BEFORE THE FINANCIAL INDUSTRY

REGULATORY AUTHORITY

In the Matter of

MCGINN SMITH & COMPANY

20090179845

VOLUME II

INVESTIGATIVE TESTIMONY OF

TIMOTHY MCGINN

WOODBRIDGE, NEW JERSEY

FEBRUARY 4, 2010

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Continued Investigative testimony of TIMOTHY MCGINN, taken at FINRA, 581 Main Street, 7th Floor, Woodbridge, New Jersey, on February 4, 2010, commencing at 9:30 a.m.

APPEARANCES:

BY - CHRISTOPHER RATTINER
BY - STEVEN ROWEN
BY - MICHAEL NEWMAN
BY - MICHAEL PAULSEN
BY - ROBERT MCCARTHY
FINRA
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095
Representing FINRA.

BY - DAVID FRANCESKI, JR., ESQ.
STRADLEY, RONON, STEVENS & YOUNG LLP
2600 One Commerce Square
Philadelphia, Pennsylvania 19103
Tel: 215-564-8000
Representing Witness.

ALSO PRESENT:
JOSEPH CARR

E X A M I N A T I O N S

E X H I B I T S - RETAINED

TIMOTHY MCGINN
TIMOTHY MCGINN, Having been previously sworn, Testifies as follows:

EXAMINATION
BY MR. RATTINER:
Q We are back on the record. Mr. McGinn -- today is February 4th.
Mr. McGinn, who is Jeffrey Few?
A Jeffrey Few is a gentleman who used to work for me at Integrated Alarm Services Group.
MR. FRANCESKI: What is the spelling on that last name?
THE WITNESS: F-E-W.
BY MR. RATTINER:
Q And why would he receive a loan from TDM Cable?
A Mr. Few was in the central station monitoring business, and it was a startup business after IASG was sold to Protection 1, and he had some working capital issues, and we lent him, I think, $20,000.
Q Was that to him personally; does he own an entity?
A He does own the entity, yes.

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Q What's the entity?

A It's called Legacy Monitoring.

Q And what were the terms of that note?

A It was a demand note, and 10 percent interest.

Q And who is Mr. Cornacchia?

A Mr. Cornacchia is an investor, and been an investor of the firm for probably 15 years.

Q And what is he invested in, which entities?

A He invested in many of our Alarm Trusts, basically just Alarm Trusts over the years.

Q And do you have a business partnership with him?

A I have a partnership with him that is not currently active.

Q And what was that?

A It was a horse breeding operation.

Q Did you raise any funds for that operation?

A I did not.

Q How about Mr. Cornacchia?

A He did not.

Q Okay. Did CCV pay an advisory fee to

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McGinn Smith or any entities affiliated with McGinn?

MR. FRANCESKI: What is the entity?

MR. RATTINER: CCV.

THE WITNESS: There were small fees paid to myself and Mr. Smith. And there may have been a small fee paid to McGinn Smith & Company.

BY MR. RATTINER:

Q And what was that for?

A It was for the organization, negotiation and the continuing management oversight of the business.

Q Now, why is there an advisory fee and then also loans being taken from the same entity?

A Well, the advisory fee would go to McGinn Smith & Company if there was such a fee. And the loans would have gone to Mr. Smith and myself.

Q And in addition to any funds that were raised, there would also be an underwriting fee?

A There were no funds raised. The firm did not -- did not raise by offering any funds for CCV.

Q How did CCV get their funds?

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A CCV borrowed funds from McGinn Smith Transaction Funding; may have borrowed funds from McGinn Smith Funding LLC; and there were three or four private notes sold to investors.

Q What do you mean by private notes?

A Just -- we offered a short-term note, maturing generally between six and twelve months to, I think, three or four investors.

Q And what is the current status? Have the notes matured?

A They have not matured.

Q When are they due?

A Anywhere from April to December 2010.

Q And how much was the total raised, the three or four notes?

A 275; 300,000.

MR. NEWMAN: Cumulatively or individually?

THE WITNESS: Cumulatively.

MR. NEWMAN: Was there a memorandum given to them?

THE WITNESS: It wasn't a memorandum. It was more of a business plan presented to them.

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MR. NEWMAN: Are they accredited investors?

THE WITNESS: Yes.

MR. NEWMAN: Did they complete any documentation indicating they had that status?

THE WITNESS: They had completed that documentation in previous transactions. They had all been investors in various transactions that we had done over the years.

BY MR. RATTINER:

Q Who are the three or four investors?

A Mr. Monassi, Mr. Rabinovich, Mr. Cohen, and I don't recall the fourth name.

Q Is Mr. Rabinovich the father of one of the reps?

A Yes.

Q And what is the current assets of CCV liquid assets of CCV?

A $15,000.

Q How is the payment going to be made in April?

A Well, we are marketing cabins in a

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ship that has been chartered, and we anticipate revenue from passenger payments.

Q And the ship that has been chartered has been fully paid for?

A Not yet.

Q How much is owed on that ship?

A Roughly $175,000.

Q And where is that money going to come from?

A Either passenger revenues or other investments by myself or Mr. Smith or some of the four parties that I have mentioned to date.

Q You mentioned yesterday that in association with the loans that were taken from TDM and/or CCV, either via note -- promissory note created?

A Yes.

Q Was that done in all instances?

A It probably was not done in all instances. It was certainly recorded as such in all instances.

Q And did you take any loans via promissory note in 2009?

A Most likely, yes.

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Q And when would that have been seasonally?

A Oh, I don't know. I mean, it could have been -- it would have been probably in the first six months of the year.

Q Okay. And have you signed any promissory notes in the last half of the year in 2009?

A No.

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 in 2006?

THE WITNESS: That is correct.

MR. NEWMAN: Why were they

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executed three years later?

THE WITNESS: We -- when the question was asked, we looked in our files, we couldn't find them. So we wanted to memorialize the economic event, and so we created the notes and executed them at that time.

BY MR. RATTINER:

Q That was the question asked by FINRA?

A Yes.

Q When were those notes dated?

A I don't know that they were dated. I don't know if there was a particular date on that note.

Q Do you normally not date a document when you sign it?

A Sometimes yes, sometimes no.

Q In addition to the notes that we are talking about from October 2006, were there other notes that you signed on a similar today in November 2009 for previous loans?

A I don't recall signing any other notes on that particular day.

Q How about within

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November/December 2009?

A There may have been.

Q Do you recall signing upwards of 15 notes in November/December 2009 total?

A I signed a number of notes in 2009.

Q In November/December?

A Yes.

Q In response to FINRA's request?

A Yes.

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.

A (Reviewing).

MR. FRANCESKI: Exhibit 3 is just --

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MR. RATTINER: I'm sorry, I'll read into the record.

Exhibit Number 3 is a promissory note dated -- on the document is dated October 2, 2006, in the amount of $352,341; and it was for value received by Mr. Timothy McGinn.

THE WITNESS: (Reviewing).

BY MR. RATTINER:

Q Was this one of the notes we have just referenced a minute ago?

A Yes.

Q Let's start on page 4. Can you just read into the record the last paragraph.

A The last paragraph?

Q Yes, please.

A "In witness whereof this note has been executed, delivered on the date specified above by the duly authorized representative of the maker."

Q And if we go to page 1 at the top of the document, can you read the date on there?

A October 2, 2006.

Q Was this signed on October 2, 2006?

A No.

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Q And why was that?

A As I indicated earlier, we didn't find the note. We wanted to memorialize this financial arrangement, which was entered into our books accordingly. And this October 2, 2006 really should have said "as of October 2, 2006."

Q In response to the 8210 request that the Staff had provided, did you indicate to the Staff that this note was not signed as it was dated?

A No.

Q And why was that?

A I didn't think it was material.

Q That's not a material fact?

A I didn't think it was a material fact.

MR. NEWMAN: This was signed in November 2009?

THE WITNESS: That is correct.

MR. NEWMAN: Was there ever a promissory note that was prepared and signed in October 2006?

THE WITNESS: We could not find any promissory note that would have been signed in 2006.

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MR. NEWMAN: So does that mean there was never one prepared in October 2006?

THE WITNESS: You know what, I don't know if one was prepared, but I certainly couldn't produce one.

MR. NEWMAN: Well, this is for $350,000. Is it your custom and practice to engage in transactions of this magnitude without any documentation?

THE WITNESS: Well, there -- I would argue that there was an entry made into the books and records of TDM Cable Funding which recognized this amount and comparable amounts to both Mr. Smith and Mr. Rogers, as of that date, as loans.

MR. NEWMAN: Okay. I'm asking you about the actual underlying documentation, not an accounting entry.

Is it your practice to engage in transactions of this magnitude without documentation?

MR. FRANCESKI: Let me -- I

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think I know what you are asking, but let's be specific. When you say "underlying documentation," because the witness' answer to that was the accounting entry is the -- part of the underlying documentation. I don't know where you want to go with that, but...

MR. NEWMAN: This is a promissory note, right?

THE WITNESS: That's what it is.

MR. NEWMAN: And so essentially what I'm asking, is it your practice to engage in oral promissory notes without a written promissory note?

THE WITNESS: Our business is largely done on an oral basis.

MR. NEWMAN: Would that include $350,000 promissory notes?

THE WITNESS: It would.

BY MR. RATTINER:

Q When the staff was at the firm in October, I believe it was 2009, we had asked whether or not promissory notes existed.

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Do you recall what your response was at that time?

A I don't recall what my response was.

Q Who created this document?

A This would have been created by Mr. Carr.

Q Okay. I am going to use an approximate number. There are approximately somewhere between 12 and 20 of these documents produced to the Staff.

Are there other documents that were not produced to the staff that would have fallen under the same category?

MR. FRANCESKI: Hold on. When you say as a predicate to that question there were -- did you say 12 to 20?

MR. RATTINER: I could count them.

MR. FRANCESKI: My only concern, you said "these documents," and I don't know if you mean Timothy McGinn notes or notes or --

MR. RATTINER: Sure. I will qualify.

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BY MR. RATTINER:

Q In terms of -- I guess the Staff requested all promissory notes for certain entities at the time via 8210.

And in response to that request, the firm provided us with the promissory notes for -- mainly -- Mr. McGinn, mainly for two entities, which would be TDM Cable Funding and CCV.

