  MR. MCCARTHY: Social Security.
2 3 4 5 6 7 8 9 10 11 12 13	if so, who that advisor is, what are their credentials; the ability of the investor to sustain the losses; and if so, at what level.  MR. NEWMAN: The risk tolerance?  THE WITNESS: Sure.  MR. NEWMAN: You would also want to know their investment objectives?  THE WITNESS: Of course.  MR. NEWMAN: Anything else you can think of?	2 3 4 5 6 7 8 9 10 11 12 13	million dollars.  THE WITNESS: Half a million dollars. Okay. Let me ask you some questions if I may in order to give you an answer.  MR. MCCARTHY: Okay.  THE WITNESS: What other income do they have apart from what the half a million dollars is going to produce?  MR. MCCARTHY: Social Security.  THE WITNESS: 24,000 a year?
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		1	
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	dollars, and the other income is Social	2	investor questionnaire or through
3	Security.	3	conversations with the client's broker,
4	THE WITNESS: What are his	4	who is rule 405 is charged with the
5	lifestyle demands? How much money does	5	notion of knowing your customer.
6	he need to support his lifestyle?	6	MR. MCCARTHY: Rule 3010 says
7	MR. MCCARTHY: I don't know.	7	you have to supervise too.
8	THE WITNESS: That's a key	8	Are you going to go rule for
9	question. That's a key matrix. If he	9	rule? That's a New York Stock Exchange
10	plays a lot of golf, belongs to a fancy	10	rule.
11	country club, he may need more money.	11	Are you guys a member of the
12	But ordinarily, I would say	12	stock exchange?
13	that in that instance I would not	13	THE WITNESS: No.
14	probably exceed 25 percent of that	14	MR. MCCARTHY: Then that may
15	money. And I would spread that out over	15	not be as germane.
16	the senior or the senior subordinated in	16	Where on the investor
17	the junior, and that spread would	17	questionnaire for these four LLCs does
18	probably be 50-30-20.	18	it give a history of the other holdings
19	MR. MCCARTHY: What are the	19	for the investor?
20	factors you would want to know?	20	THE WITNESS: I don't know.
21	THE WITNESS: Well, as I said,	21	MR. MCCARTHY: Does it?
22		22	THE WITNESS: I don't know.
23	I would want to know what his lifestyle	23	
10	demands are. I would want to know if he	l .	MR. MCCARTHY: Do any of your
24	had any looming liquidity needs that	24	previous private placements give you a
25	could be identified. I would want to	25	history of the holdings of the
	Page 383		Page 385
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	know what kind of health he was in. I	2	customers?
3	would want to know what kind of	3	MR. FRANCESKI: For clarity,
4	healthcare insurance he might carry to	4	Bob, holdings at McGinn Smith or holding
5	address any health concerns. I would	5	anywhere?
6	want to know if he had any particular	6	THE WITNESS: I think there's
7	needs to support children or	7	a line on the questionnaire that asks
8	grandchildren.	8	the size of their investment portfolio,
9	MR. MCCARTHY: Would you want	l .	and the or mit and the polition,
	TAILC TAIC LITE . WOULD WITH	19	and have they had any experience in
		9	and have they had any experience in investments in this particular asset
10	to know what other investments he had?	10	investments in this particular asset
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10 11 12	to know what other investments he had? THE WITNESS: Sure. MR. MCCARTHY: Would you want	10 11 12	investments in this particular asset class.  MR. MCCARTHY: I think you
10 11 12 13	to know what other investments he had? THE WITNESS: Sure. MR. MCCARTHY: Would you want to know what other investments he had in	10 11 12 13	investments in this particular asset class.  MR. MCCARTHY: I think you might be mistaken as far as their
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1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	million dollars' net worth but most of	2	MR. MCCARTHY: Did you have
3	it was there house?	3	any specific conversations regarding
4	MR. FRANCESKI: Objection.	4	suitability with the registered
5	You may answer.	5	representative?
6	MR. MCCARTHY: Asking for	6	THE WITNESS: Relative to
7	personal knowledge.	7	these transactions?
8	THE WITNESS: I'm sure that I	8	MR. MCCARTHY: Yes.
9	knew people who had million-dollar net	9	THE WITNESS: No.
10	worths and that million-dollar net worth	10	MR. MCCARTHY: As a principal
11	was comprised largely of their real	11	of McGinn Smith, do you know if there
12	estate.	12	was any procedure in 2003 or 2004 that
13	I also knew a number of people	13	would have documented such a review?
14	who had substantially higher net worths	14	THE WITNESS: No.
15	with a substantially lower portion of	15	MR. FRANCESKI: Earlier in a
16	their net worth being comprised of	16	series of questions the term "junk bond"
17	residential real estate.	17	was used. Do you recall that?