Are there other documents outside of TDM Cable Funding and CCV that would have fallen under the same category where a note was produced and signed after the promissory note was actually transacted?

A Yes.

Q What would that be?

A I don't know specifically.

Q And how many of those?

A I have no idea.

Q And where would those reside?

A My guess is you have a copy. And my guess is that we have a copy at 99 Pine Street.

Q Away from the ones that were provided to the Staff. The Staff has TDM Cable and CCV.

Away from those two entities and

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those loans, are there other loan documents that were created in or around November 2009?

A Yes.

Q That were signed by yourself?

A Correct.

Q What entities?

A I don't have a list of those entities. They may have included a thing called NEI Capital.

Q Any others?

A MS Funding LLC. And there may have been others. I can't recall specifically at the moment.

Q And can you -- what is NEI Capital?

A NEI Capital is an entity that was created in late 2008 to effect an alarm -- security alarm transaction.

Q And who owns it?

A It is owned by McGinn Smith Holdings.

Q And did they do a raise?

A I'm sorry?

Q Did they do a raise of funds?

A I would say October 2008.

Q And how much was raised?

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A $2 million.

Q And did any of the four note entities, LLCs, loan money to NEI?

A No.

Q And what is the current status of that $2 million?

A It's outstanding.

Q And what was the maturity date; was it a note?

A No. It was a securitization. It had an amortization schedule. And I think the amortization schedule goes out for five years.

Q Are there interest payments in between or no?

A Oh, sure, monthly payments.

Q Monthly?

A Yes.

Q How is the status?

A It's current within 60 days.

Q And how is the future status, I will say within the next three months?

MR. FRANCESKI: To the extent he can foresee the future.

MR. RATTINER: Correct.

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THE WITNESS: Payments will continue to be made for the next three months.

BY MR. RATTINER:

Q And in addition to NEI and MS funding LLC, you are not aware of any others that you recall as we sit here today?

A Correct.

Q And at whose direction did you sign these notes?

A At whose direction?

Q If any?

A No one, no one in particular.

Q Did you date any of the notes that you signed in November 2009?

A Well I don't know.

MR. FRANCESKI: I take it, Chris, you mean did he put a date next to his signature?

MR. RATTINER: Correct. Right. All of the notes obviously have a date embroiled on the document.

MR. FRANCESKI: Did you understand the question that way?

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THE WITNESS: Yes.

MR. ROWEN: Excuse me. Outside of the $2 million raise in October 2008, what other entities invested in NEI?

THE WITNESS: We did that transaction as a joint venture with a firm called Fall Circle Funding out of Westchester, New York.

MR. ROWEN: Is that a broker-dealer?

THE WITNESS: It is a hedge fund.

MR. ROWEN: Did any entities that you have any affiliation with loan money to NEI?

THE WITNESS: There may have been a bridge loan until the transaction was -- until the capital raise was completed. And I can't tell you who that was from. I don't believe it was from any of the four funds: The FIN, FEIN, FAIN, TAIN.

MR. ROWEN: When was that

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done?

THE WITNESS: If it was done, it would have been done in the October 2008 time frame.

BY MR. RATTINER:

Q What was NEI's financial viability in October 2008?

A It was a newly-formed entity.

Q Did it have any revenues?

A No. It was a single-purpose entity.

Q And how about now, do they have any revenues currently?

A It remains a single-purpose entity.

Q What do you mean?

A The revenues come from the portfolio of assets that were purchased. And that revenue stream is probably $1.2 million annually.

Q How much of the $2 million went to purchasing assets?

A Roughly 60, 65 percent.

Q And what about the rest?

A It was -- they were, those funds were used to make loans to myself, Mr. Smith and Mr. Rogers.

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Q And those loans were approximately 600,000, 200 each or...

A I would guess probably somewhere between 600 and 800,000.

MR. NEWMAN: Those loans were made when?

THE WITNESS: They would have been made in that same time frame, October/November 2008.

MR. NEWMAN: What is the interest rate?

THE WITNESS: Somewhere between 3 and 6 percent.

MR. NEWMAN: Between 3 and 6 percent?

THE WITNESS: Hm-hm.

MR. NEWMAN: How is that interest rate negotiated and arrived at?

THE WITNESS: It wasn't negotiated. It was arbitrary.

MR. NEWMAN: And who selected -- who made the determination on what the interest was going to be?

THE WITNESS: I did.

MR. NEWMAN: Has the loan been repaid?

THE WITNESS: No.

MR. NEWMAN: When are the payments due?

THE WITNESS: Typically these loans have anywhere from a five to seven year maturity.

MR. NEWMAN: Why is that?

THE WITNESS: It is the way we have done it.

MR. NEWMAN: Is that the customary practice?

THE WITNESS: It has been our customary practice, yes.

MR. NEWMAN: And you're receiving a loan -- I'm sorry. What is the entity who is issuing the loan?

THE WITNESS: NEI.

MR. NEWMAN: And what is your position with NEI?

THE WITNESS: Probably managing member.

MR. NEWMAN: So you're lending

money to yourself?

THE WITNESS: Correct.

MR. NEWMAN: Determining the interest rate, determining when the loan is going to be repaid, and typically it's five to seven years after you get the money?

THE WITNESS: Correct.

MR. ROWEN: Did you anticipate this loan at the time the NEI Capital raise through the broker-dealer was being conducted?

THE WITNESS: Yes.

MR. ROWEN: Was that disclosed -- was the loan disclosed to the potential investors in NEI Capital in the private placement memorandum?

THE WITNESS: No. As I testified yesterday, we disclosed the total acquisition cost, which included the loan proceeds.

MR. ROWEN: Did it specify the loan proceeds?

THE WITNESS: It did not.

MR. NEWMAN: Why isn't that disclosed to the investors?

THE WITNESS: It wasn't disclosed to the investors for basically the reason that the total transaction, the total cost of the transaction, including compensation for these loans, was an aggregate number; and that's what was disclosed.

MR. NEWMAN: How does that loan that's payable in five to seven years benefit the investors?

THE WITNESS: How does it benefit the investors?

MR. NEWMAN: Yes.

THE WITNESS: Well, without having some form of compensation to the principals, there wouldn't be a transaction. So to the extent that the transaction is beneficial to the investors, it becomes part of that.

MR. NEWMAN: Now, the amount that was raised again, I'm sorry, was how much?

THE WITNESS: I don't know the exact amount. I said 2 million, it could have been more than that, it could have been 3 million. May have been 3 million. I don't have that in front of me.

MR. NEWMAN: Approximately? This is a transaction --

THE WITNESS: Somewhere between 2 and $3 million.

MR. NEWMAN: Let's say it's $2 1/2 million, approximately.

THE WITNESS: Okay.

MR. NEWMAN: And the loan amount -- the face value of the amount you got was how much again?

THE WITNESS: The face value of the loan that I got was somewhere between 275 and 300,000 dollars.

MR. NEWMAN: So basically 10 percent of the offering amount is going to you in this loan; is that correct?

THE WITNESS: Yes.

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MR. NEWMAN: And when does the offering suggest, project, tell investors that they can expect a return for their investment?

THE WITNESS: The investors get a return every month and have gotten a return every month since the transaction was consummated.

MR. NEWMAN: Based on what revenues?

THE WITNESS: Based on the revenue from the underlying portfolio of security Alarm Contracts that was purchased.

MR. NEWMAN: Those are the quarterly interest payments?

THE WITNESS: Actually, I think they are monthly.

MR. NEWMAN: Those payments don't represent a return of principal, they represent actual interest payments?

THE WITNESS: Actually, they represent interest and principal. It's a debt service payment. There is a

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component of interest and a component of principal.

MR. NEWMAN: Was there a written note associated with this loan or any written document associated with this loan you are describing?

THE WITNESS: Which loan?

MR. NEWMAN: The loan -- the $700,000 loan -- or $250,000 loan. Excuse me.

THE WITNESS: If there was, it was done in the November 2009 time frame.

MR. NEWMAN: So you don't know, again, if it was a loan?

THE WITNESS: No, I knew there was a loan. I don't know if there was a document.

MR. NEWMAN: That's my question. You don't know if there was a written loan document?

THE WITNESS: Correct.

BY MR. RATTINER:

Q Was there an advisory fee associated

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with this deal?

A Yes.

Q And what was that?

A It was a fee paid to McGinn Smith & Company.

Q Percentage?

A Oh, I don't know.

Q Is there a typical advisory fee?

A A typical advisory fee might be as much as 10 percent of the offering.

Q Now, maybe I am confusing the terminology.

Is there also an underwriting fee?

A Yes.

Q Would the underwriting fee would be the 10 percent, I assume?

A No. The underwriting fee would be more in the area of 6 percent.

Q Okay. So in this case, the underwriting fee was approximately 6 percent?

A Yes.

Q Also an advisory fee of 10 percent?

A Correct.

Q And in addition to that about

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30 percent came out in loans?

A Yes.

Q So NEI takes 44 percent of the total raise approximately?

A Approximately.

Q What is the target return in order to pay back the investors needed to be on a 44 percent loan to NEI the income producer versus the 2 to 3 million dollars raised?

MR. FRANCESKI: Wait a second. Slow down. I thought you said a loan to NEI.

MR. RATTINER: Investment in NEI.

MR. FRANCESKI: Yes.

THE WITNESS: I am not sure I understand your question.

BY MR. RATTINER:

Q Well, the loans to yourself, the 30 percent to yourself, Mr. Rogers and Mr. Smith is yielding 3 percent a year?

A 3 to 6, I don't know where it is.

Q What was the interest rate associated with the promissory note to the investors -- not the

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promissory note, the private placement memorandum?

A I think it was 13 percent.

Q Okay. So 13 percent to the investors?

A Right.

Q What does NEI need to produce to cover that 13 percent plus whatever costs that are associated with this deal?

A NEI needed to produce $390,000 a year of interest plus principal of perhaps another -- I would say that the total return from the portfolio had to be somewhere around $700,000 a year.

Q You are basing that on a $3 million investment --

A Yes.

Q -- or a $1.6 million investment that they actually received?

A 3 million.

Q Right. So now how do you base that on 1.6 -- they didn't receive 3 million?

A You've asked me what the return had to be --

Q Right.

A -- to service the capital raise of $3

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million at 13 percent.

Q Right.

And, I'm sorry, just to interrupt you for a second.

We said that 44 percent of that money went to NEI, approximately?

A Right, right.

Q The other remaining, the advisory fee, obviously there's no return on?

A Right.

Q The underwriting fee there's no return on. That's 16 percent?

A Right.

Q And the 300,000 -- or the 900,000 or so that went to the three individuals is yielding something where between 3 and 6 percent?

A Right.

Q So we are at a significant deficit. So NEI's money would have to return what to get the customer, the principal and interest back?

MR. FRANCESKI: Do you understand the question?

THE WITNESS: I do. I am just doing some mental arithmetic.

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Roughly $700,000 a year, less -- less the accrual of 50,000. Still 675 to 700,000 dollars a year.

BY MR. RATTINER:

Q So that's 70-something percent of the amount loaned per year?

A Well, it -- you can use whatever denominator you choose. But if you use the typical experience in the alarm industry, where EBITDA margins are roughly 70 percent of revenue, this is a portfolio that would generate and was forecast to generate roughly $800,000 a year in cash flow.

Q Percentage-wise, how many deals -- and let's take year by year, I guess, 2009, how many deals would have had a similar structure where there was a raise in excess of what was needed or given to the entity and a loan given to one or more principals of McGinn Smith?

MR. FRANCESKI: Let me object to that question. The part after the "or" I am okay with. The reference to "needed" is inappropriate.

MR. RATTINER: Why?

MR. FRANCESKI: Because that's

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a judgment, that's not a question.

MR. RATTINER: Well, I guess the -- McGinn Smith and Mr. McGinn and his knowledge of the industry obviously comes up with a need base on what's needed to the raise, which is why they would have a minimum and a maximum in each deal. So I don't know that I agree with your disagreement.

MR. FRANCESKI: Well, I don't know. It's a compound question.

MR. RATTINER: Right. And that I could apologize for.

MR. FRANCESKI: If you can parse it out give it a try.

BY MR. RATTINER:

Q In 2009, were there similar deals structured as this?

A In 2009 -- in 2009 the only deal that would have been comparable but not entirely synonymous would be the TDMM Cable Funding transaction.

Q Walk us through some of the details on that, if you could.

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A TDMM Cable Funding was a transaction that was created to acquire some 22 contracts for the provision of cable TV, internet, telephone, security in Florida.

The acquisition price of those assets was roughly two-and-a-half mil -- two-and-a-quarter million dollars. There were underwriting spreads of 6 percent as is normal. And there were advisory fees paid to McGinn Smith & Company. I don't know if there were any loans out of that transaction. I just don't remember.

Q Advisory fee would also be 10 percent, or approximately?

A Yeah. 10 or 15 percent.

I think the other transactions done in 2009 did not have any loans. And there were only -- there was only one other transaction, the cable space that was called TDMM Benchmark, and there were a couple of rollovers for maturity for previous transactions of Verifier Capital, for one. I think that may have been the only one.

Q Have you taken any loans off of any rollover deals?

A No.

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Q Have any similar situations in 2010?

A No.

Q How about 2008?

A I think it was just the NEI transaction.

Q Okay. And why would you do it in one transaction and not another? What would be the --

A Well, certain transactions have -- have more -- have better spreads, have more earned income, have more operating cash flow and could support those -- those events. Some can't.

Q How is it disclosed to the entity? NEI is owned by who, for instance?

A I think NEI is owned by MS Holdings. And that may well be disclosed in the offering document, but I am not certain of that.

Q Okay. Have you done any of these similar transactions where there was an entity not affiliated with McGinn Smith?

A No.

Q So 2008 as far --

A Well, wait a second. Let me back up there.

Have we done any other

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transactions --

Q Where you would have taken a loan that were not affiliated with -- NEI, well, there's an affiliation through MS Holdings.

A Yeah.

Q TDMM, obviously is an affiliation?

A Right. Right. Right.

When we did the TDM Verifier transactions where we have a nominal equity ownership, we may have taken loans on those transactions, I don't recall.

Q Okay. So let's go back to 2007. What would we have in that year?

A 2007, we had -- we had the First Line transactions. And I don't believe there are any loans taken from that First Line transaction.

What else did we do in '07? We did -- we did a Verifier transaction in January '07. And we did a Luxury Cruise transaction in, I think, the second quarter of '07.

And any loans taken out of those transactions would have been -- you remember yesterday I used the term "conduit," we used TDM Cable Funding as the conduit. It would show up on

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the TDM Cable Funding balance sheet.

Q So when we are looking at Exhibit Number 2 -- I apologize, Exhibit Number 1, and we had seen other loans throughout the document --

A Right.

Q -- those would have been related to Verifier or --

A That's correct.

Q How about in 2006?

I guess you started towards the end of the year in 2006?

A Yes.

The only thing that was done in '06 was this first cable transaction, TDM Cable Funding.

MR. RATTINER: We are going to introduce the next exhibit.

MR. PAULSEN: One last question on NEI. Where are the financial books and records maintained for that entity?

THE WITNESS: 99 Pine Street.

MR. PAULSEN: In what format are they maintained?

THE WITNESS: I am not sure

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what you mean by "what format."

MR. PAULSEN: Accounting software, hard copy, manual?

THE WITNESS: I am sure it's on the accounting software on the Quicken books or some other software platform.

MR. PAULSEN: Do you receive reports, 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.)

BY MR. RATTINER:

Q Mr. McGinn, I am handing you Exhibit Number 4. And this is a series of promissory notes that I will read into the record in a moment.

A (Reviewing).

Q All right. Mr. McGinn, in front of you -- I am going to read what it is: Exhibit Number

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4.

Exhibit Number 4 comprises of several promissory notes, the first of which is dated January 30, 2007 in the amount of $92,000 with your name on it, Mr. McGinn.

The second one we have is March 27, 2007 -- March 28, 2007 for $96,000, also addressed to yourself.

July 12, 2007 is the third one for $30,000, also for Mr. McGinn.

And all of the remaining notes are for Mr. McGinn.

August 7, 2007 for $75,000.

A August 6th.

Q I apologize. August 6th.

October 10, 2007 for $50,000.

January 30, 2009 for $25,000.

February 9, 2009 for $20,000.

And March 13, 2009 for $35,000.

And each one of these is for value received by Mr. McGinn from TDM Cable Funding LLC.

MR. RATTINER: I am going to give Mr. Franceski a moment to review those.

MR. FRANCESKI: Ready to go.

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BY MR. RATTINER:

Q Were these notes all signed on or around November 2009?

A Yes.

Q And you had mentioned Mr. Carr created them?

A Correct.

Q When did Mr. Carr start with the firm?

A January 2007.

Q In 2006, who would have been the one creating these documents? Or similar documents? Not these specific, but promissory note documents.

A Well, 2006 we did not have general counsel. So anything that was done would have been done by either an outside law firm or at our own hand.

Q And prior to the initial Exhibit Number 3, October 2, 2006, were there any promissory notes prior to that date that you received?

A No.

Q And what started the process of this promissory note come October 2006?

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A Well, as I testified earlier I rejoined the firm in that time frame, 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.

Q And who came up with the idea of having these promissory notes?

A I think it was a collective decision between myself and Mr. Smith.

Q And did you have a similar practice when you were IASG?

A No. IASG was a public company. We worked off our own balance sheet. We did have a similar practice for transactions that we had done from 1981 through 2003.

Q And how would those have been memorialized?

A I am not certain how they were memorialized.

Q And who would have been party to those promissory notes from '81 to 2003?

MR. FRANCESKI: Can I hear that question back?

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BY MR. RATTINER:

Q Sure.

Who would have been the parties or a party to those transactions with the promissory notes?

MR. FRANCESKI: Let me --

MR. RATTINER: I could rephrase.

MR. FRANCESKI: No. That's okay. It's not that, Chris. I thought I heard the same thing in a question about three questions ago. And I was going to ask the court reporter to repeat it.

There was a question earlier, Chris, in which you asked about transactions earlier in time. I am forgetting the date. But I think you characterized the transaction as promissory notes, when it should have been characterized as loans.

And I think the witness answered as though you were asking him "Did you engage in these loans back at

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that time?" Whether or not there were promissory notes, I am not sure the 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 document. That's my issue.

And I think you got the answer you intended from Mr. McGinn, but I

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wanted to be careful with the record.

MR. RATTINER: Correct. And I think the Quicken files also reflect loan not promissory note.

MR. FRANCESKI: Correct.

MR. RATTINER: However the document reflects promissory note which correlates to the loan.

MR. FRANCESKI: Can we concentrate on loans for now? If you want to ask about how they were documented --

MR. RATTINER: Okay.

MR. FRANCESKI: Is that how you understood the question?

THE WITNESS: Yes. And let me correct my previous answer.

In all of the transactions done between '81 and '02, they weren't -- there were no loans. The payments were made as fees and were recognized as such.

BY MR. RATTINER:

Q Okay. Were there any promissory

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notes? So --

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?

Q So let's go back to the origination of process.

So the origination of this process

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was in 2006?

A Correct.

Q And there were discussions between yourself, Mr. Smith and Mr. Rogers?

A Mostly myself and Mr. Smith.

Q And how did those discussions take place?

How did this concept come to be?

A Well, it came to be as a result of tax planning as well as looking at the spreads in these particular transactions.

Q If we look through these documents and put them all together to save some exhibits, were all of these documents as you see them in front of you in Exhibit Number 4 all signed on November 2009?

A Yes.

Q Okay. How was it determined which loans needed promissory notes?

What did you review to tie out, if you will?

A Well, we reviewed the books and records. And to the extent that it's indicated in Exhibit 1, there were loans on the books. We memorialized that by way of these promissory notes.

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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 November 17, 2009. And that document was a cover sheet to the promissory notes we discussed in Exhibit

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Number 4. And that was received from Mr. Brian Shea. That was dated November 16, 2009.

Mr. McGinn, have you seen this letter?

A No.

Q And if you turn to page number 2, question number 5, this 8210 request had requested specifically in connection with the entities listed in item number 1.

"Please provide all documentation related to loans made payable to the following individuals: David Smith, Lynn Smith, Tim McGinn, Matt Rogers, Mario Bustamante; including, but not limited to, loan origination documents, promissory notes, repayment information and any other documents. Additionally, please identify whether there were any other loans made payable to other individuals or entities not previously identified."