18	MR. MCCARTHY: And in a figure	18	THE WITNESS: I do.
19	that says net worth \$1 million, how do	19	MR. FRANCESKI: And that has
20	you know the difference?	20	some pejorative ring to it. Are you
21	THE WITNESS: Yell, if the	21	familiar with the term "high yield
22	answer is just net worth without any	22	bond"?
23	reference to the makeup of that net	23	THE WITNESS: I am.
24	worth, then you wouldn't know the	24	MR. FRANCESKI: Do you equate
25	difference.	25	high yield and junk bond as the same
	Page 387		Page 389
	_	1	_
1	TIMOTHY MCGINN	1	TIMOTHY MCGINN
2	MR. MCCARTHY: So if I	2	thing?
3	wouldn't know the difference, how do I	3	THE WITNESS: I do.
4	make a suitability determination if I am	1 -	MR. FRANCESKI: That's it.
5	a principal?	5	(Whereupon a recess is taken.)
6	THE WITNESS: Well, as I said	6	BY MR. RATTINER:
7	earlier, there are two levels of	7	Q We are back on the record. We have a
8	information input here.	8	few more questions. And I think we are coming down
9	The first level is from the	9	the home stretch here.
10	broker. And the sort of the First	10	Question with regard to Exhibit
12	Line of communication is with the	11	Number 11 real quick.
13	customer. And the presumption is that	13	Was this \$40,000 used to pay investor
14	the broker has some incremental	13	interest?
15	knowledge of what that investor's	15	A It may have been.
16	financial profile looks like.	16	Q Was there an interest payment due at the end of March?
17	MR. MCCARTHY: As a principal,	17	Ì
18	would you have that conversation with	18	
19	the broker?	19	Q Okay. That's all I have with that.
20	THE WITNESS: I would, yes.	20	And as far as you know, has there
21	MR. MCCARTHY: As a principal	21	been has any McGinn Smith entity or affiliate
22	at McGinn Smith, do you believe Mr. Smith had that conversation with the	22	borrowed money from a financial institution yes or
23	broker?	23	no, first. Sorry.  MR. FRANCESKI: I'm sorry?
24	THE WITNESS: I don't know for	24	MR. FRANCESKI: 1m sorry? BY MR. RATTINER:
25		25	
	sure, but I guess that he did.	1 43	Q Has any McGinn Smith entity or party

	Page 390	Page 392
1	TIMOTHY MCGINN	1 I, S. Arielle Santos, C.S.R., a Certified Shorthand
2	borrowed money from a financial institution; i.e., a	2 Reporter do hereby certify:
3	bank?	3 That prior to being examined, the witness named in the
4	A Yes.	4 forgoing deposition, was by me duly sworn to testify the
5	Q And let's take down year by year.	5 truth, the whole truth, and nothing but the truth.
6	When was the last time that happened?	6 That said deposition was taken before me at the time
7	MR. FRANCESKI: Any McGinn	7 and place set forth and was taken down by me in shorthand and
8	Smith entity?	8 thereafter reduced to computerized transcription under my
9	BY MR. RATTINER:	9 direction and supervision, and I hereby certify the foregoing
10	Q Or affiliate.	10 deposition is a full, true and correct transcript of my 11 shorthand notes so taken.
11	MR. FRANCESKI: Got that?	12 I further certify that I am neither counsel for nor
12	THE WITNESS: The last year	13 related to any party to said action nor in anywise interested
13	that that was done, I don't know. I	14 in the outcome thereof.
14	don't know. Not in the recent past,	15
15	that's for sure.	16
16	BY MR. RATTINER:	S. Arielle Santos
17	Q Since the time you have been back?	17 Certified Shorthand Reporter
18	A No.	18
19	Q So prior to 2003?	19
20	A Correct.	20
21	Q Okay.	21
22	MR. NEWMAN: I don't have	22
23	anything else at this point.	23
24	MR. FRANCESKI: I have one	24
25	clarifying question.	25
	Page 391	
1	TIMOTHY MCGINN	
2	Mr. McGinn, there were a	
3	series of questions earlier in which you	
4	were asked about labels, such as, income	
5	growth speculative speculation from	
6	new account form.	
7	Do you recall those questions?	
8	THE WITNESS: I do.	
9	MR. FRANCESKI: Do you recall	
10	in the prospectus and/or subscription	
11	agreement how the LLC notes were	
12	classified?	
13	THE WITNESS: In each case the	
14	offering document described the	
15	investment of a speculative nature.	
16	MR. FRANCESKI: That's all.	
17	MR. RATTINER: That concludes	
18	today's record. Obviously, reserve the	
19	right to call you back or ask additional	·
20	questions.	
21	We don't have any questions at	
22	this time. And we are going off the	
23	record.	
24	(Whereupon OTR Concluded at	
25	4:01 p.m.)	