MR. FRANCESKI: You're reading item 5, page 2?

MR. RATTINER: Yes.

BY MR. RATTINER:

Q Were these loans that we discussed in Exhibit Number 4 provided in response to number 5 on

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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 sitting here today, Mr. McGinn, whether it is, you can answer that question.

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If it wasn't, do you know why it wouldn't have been?

THE WITNESS: No.

This is a letter that was dated -- sent to Mr. Franceski with a copy to Mr. Smith. I didn't see this letter until two minutes ago. And I don't know why it wasn't included.

BY MR. RATTINER:

Q When you were signing the documents identified in Exhibit Number 4, did you know why you were signing them?

A I was signing those documents to memorialize the transaction that had occurred on the particular dates as indicated on each of the promissory notes.

Q Had it been indicated to you that it was based on a request from FINRA?

MR. FRANCESKI: I'm sorry. Say that one again.

MR. RATTINER: Had there been --

MR. FRANCESKI: Had --

MR. RATTINER: I forgot what I

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said.

(Whereupon the question was read.)

THE REPORTER: Question, had it been indicated to you that it was based on a request from FINRA?

BY MR. RATTINER:

Q Had anyone indicated to you that this was being requested by FINRA, Exhibit Number 4?

MR. FRANCESKI: You have to do better than that. Because it is a pretty important question.

MR. NEWMAN: Let me step in for this.

Were you aware FINRA had requested loan documentation pertaining to you, Mr. Rogers, Mr. Smith, Lynn Smith and Mario Bustamante?

MR. FRANCESKI: Where? When?

MR. NEWMAN: Were you aware that FINRA had requested on or about September 2009 that information?

THE WITNESS: Here's what I was aware of. You guys were in our

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offices at about that time frame.

And Chris, I think it was you who asked me what the nature of these payments was. And I told you they were loans. And you then asked me if we had documentation. And I said, yeah, I think we do.

Well, as it turns out, we didn't. So we created the documentation to memorialize the transaction that had been previously posted to our books as loans.

I didn't see this document. So --

MR. FRANCESKI: This document, meaning Exhibit 5?

THE WITNESS: Exhibit 5. So I was not familiar with any requests for information that pertained to Lynn Smith, Matthew Rogers or Mario Bustamante in an expanded version.

MR. NEWMAN: So is it your testimony when you were signing these documents before you as Exhibit 4 --

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Exhibits 4 and 3, that you were unaware that those documents would be turned over to FINRA Staff in response to a request for information?

THE WITNESS: No. I was totally aware that they were going to be turned over to Staff. That was -- that was not unclear at all.

MR. NEWMAN: And I want to find out the process in terms of how you first became aware there were no loan documents who conveyed that to you, approximately when that was conveyed to you, the context.

MR. FRANCESKI: Take it down a little bit.

MR. NEWMAN: Explain to us how you became aware that there was no documentation, loan documentation for the transactions that were being requested.

THE WITNESS: I am not certain who it was, who informed me of that. It may have been Mr. Shea or Mr. Smith,

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after receipt of this letter.

They asked me if I had any idea where these documents might be located. I threw my hands in the air.

And at that point we -- we proceeded to create the notes as we see here in Exhibit 3 and Exhibit 4.

MR. NEWMAN: Did you make any effort to search for the notes?

THE WITNESS: Yes.

MR. NEWMAN: What was that effort?

THE WITNESS: Well, I looked in my files. I looked in other files around the office that I thought would be a logical place for these things to have been put into. Unable to find them. And I said, "I don't have them. I can't find them."

Others looked for them. They couldn't find them. And so we created these notes to memorialize the transaction.

MR. NEWMAN: Who else was

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looking for the notes?

THE WITNESS: I suspect Shea was looking for them as well as Smith and perhaps a fellow who works for Shea by the name of Brian Cooper.

MR. NEWMAN: How long did the search take place?

THE WITNESS: I don't know.

MR. NEWMAN: Approximately?

THE WITNESS: Couple of days.

MR. NEWMAN: What discussions did you have with Mr. Smith about the fact that you were unable to locate the loan documents.

THE WITNESS: It wasn't an involved discussion. I just said "I can't find them. Can you? No. I can't find them."

And so we conferred with counsel and we decided to create the notes that would document these loans.

MR. NEWMAN: When you say you conferred with counsel, can you be more specific who?

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THE WITNESS: Mr. Carr.

MR. NEWMAN: Did you have any concerns about the fact there was no loan documentation?

THE WITNESS: No.

MR. NEWMAN: Why is that?

THE WITNESS: Because the loans were duly recorded on the books and records. There was no reason to think that those books and records wouldn't be conclusive. And so no, I didn't have any particular concerns.

MR. NEWMAN: Did Mr. Smith express any concerns about the fact there were no loan documentation -- there were no loan documents?

MR. FRANCESKI: Let me caution the witness here. Any conversations in which Mr. McGinn and Mr. Smith spoke together in front of counsel would be privileged.

Outside of those -- outside of any counsel present, he's free to answer.

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Go ahead.

THE WITNESS: Repeat the question, please.

MR. NEWMAN: Did Mr. Smith -- I will repeat it.

Other than any conversations with counsel, did you have any conversations with Mr. Smith in which he expressed any concern about the fact that you or anyone else within McGinn Smith was unable to locate these loan documents?

THE WITNESS: No.

MR. NEWMAN: So the process through which you executed these different notes, that was all done, I think you testified, the same day; is that correct?

THE WITNESS: I don't know if it was done on the same day, but it was done in the same general time frame.

MR. NEWMAN: Now, were you the only person who was signing loan documents at this time? Or were there

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other people at McGinn Smith doing the same thing?

THE WITNESS: I was signing documents. I believe Mr. Smith was signing documents. And I know that we sent these notes to Mr. Rogers for him to execute. I don't know if there was anyone else who was executed documents.

MR. NEWMAN: Were you present when Mr. Smith was signing these documents?

THE WITNESS: I don't remember.

MR. NEWMAN: Now, we have already established that the dates on the loan documents don't comport with the dates in which these were executed.

THE WITNESS: That is correct.

MR. NEWMAN: That is correct?

THE WITNESS: We have established, I think, that these dates comport with the timing at which the entry was made into the books and records of TDM Cable Funding LLC.

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MR. NEWMAN: Did you ever consider or discuss the possibility of telling FINRA staff that you or the firm did not have these loan documents?

THE WITNESS: No.

MR. NEWMAN: Why is that?

THE WITNESS: I didn't think it was material.

MR. NEWMAN: Did you tell -- let me rephrase that. Are you aware of anyone within McGinn Smith, including yourself, informing FINRA staff when these loan documents were provided that the dates on those document did not reflect the dates in which they were executed?

THE WITNESS: No.

MR. NEWMAN: Why wasn't FINRA Staff informed of that fact?

THE WITNESS: Because the loans were entered into the books and records on those dates, were identified as such, and what we have done here is to complete the memorialization by way

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of these documents on an as-of basis for each and every one of the loans in question.

MR. NEWMAN: Did you ever consider the possibility FINRA may be confused or misled about the actual execution dates of these documents?

MR. FRANCESKI: Objection.

MR. NEWMAN: Based on the way they were provided or presented to the Staff?

MR. FRANCESKI: Objection. But you may answer.

THE WITNESS: No.

MR. NEWMAN: Do you have any concerns sitting here today about that fact?

MR. FRANCESKI: Objection. But you may answer.

THE WITNESS: No.

MR. NEWMAN: You don't believe this was a misleading document?

THE WITNESS: No.

MR. FRANCESKI: Objection.

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You may answer.

MR. RATTINER: Can I ask a follow-up there, Mike? Are you finished?

BY MR. RATTINER:

Q I guess, looking at Exhibit 3 or 4, how would you tell when it was signed?

A You wouldn't looking at these exhibits. But you would if you read my testimony.

Q Did you intentionally not date the document when you signed it?

Mr. FRANCESKI: Sorry. Did he...

BY MR. RATTINER:

Q Did you intentionally not date the document when you signed it?

A No.

MR. FRANCESKI: No, he did not intentionally not date the document. Okay. A lot of negatives in there. But that is the question and answer.

MR. RATTINER: You want to clarify it?

MR. FRANCESKI: Yeah. May I?

Mr. McGinn, with respect to the transactions that are memorialized by the notes that have been discussed in Exhibits 3 and 4 --
MR. NEWMAN: Right.
MR. FRANCESKI: -- did McGinn Smith & Company provide to FINRA the underlying data regarding the transactions in your books and records?
THE WITNESS: Yes.
BY MR. RATTINER:
Q If I could, did the data provided in those books and records indicate maturity, the payment, any detail regarding the loan itself?
A Probably not.
Q Probably not?
A Yes.
Q Is there a potential that it could have identified that information within Quicken?
MR. FRANCESKI: That's a different question. You just narrowed it down to Quicken.
BY MR. RATTINER:
Q Exactly. Just Quicken?

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. Cooper. And subsequent time frames, it could have been Mr. Shea or Mr. Cooper.
Q In October 2006 when we discussed the first exhibit, Number 3 -- the first promissory note, Exhibit Number 3, what details would have been provided to Mr. Rees regarding the maturity date, the payments, things of that sort within the promissory note that we have today?
MR. FRANCESKI: At the time Rees booked them?
BY MR. RATTINER:
Q Correct. Back in October 2006.
A I am not certain what would have been

provided to Mr. Rees at that time.
Q What would you have evidenced of what you provided to Mr. Rees at that time?
A I don't know.
Q Would you normally communicate via e-mail indicating to Mr. Rees what the loan's terms were?
A I would normally communicate with Mr. Rees verbally. His office was 10 yards from mine, and wouldn't be too difficult to walk out of one office and go into another.
Q Prior to September 2009 when the Staff first asked the question, had you indicated to Mr. Rees at any point in time the terms of loans that you have taken from any entity?
MR. FRANCESKI: Hold on. First asked what? Staff asked what question?
BY MR. RATTINER:
Q With regard to the promissory notes, whether or not they existed; whether or not the firm maintained promissory notes for the loans made.
MR. FRANCESKI: You're referring to this verbal conversation?

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.
MR. RATTINER: Correct.
BY MR. RATTINER:
Q I will re-ask what I asked.
So prior to September 2009, what information -- or what document -- let me back up.
Had you ever communicated with Mr. Rees, Mr. Cooper or Mr. Shea the terms of any of the notes or loans from 2006 through August 2009?
A I may have. But I can't sit here and give you specifics as to whom I spoke to, when I spoke to that person and what was said.
Q Would someone have said --
A There's no secret. You know, this

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information is not a state secret. And so there would have been no reason for me not to share that information. However, if you're asking me if I can definitively tell you who I may have shared that information with, when I shared that information, what that information was, I can't do that.

Q Did you share that information?

A More than likely, yes.

Q Every loan?

A I don't know.

Q So how would -- I mean, in today's date and then November 2nd or thereabouts these loan documents were created, how did Mr. Carr know -- who informed Mr. Carr what the terms of the notes were?

A I did.

Q How did you know what those terms were?

A Because I remember what the terms of the note was.

Q What did you refer to?

A My memory.

Q So in your memory from October 2006 through August 2009 you remembered each loan, the value, the maturity, the percentage?

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A I didn't recall necessarily the amount, but I did recall the maturities and the interest rate.

Q Is that because there's no differences? I'm asking.

A They are pretty consistent, yeah. There aren't a lot of differences there.

Q And was there anything memorializing the details of the notes prior?

A No. And that's exactly why we did these, is to memorialize those things.

Q Right.

But in order to get to these, other than what you had in your mental status, was there any documentation that you used to create those?

A No.

Q Okay.

MR. FRANCESKI: Do you mind if I follow-up?

MR. RATTINER: Sure.

MR. FRANCESKI: Mr. McGinn, this conversation that you referred to and that Mr. Rattiner asked you about that occurred at McGinn Smith's offices

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in September 2009, did you have counsel present to advise you how to answer those questions when the investigative staff was asking you those questions?

THE WITNESS: No.

MR. FRANCESKI: Did the investigative staff suggest to you that you were entitled to have counsel present while those questions were being asked?

THE WITNESS: No.

MR. FRANCESKI: Were you given an opportunity to bring counsel in while being asked those questions?

THE WITNESS: No.

MR. FRANCESKI: That's all.

MR. NEWMAN: Well, did you ask to have counsel present for that conversation?

THE WITNESS: No.

MR. NEWMAN: Or involved in that conversation?

THE WITNESS: No.

MR. FRANCESKI: Could I make a

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statement for the record? I just want the record to reflect that on a number of occasions in the course of this investigation I have advised the Staff that clients who are represented by counsel and any substantive discussions between the Staff and my clients should take place only with counsel present.

MR. NEWMAN: All right. We are not going to -- obviously, I know where you are headed with that statement. We are not going to address that at this time in this OTR.

MR. FRANCESKI: I understand. I just want to make it clear on the record.

MR. NEWMAN: That's fine.

BY MR. RATTINER:

Q Back in September -- referring back to the meeting when we were -- the Staff was up at McGinn Smith offices and the question was first posed with regard to TDM Cable and the entries that were made in the Quicken file, do you recall what your first answer was when the Staff asked what these --

what these numbers represented?
A No.
Q Okay. You don't recall that you had mentioned they were fees at the time?
A I just testified that I didn't remember.
Q I was wondering if I can help you recall.
A No.
Q Okay.
MR. NEWMAN: Mr. McGinn, looking at the various notes, Exhibit Number 4, the package there, if you look at the maturity dates on those notes, they have -- for all of these notes, they appear to mature approximately one day less than six years for each note.
Do you see that?
THE WITNESS: I do.
MR. NEWMAN: Is there any reason for that?
THE WITNESS: In most of these instances the underlying capital raise would have been fully discharged within

the six-year time frame.
MR. NEWMAN: I am not following that. You are saying the offering proceeds would have been --
THE WITNESS: Fully amortized.
MR. NEWMAN: Within the --
THE WITNESS: Six years.
MR. NEWMAN: Is that specified within the offering memorandum?
THE WITNESS: Yes.
MR. NEWMAN: How does that pertain to the loan, that concept? What does that have to do with when the loan gets repaid?
THE WITNESS: Well, to the extent the asset that the loan notes issued by the capital raise have not been repaid, that there is a secondary source of repayment, which is the value of each of these notes.
MR. NEWMAN: Are you aware of any tax implications in having a loan that has not been paid within six years?
MR. FRANCESKI: Objection.

THE WITNESS: No.
MR. PAULSEN: You referred to these monies borrowed or as noted in the promissory notes as a secondary source to -- you said -- I believe you just said a moment ago that in the event that proceeds were not fully returned to the investors that you can turn to these notes as a secondary source?
THE WITNESS: Correct.
MR. PAULSEN: Can you explain that?
THE WITNESS: Yes.
MR. PAULSEN: Please do.
THE WITNESS: If we have a transaction in the security alarm space, as an example, and the flow of funds is not sufficient within the prescribed amortization period to totally discharge the obligations pursuant to that offering, then these notes become a secondary source of cash to the entity TDM Cable Funding, which would be used to pay off that deficiency.

MR. PAULSEN: So in the event that they are fully amortized within that six-year period --
THE WITNESS: Yes.
MR. PAULSEN: -- do you have any intention of repaying the loan?
THE WITNESS: Well, absolutely. But the entity that we would be paying it to would essentially be ourselves. So we would make a payment from the right pocket to the left pocket.
BY MR. RATTINER:
Q Can we walk through that slower, be more clear maybe?
A Yeah, sure.
Who owns the equity of TDM Cable Funding?
Q TDM. The three individuals.
A Right. So who has the loans?
Q Those three individuals.
MR. FRANCESKI: Rather than rhetorical questions --
THE WITNESS: Right.

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If -- if the three owners of the entity, McGinn, Smith, and Rogers, now own the -- always owned, but own the LLC, that LLC has fully discharged its obligations pursuant to the capital raise.

What is left on the balance sheet? The balance sheet has assets of these notes, right, and the -- no other liabilities. So the equity on the balance sheet would be the value of these notes. Since we own the equity, it's effectively a wash.

BY MR. RATTINER:

Q And at that point it's not income? Why?

A I didn't say it's not income.

Q I'm asking. At that point is it income?

A It's only income if it's forgiven. If it's repaid, it is not income.

Q Right.

A So here is what we do: Six years goes by, right? All of the capital raise has been

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discharged, fully amortized. We still have the cash flow from the underlying assets that were purchased. That cash flow from the underlying assets can be paid 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 to mature prior to the total amortization of those assets, would the loan be returned to the investors? The

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answer is probably yes.

MR. PAULSEN: So is it convenient that they are dated one day prior to that six-year period, so as to never have to repay the loans?

MR. FRANCESKI: Objection to the form.

But you may answer.

THE WITNESS: It is not the intention of creating the maturity to never repay the loans. It is the intention, as I have testified, to have the maturity correspond to a point in time at which the capital raised notes were fully amortized.

BY MR. RATTINER:

Q Are there any loan documents that currently exist today that mature before the amortization schedule concludes?

A I don't know. I don't think so.

Q How does attrition take place with TDM regarding the amount raised?

Maybe you could explain it: How does the attrition rate take fact, not in the promissory

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notes, but the raise itself and the return to investors?

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:

Q Mr. McGinn, in front of you we have Exhibit Number 6. I will give you time to review it.

I am just going to read into the

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record what it is. It's promissory notes all related to Cruise Charter Ventures. We have multiple notes. The first one is in the amount of $5,200 with the date of October 8, 2009.

The second is a $5,000 note with the date of August 11, 2009.

The third one is $7,000 note dated December 17, 2008.

The fourth one is $3,000 note dated September 2, 2008.

And the next one is $50,000 note dated June 6, 2008.

And the final one is a $25,000 note dated May 14, 2008.

A (Reviewing).

Q Similar to the questions in Exhibit Number 4 that we had, were these notes also signed around November of 2009?

A I would guess so, yes.

Q And, again, who created the notes?

A Mr. Carr.

Q These were all for CCV as we said.

What were these -- for instance, let's take the first one, October 8, 2009; what was

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the $5200 for?

A I don't know. I don't remember.

Q Was it common to take small denominational loans?

A No, it wasn't particularly -- it wasn't common as we have seen in Exhibits 3 and 4, but -- and I don't know how many of these notes have been repaid. I suspect many of them have.

Q I guess which ones -- I mean, these all have maturity dates in excess of today's date.

A Right.

Q But you believe that some of these have been repaid?

A I think that may be the case, yes.

Q And what sort of evidence would you have of that?

A As I sit here today?

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.

Q How would that be reflected on the books of CCV, if you know?

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A Well, it would have been reflected as a repayment of the note -- repayment of the loan.

Q Would you communicate that to Mr. Rees or Mr. Shea, depending on their tenure?

A Yes.

Q And who would you submit the check to?

A Mr. Rees, Mr. Shea or Mr. Cooper.

MR. FRANCESKI: Chris, when you use the term "created," and Mr. McGinn has answered that Mr. Carr created, I assume your understanding that means drafted, produced the document?

MR. RATTINER: Versus?

MR. NEWMAN: Physically doing it himself.

MR. FRANCESKI: Yeah. Or -- or was involved in the transaction.

MR. RATTINER: Oh, yeah, absolutely.

MR. FRANCESKI: The cleaner way would be to say: Who drafted the note? But I am okay. In a perfect

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world.

MR. NEWMAN: Those documents were provided to FINRA Staff, those exhibits?

THE WITNESS: Well, given the fact that you just handed them to me, I assume that they were, indeed, given to FINRA Staff, yes.

MR. NEWMAN: Okay.

BY MR. RATTINER:

Q Based on seeing these notes, both in Exhibits Number 3, 4 and 6, can you recall now how many others exist, other than these notes?

A No.

Q Are there others, other than NEI we discussed?

A I don't know.

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 misled by the information on those documents concerning the date in which

they were executed?
THE WITNESS: No.
MR. NEWMAN: Sitting here today, do you have any concerns about that issue?
THE WITNESS: Same answer as before: No.
MR. NEWMAN: How would anyone -- we will put FINRA aside. How would any person looking at that document know that it was executed in 2009 rather than 2006, any of those documents?
THE WITNESS: They wouldn't.
MR. NEWMAN: Okay.
MR. RATTINER: I am going to introduce Exhibit Number 7.
(Whereupon Exhibit 7 is marked.)
BY MR. RATTINER:
Q Exhibit Number 7 is an e-mail from David Smith to Mr. Timothy McGinn dated July 29, 2009.
Mr. McGinn, did you receive this e-mail?

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.
Q And how would that be reflected on the books and records, the repayment of the $160,800?
A It would be reflected as the repayment of a loan balance.
Q Which account would have been used to pay that back?
A Either TDM Cable Funding. Or this may have been TDMM Cable Funding LLC.
Q And at this point Mr. Smith had outstanding loans from TDM; is that correct?
A That's what he indicates in his e-mail, yes.

Q Even away from this e-mail, other monies similar to the notes that we discussed previously, was Mr. Smith -- Mr. Smith owed money to TDM based on promissory notes?
A This was money owed to Mr. Smith by TDM.
Q Away from that. Mr. Smith owes TDM money prior to this e-mail?
A That's correct.
Q Okay. So -- and then he -- well, how did the determination come to have Mr. Smith lend $366,000 to TDM?
A Because we had a transaction that had closed in June, I think, June or July, early July. We had not sold out a sufficient number of dollars in the capital raise. We needed a bridge financing. And this was the provision of that bridge financing.
Q And was this financing from Mr. Smith or Mrs. Smith?
A I don't know.
Q And --
A In this e-mail he says "I," so that would suggest to me it was Mr. Smith.
Q And there was an offer around the

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.
A December of '09.
Q When did it commence?
A July.
Q So this was -- I apologize. So this was a bridge to get you to the financing?
A Correct.
Q What was the financial status of TDM prior to the bridge?
A It was an ongoing company. It was current in all its liabilities. It had roughly 24, 25 different communities subscribing to the services that were provided. It was good business.
Q And what sort of liquid assets did

they have in or around June 5, 2009?
A Well, obviously not quite enough to get that deal closed or we wouldn't have borrowed $366,000.
Q Was Mr. Smith the only one to lend money to TDM?
A Yes.
Q How did that come into play versus the other two partners?
A Mr. Smith had the liquidity in his account and was happy to provide that.
Q What is the current status of that loan -- first of all, was there any loan documentation drawn up?
A Probably not. What is the current position of the loan? I think the loan has been paid down to approximately $30,000.
Q And who authorized the repayments?
A I did.
Q And were those repayments made to Mr. or Mrs. Smith?
A Whomever provided the loan.
As I said earlier, this would suggest it was Mr. Smith. If, however, I was wrong and it

was Mrs. Smith, then the loan proceeds -- or the repayment proceeds would have gone to Mrs. Smith.
Q What sort of interest rate was associated with this loan?
A 5 percent, 6 percent.
MR. NEWMAN: Are you aware of Mrs. Smith being involved in any other McGinn Smith transactions?
THE WITNESS: I'm sorry?
MR. NEWMAN: Are you aware of Mrs. Smith being involved in any other McGinn Smith transactions?
THE WITNESS: I know Mrs. Smith is an investor in a number of transactions. One that comes to mind is a thing called Pine Street Capital.
MR. NEWMAN: What is her interest in Pine Street Capital?
THE WITNESS: She is a limited partner, bond holder, whatever.
MR. NEWMAN: What is her actual ownership interest?
THE WITNESS: Oh, it's quite small. I don't know the exact number.

I don't think -- I don't think it's very large as a percentage of Pine Street Capital's assets.
MR. NEWMAN: What other ventures besides Pine Street Capital?
THE WITNESS: For Mrs. Smith?
MR. NEWMAN: Yeah.
THE WITNESS: I don't know.
MR. NEWMAN: You said she is involved in a number of ventures.
THE WITNESS: I said she was involved in Pine Street Capital. I don't know if she is involved in anything else.
MR. NEWMAN: You don't know, sitting here today, if she was involved in any other transaction?
THE WITNESS: She is not my wife. She is not my client.
MR. NEWMAN: I know she is not your wife; but I'm asking you if you know if she was involved in any other transaction?
MR. FRANCESKI: Objection.

Asked and answered.
THE WITNESS: I don't know.
MR. NEWMAN: I thought you said a moment ago she was involved with a number of things.
THE WITNESS: Would you read back what I said a moment ago?
MR. FRANCESKI: I am not sure that's what he said. Why don't you read it back.
(Whereupon the answer is read back.)
THE REPORTER: Question, are you aware of Mrs. Smith being involved in any other McGinn Smith transactions?
Answer, I know Mrs. Smith is an investor in a number of transactions. One that comes to mind is a thing called Pine Street Capital.
MR. NEWMAN: So a number of transactions.
What else besides Pine Street Capital?
THE WITNESS: Let's make that

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"transactions" read "transaction." Singular.

MR. NEWMAN: So you're changing your answer?

THE WITNESS: I don't know what other investments Mrs. Smith has. I know she is an investor in Pine Street Capital. I don't know what else she has.

MR. NEWMAN: Has she been involved in any other loans besides this one?

MR. FRANCESKI: This one meaning?

MR. NEWMAN: TDM.

MR. FRANCESKI: Did we establish she was involved in the TDM loan?

THE WITNESS: I mean, we didn't establish.

This says "I, David." And I testified I didn't know whether it was David or Lynn. So I don't know whether it's David or Lynn.

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And what time frame are you referring to, Mr. Newman?

MR. NEWMAN: In the last seven years.

THE WITNESS: No. That I know of.

MR. NEWMAN: How about loans, any other loan transactions involving Mrs. Smith?

MR. FRANCESKI: Objection. Asked and answered.

THE WITNESS: In terms of the last seven years?

MR. NEWMAN: Yes.

THE WITNESS: I know of none.

BY MR. RATTINER:

Q I apologize if I asked this already: How much was raised as part of this deal that we are talking about in or around June through December 2009?

A It would be a million-three, million-four.

Q Was Mr. Smith paid back with those proceeds?

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A He was paid back with proceeds of the capital raise. He was not paid back with those proceeds.

Q Prior to the proceeds being raised -- and I understand the whole fungibility piece of this; but prior to the proceeds being raised, couldn't Mr. Smith be paid back on June 6th?

A No.

Q So what monies came in to pay Mr. Smith back?

A Monies from the capital raised.

Q So that -- so he was paid back from monies from the capital raised?

A Right. But not necessarily the 1.3 or 1.4 that had been raised by June 5th. Obviously if we borrowed the money we needed that incremental capital to make purchases.

Q Right.

A Subsequent to that, to the extent that we raised incremental dollars, we paid back Mr. or Mrs. Smith, I believe, 335,000-plus-or-minus dollars.

Q And how -- what is the time frame here?

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We have the e-mail from July 29th saying it was paid back, you know, a little less than half.

When was he paid back almost fully minus the $30,000 or so that's outstanding?

A I would say within the next 90 days.

MR. NEWMAN: You don't remember about a transaction that occurred in the fall of last year, who was repaid, whether it was Mr. and Mrs. Smith?

MR. FRANCESKI: That was kind of a compound question.

MR. NEWMAN: You said the money was repaid to Mr. or Mrs. Smith, correct?

THE WITNESS: That's correct.

MR. NEWMAN: And this presumably happened, based on your testimony, in the fall of 2009?

THE WITNESS: Or the summer.

MR. NEWMAN: Okay. You are sitting here today telling us you don't know who was repaid?

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THE WITNESS: I am sitting here today, and I am reading Exhibit 7, which was handed to me, which says: "Tim, on 6/5 I" -- I, David Smith, "lent TDM $366,000."

What I am telling you here and what I've told you repeatedly is when asked if "I" referred to David Smith or he mistyped that and it should have been Lynn Smith, I don't know. I don't know what their division of capital is.

MR. NEWMAN: I am not asking you what -- if you know what their division of capital is. I'm asking you about this specific loan and who was involved and what knowledge you have of that involvement.

This is a transaction that occurred in the summer and fall of 2009.

MR. FRANCESKI: Objection. Asked and answered.

MR. NEWMAN: You don't know -- you don't know if you're dealing with Lynn Smith or David Smith?

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MR. FRANCESKI: Objection. Asked and answered.

MR. NEWMAN: Is that what you are telling us?

THE WITNESS: That's what I have told you repeatedly.

MR. NEWMAN: You have a good enough memory to remember loan terms from four or five years ago and prepare 15 note documents, but you can't tell us about a loan transaction that occurred in the summer of 2009?

MR. FRANCESKI: Objection; that's argumentative.

MR. NEWMAN: Is that what you are telling us?

MR. FRANCESKI: Objection; argumentative.

THE WITNESS: I have answered your question.

BY MR. RATTINER:

Q The raise that was done in June through December, were there underwriting fees associated with that?

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A Yes.

Q Advisory fees?

A Yes.

Q And what were those?

A The underwriting fees were probably the normal 6 percent. And the advisory fees may have been 4 or 5 hundred thousand dollars.

Q You mean in percentage?

A You want a percentage?

Q Just because you said it was 1.3 and 1.4 raised. So if you are saying advisory --

A As of that date. That's not the total raise.

Q What was the total raise?

A The total raise was $3 million.

Q And that happened sometime prior to December '09?

A Correct.

Q So $3 million was raised. There's a 6 percent underwriting fee?

A Yes.

Q And then there was a 15 percent -- approximate --

A Approximate.

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Q -- advisory fee?

A Right.

Q Any loans?

A I don't believe so.

Q What happens if the bridge loan is not made?

A If the bridge loan was not made?

Q Right.

A We would have had to renegotiate the terms of the acquisition timing with the seller.

Q The PPM? Did that identify the bridge loan?

A I don't think so.

Q Was the bridge loan made prior to the PPM production or after?

A After.

Q Prior to the first sale?

A After.

Q After the first sell.

How many people invested at the time of the bridge loan, approximately?

A 25.

Q How much raised at that point?

A Million-three, million-four.

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Q Okay. So a million-three or a million-four was raised in June?

A Right.

Q Okay. Good.

Did TDM have any issues paying interest to investors at any point in time?

A Not, not through that date, no.

Q At any point in time. During your tenure, let's say, from November '06 when you returned.

A We are current within 60 days and always have been.

Q Have you been so without any loans?

A Yes.

MR. RATTINER: I want to introduce the next exhibit.

We can take a break.

(Whereupon a recess is taken.)

EXAMINATION

BY MR. ROWEN:

Q We will go back on the record.

Mr. McGinn, yesterday we talked about four funds: First Independent, First Excelsior,

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Third Albany and First Advisory, and I wanted to delve into those a little more.

A Excuse me. May I interrupt for a second?

Q Sure.

A Before we go on to new questions, I would like to correct some of the testimony I gave earlier.

Q Go ahead.

A I spoke to Mr. Smith at lunch today and got some clarity on this matter as well as --

MR. RATTINER: Exhibit 7?

THE WITNESS: Exhibit 7.

-- as well as Mrs. Smith's investment in other transactions. So I would like to put that on the record.

The $366,000 was lent by Mrs. Smith not Mr. Smith.

In addition to the Pine Street Capital Partners investment, she also has purchased $300,000 of TDMM benchmark in various maturities. So that's the correction.

Thank you.

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MR. NEWMAN: Thank you.

BY MR. ROWEN:

Q Speaking of the four income note deals, the four funds I will call them here, did those income funds purchase Alarm Contract bundles?

A Yes.

Q And what was your involvement with those purchases?

A At the time the purchases were made, I was running the public company, Integrated Alarm Services Group. I was involved in the servicing of those accounts; which is to say, the monitoring, the billing, the collections. Not I personally, but the company that I ran performed these functions; the physical service of sending trucks to houses when there were problems and so forth. And that was the extent of my involvement.

Q Who else was involved in the purchasing of those Alarm Contract bundles?

A Well, it would have been Mr. Smith who was running the funds at that time.

Q Anyone else?

A I doubt it.

Q Who priced and valued the contracts

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at the time they were purchased?

A The pricing and value of the contracts was discussed by myself and Mr. Smith. Typically these types of assets traded at different multiples of revenue. And I -- I can cite several examples of transactions occurring in the marketplace that had a high multiple of mid 60s and a low multiple of high 30s, so that the normal or the average multiple for acquisitions was probably in the mid to low forties.

Q When were these -- for the four funds, when were the contracts valued and priced?

A I don't know. I don't know specifically when.

Q How were revenues tracked for the Alarm Contracts?

MR. FRANCESKI: The Alarm Contracts?

BY MR. ROWEN:

Q Purchased by any of the four income note programs?

MR. FRANCESKI: The LLCs?

BY MR. ROWEN:

Q Yes.

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A They were tracked daily through lock box reports?

MR. NEWMAN: By who?

THE WITNESS: By the staff -- well, first of all, by the staff of Integrated Alarm Services Group who had performed the function of billing and collections. It was Integrated Alarm Services Group that maintained the general ledger for that business. And that information was provided to Mr. Rees at that time.

BY MR. ROWEN:

Q At that time being the time of purchase?

A Beyond the time of purchase, post time of purchase.

Q The daily tracking?

A I don't know if Rees got a daily report. Integrated Alarm created a daily report but -- from the lock box. But I don't know if Rees wanted or required a daily dump of data. I'm sure he got a monthly dump of data.

Q What was the expected profit margin

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for the four funds investments in Alarm Contracts?

A Somewhere in the order of 8 to 12 percent.

Q Who was responsible for amortizing the contracts?

A Who was responsible for amortizing the contract. I am not sure I understand what you are trying to get at.

Q Within the four funds' books and records?

A Well, that would be Rees and his staff.

Q What involvement, if any, did you have in that?

A None.

Q Who is responsible for tracking contracts that were in default?

A That would have been done by the staff of Integrated Alarm Services Group and supervised by Mr. Keenholts, the name I mentioned yesterday.

Q And how was that communicated to anyone at McGinn Smith?

A My assumption, there were monthly

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reports given to the people at McGinn Smith by Keenholts and his group who worked for me.

Q At what point would the Alarm Contracts be written off?

A Well -- they're really never written off because there's a sequence of collection protocols that we go through. And that sequence of collection protocols included an in-house collection protocol as well as turning them over to collection agencies on an out-house basis, and filling that, and selling them to scavengers, for want of a better term, at 10 cents on the dollar. So there was a process that was an iterative process, and it had at least three distinct components.

Q When you say ten cents on the dollar, are you using that as an example?

A Yes, I am using that as an example.

Q How does that affect the valuation in the books and records of the funds?

A Well, I don't know how the books and records of the funds would reflect the value.

Clearly in the alarm industry attrition is a fact of life and it's -- you know, you know you're going to have attrition, what you want to

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do is control that attrition, minimize it.

How that was reflected on the books and records, I don't know.

MR. NEWMAN: Who was Integrated Alarm Services? Who is that; what entity is that?

THE WITNESS: Integrated Alarm Services Group is a company that went public in July -- July 23rd, to be exact, 2003. It was a company where I was the chairman and CEO. We were the largest third-party monitoring company in the country, perhaps the world.

In addition to that, we owned -- "we," IASG, owned roughly 115,000 residential accounts. And we owned -- we had a loan portfolio of roughly $25 million. It was traded on NASDAQ.

MR. NEWMAN: Do you know how much the four LLCs invested in Integrated Alarm Services?

THE WITNESS: I don't know if they invested anything in Integrated.

MR. NEWMAN: I'm sorry. How

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much money was used to purchase the Alarm Contracts, approximately?

THE WITNESS: I do not know.

MR. NEWMAN: What involvement did you have in dealing with the advice or Mr. Smith or the LLCs in terms of the purchase of the Alarm Contracts?

MR. FRANCESKI: Objection. Asked and answered.

As I said, Integrated Alarm Services Group provides certain servicing functions to the portfolios, which included billing, collection, monitoring and physical service.

We prepared -- "we," IASG, prepared monthly reports that we provided to Mr. Rees. And that's -- that was the extent of our interaction.

MR. NEWMAN: Now, who puts the value on the Alarm Contract?

THE WITNESS: Well, the person who puts the value on the Alarm Contracts is the person who's buying or selling said contracts.

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MR. NEWMAN: Okay. So to the extent that the Alarm Contracts are being sold to the LLCs, there's a value ascribed by both the purchaser and seller?

THE WITNESS: Correct.

MR. NEWMAN: So negotiable amount, correct?

THE WITNESS: Correct.

MR. NEWMAN: What negotiable --

MR. FRANCESKI: There's a price range.

MR. NEWMAN: Right. There's a price that you reach between the parties.

THE WITNESS: Right.

MR. NEWMAN: How in this case was the price arrived at for the sale of the Alarm Contracts to the LLCs?

THE WITNESS: Well, I don't know specifically. But what I would suggest the process was is a market check of price to multiple, multiple of,

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which is defined as the price divided by the recurring monthly revenue in that particular portfolio. And to the extent that that price -- or that multiple was equal to or less than what was occurring in the marketplace at that time, one would reach the conclusion that it was a fair and equitable price. If it was a large departure from normal and customary tradition -- not tradition, but activities in that market, then you would reach a different conclusion.

MR. NEWMAN: Did you provide the price of the Alarm Contracts to Mr. Smith?

THE WITNESS: No.

MR. NEWMAN: So how did Mr. Smith know how much to pay for the Alarm Contract?

THE WITNESS: Mr. Smith and I had worked in the alarm industry since 1992. We had done roughly $750 million of financing over that period of time.

In July of 2003, as I

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mentioned, we took IASG public. We raised $225 million of equity. Mr. Smith sat on the board of IASG. He was intimately aware and familiar with the industry and with practices within the industry. So there was a body of knowledge that existed between Mr. Smith and myself relative to that business, relative to valuations, relative to operating considerations and operating protocols.

MR. NEWMAN: And he was on the board of directors of Integrated?

THE WITNESS: That's correct.

MR. NEWMAN: So I understand he has a knowledge of the industry and so forth, but I am still trying to determine in these particular instances how the price was arrived at for -- to sell to the LLC the Alarm Contracts?

MR. FRANCESKI: Do we have who the seller is, Mike, on the record of these typical transactions? I don't know if we have that.

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MR. NEWMAN: Who is the seller if it's not Integrated?

THE WITNESS: Integrated was not the seller. My guess is the seller was previously created trusts that owned the accounts. And those trusts were on the sell side. And the funds were on the buy side.

MR. NEWMAN: Okay. But, again, how -- I'm still trying to determine how the sale price was arrived at. I understand who the parties are. I understand your knowledge. I understand Mr. Smith's knowledge. I understand your relationship.

But what I want to learn is how whatever price that was ascribed to those Alarm Contracts was arrived at between the two of you, or if there was any discussion? If you tell them, "This is what we have. This is what we'll sell." And he said "Fine"?

MR. FRANCESKI: Objection.

THE WITNESS: First of all, it

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wasn't "we," it wasn't Integrated Alarm. 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.

MR. NEWMAN: You had no personal involvement?

THE WITNESS: That's correct.

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BY MR. ROWEN:

Q What's the typical documentation of this analysis you speak of in determining the value and the price of Alarm Contracts?

A What is the typical documentation? The documentation is generally an asset purchase agreement. And that asset purchase agreement would specify by schedule the accounts being conveyed and the consideration being paid for those accounts.

Q Well, what would the documentation be for the source of the price of those accounts, of how they were valued?

A I don't know that the asset purchase agreement would go into any detail as to how that price was determined, what metrix were used. It typically does not include such -- such description.

Q But there would be -- if there would be an analysis, where would that be documented?

MR. FRANCESKI: I'm sorry, "would be an analysis"?

BY MR. ROWEN:

Q If there would be an analysis, which I think he spoke of the analysis, where would that be documented?

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A The analysis would most likely be 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 end notes?

THE WITNESS: Note to file sort of thing.

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MR. MCCARTHY: Help me out here because I want to make sure I understand your testimony.

Were many of these packages, if you will, of contracts that were being purchased, previous packages that were -- that money had been raised through McGinn Smith entities?

THE WITNESS: Yes.

MR. MCCARTHY: So these packages, these bundles, if you will, had a value that McGinn Smith had previously put on them when they bought these for the private placement?

THE WITNESS: Correct.

MR. MCCARTHY: Can you walk me through a transaction as far as -- pretend, if you will, analysis. I want to understand how the thinking goes.

THE WITNESS: Yes.

MR. MCCARTHY: Let's use a dollar because a dollar is nice and round. I have a dollar and I'm going to want to buy these contracts. And

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there's going to be an interest amount that I'm going to be looking at.

Can you walk me through that analysis.

THE WITNESS: Sure. But let's 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; 30,000 times 43, $1.29 million.

We would put those contracts

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into a pool, and we would calculate what we consider to be the likely attrition factor on that beginning number of a thousand accounts. The only thing you really know in the alarm business is that a year from now if you start with a thousand, you are going to have less, you never have more, you never have a thousand. It's going to go south. The question is: How far south? And when does it go south?

So we had data for years and years and years. We had data for hundreds of thousands of accounts. So we had a pretty good insight, proprietary insight into what that attrition might be.

Then we did a present value calculation. We knew that the cost of servicing those accounts was roughly 5 to $6 a month. So when we started with $30,000 of revenue on month one, we would have 5 or $6,000 of expenses; consequently, we'd have 24, $25,000 of

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available cash flow.

And that would go down every month because the number of live accounts would diminish every month. So 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 did it.

MR. MCCARTHY: Just on

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average, what attrition value would you attribute to these contracts?

THE WITNESS: Depending on the type of contract, commercial versus residential, on the commercial side we would use an attrition rate of anywhere from 6 to 8 percent. On the residential side, in normal times, we would use an attrition rate of anywhere between 10 and 14 percent.

MR. MCCARTHY: And those are the legitimate figures for the purposes of these notes?

THE WITNESS: Yes. Those had been legitimate figures for the dozen years that we had been involved in this business.

The attrition rate in the residential portfolio jumped up after middle of 2007 when we began to see delinquency rates on mortgages go up substantially. And as you see delinquency rates on mortgages and other consumer credit going up, you're

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officially going to be affected because this is a consumer item. And we saw ramp up in attrition after that point.

MR. MCCARTHY: To what figure? How high was the attrition?

THE WITNESS: The figure, depending on the type of portfolio, could run as high as 20 percent.

MR. MCCARTHY: Was that unheard of before 2007?

THE WITNESS: Yeah, pretty much. Unless you are really talking about junk stuff, which we never bought. But when you saw the delinquency rate on primary mortgages go from 1 percent to 6 percent, you could imagine what happened to alarm paper.

MR. MCCARTHY: Did your public company ever have attrition rates as high as 15, 16, 17 rates?

THE WITNESS: Yes.

MR. MCCARTHY: It wasn't that unheard of? That was before 2007, right?

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THE WITNESS: Correct.

MR. MCCARTHY: So before 2007 you still had to account for some attrition rates that could be as high as 17.8?

THE WITNESS: Well, there were seasonal -- there were seasonal factors. I think one quarter we had a pretty high attrition rate. But by and large our attrition rates at the public company ran in the 12 to 14 percent rate on a steady state, smooth basis.

MR. MCCARTHY: Walk me through, if you will, the life of these contracts. I bought these to market in a private placement.. And the private placement has been fulfilled. It is a six-year contract or so, and you've paid the interest through that.

How do you pay back the customers through principal? What mechanism? If there's not enough money in there, all you have are contracts and those contracts, while they may or may

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not have some value, do not have enough value per se at one point to pay back the customers, how do you get them out?

THE WITNESS: Well, first of all, in all of these transactions there was amortization. So to the extent -- to the extent that the contracts stayed within our prescribed band of performance, that principal amount was amortized over four, five, six years.

The other way that you would take out principal would be in terminal valuation. To the extent you didn't amortize initial debt, you still had a pool of assets, shrunken pool nonetheless, but you still had a pool of assets which was -- which had value. These things are relatively fungible. There has been some disruption in the liquidity in that particular marketplace. But by and large, there was always capital around to buy these pools of assets.

You may recall that Tyco just

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bought Brinks in a $2.5 million transaction. Stanley Works bought Sonitrol in a $600 million transaction. Stanley Works also bought Honeywell Monitoring Services for $600 million. So there's always capital around to buy these things.

So to the extent that you don't amortize from operating cash flow, you do have the terminal value of the portfolio to address that.

MR. MCCARTHY: And how would McGinn Smith & Company normally address that? Would that be done through an additional capital raise?

THE WITNESS: When McGinn Smith & Company was in that business, which it was in from 1992 to 2003, I would say 90 percent of the capital raise was repaid by way of amortization.

MR. MCCARTHY: After 2003?

THE WITNESS: Well, after 2003 McGinn Smith no longer was in that business. Because I and Mr. Smith had

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to sign noncompetes with the public company.

MR. MCCARTHY: So you're raising capital through private placements for those Alarm Contracts. You were only raising capital through buying bundles of those contracts?

THE WITNESS: McGinn Smith & Company as of July 23, 2003 was precluded by contract with IASG, with the board of directors of IASG, from playing an active role in that business.

EXAMINATION

BY MR. RATTINER:

Q Could they use the four funds to buy contracts?

A They could not go out into the marketplace and buy contracts from an alarm dealer in Woodbridge, New Jersey.

Q But how could they? What was the workaround, if you will?

A Well, the funds could buy existing contracts from existing trusts that may have been

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created but could not intervene in the marketplace, in the commercial marketplace by going to any dealers in the marketplace and buying their contracts.

Q So would they be buying resales -- buying a pre-qualified bundle?

A Yes.

Q Versus creating their own bundle?

A That's correct.

Q Okay.

MR. MCCARTHY: These bundles just happen to always be McGinn Smith's previously-put-together products?

MR. FRANCESKI: That were purchased by the LLCs, you mean, Bob?

MR. MCCARTHY: Yeah.

THE WITNESS: Yes.

MR. MCCARTHY: And were there -- any of these bundles that would not have had the amortization put away to pay off their customers without adding additional funds from these loans?

THE WITNESS: Well, at the time of these acquisitions by the funds,

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as I recall, the acquisition was made at a pricing level, a multiple that would have delivered the funds, a targeted rate of return which the fund manager found to be compelling.

BY MR. RATTINER:

Q And what was that?

A Double digits, 10, 12 percent.

Q That's based on the amortization or based on the price of the contract at the time of purchase?

A Based upon the entire matrix of the dynamics for that particular pool.

EXAMINATION

BY MR. ROWEN:

Q Maybe we can tie this back to my earlier question.

Where would that matrix be documented?

A To the extent that it is documented, that would be documented in the notes of the buyer.

Q What form does that take?

We are not experienced with the Alarm

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Contracts.

What form would that take?

A I don't know. It may have taken the form of a legal pad with notes and calculations. It may have taken the form of a spreadsheet. It may have taken the form of some other mechanism. I don't know.

EXAMINATION

BY MR. RATTINER:

Q How does the negotiation work on a deal that was brought to place by McGinn Smith and then re-bought, or however we want to term it, post 2003?

Who is on -- who's the buyer, who's the seller?

A Well, the buyer is the funds.

Q Okay.

A And so the representative of the funds would be Mr. Smith.

Q Right.

A And the seller would be presumably the trustee for the accounts in that particular pool?

Q Is that also going to be Mr. Smith?

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A I would guess so, yes.

MR. MCCARTHY: So what happened, you are doing this, you are making all this money, how come it all fell apart?

MR. FRANCESKI: What is the "this"?

MR. MCCARTHY: I mean, apparently you had a good plan of business and you were making money for all this time. And a couple of years ago, it all started to all fall apart.

What happened?

MR. FRANCESKI: Again, I need to know what the "this" is. All of what fell apart?

MR. MCCARTHY: What happened with McGinn Smith? Why is McGinn Smith looking at a BDW? Why are there delinquent payments on these notes? Give me what happened.

MR. FRANCESKI: That's different. That's not just the Alarm Contracts. That's everything the LLCs

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did.

THE WITNESS: What -- I think what happened globally, and I would cite a recent book that was published, written by a fellow named Ira (sic) Ross Sorkin, who writes for the New York Times. The name of the book is Too Big To Fail. It did a very good job, in a sort of narrative manner, talking about what happened to the credit markets and to the economy in this country from August of 2007 through today. And what happened was the world basically fell apart. We had Fannie Mae, Freddie Mac, Washington Mutual, Lehman Brothers, Bear Stearns, Merrill Lynch, Wachovia, and other large financial institutions that failed or that went out of business or were chased into the hands of an acquirer; i.e., Merrill Lynch into Bank of America, Wachovia into Wells Fargo.

In addition to which the funds, the FIINs, the FEINs, the FAINs and the TAINs were effectively a

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specialty finance company.

And I would think that the closest model to what the funds were was CIT. And CIT was a company with a balance sheet of $80 billion, had a stock price as high as $87 and went bankrupt. And went bankrupt because by and large they could not roll over their debt. They had -- they had defaults in their portfolio because the businesses that they lent to could not roll over their paper. Their business went south.

I think that by and large people forget just how treacherous the markets were between September 15th of '08, when Lehman filed, and today.

And you know, Paulson, Hank Paulson, former Secretary of the Treasury, just released a book on Monday called At The Brink. And that, too, discusses this period of time. And I think that there were large, very difficult macroeconomic trends that caused disruptions, not only in these

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funds, and they did, but in many other institutions that were thought to be sacrosanct.

MR. MCCARTHY: In this Too Big To Fail book that you've described, didn't they also blame a lot of this on the greed?

THE WITNESS: Yeah. You read the book?

MR. MCCARTHY: Wasn't it mostly blamed on greed?

THE WITNESS: Some of it was.

MR. MCCARTHY: High fees?

THE WITNESS: No. Some of it was basically the leverage that was created. In particular they referenced AIG. And AIG had a unit called Financial Products Unit that wrote literally trillions of trillions, 10th to the 12th trillions of dollars of credit default swaps. And they did this off the back -- off the balance sheet of the holding company, AIG. And that was -- that was the largest single bailout

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by the United States Government.

And yes, there was an element of greed there, and that people were taking out to 20, 30 million dollar bonuses, and they were doing that because they could -- they could get these credit default swaps done, and no one ever thought they were going to come back and they would have to pay on them. Well, they did have to pay on them. And that's why the government pumped $80 billion into AIG.

MR. MCCARTHY: So the case of McGinn Smith, do you think any part of this breakdown that's occurred was due to the fact that in many of these cases that you just cited today, that 20, 25, 30 percent was taken off the top?

THE WITNESS: The answer is no. And the reinforcement to that answer is the investments that were made by the funds did not have any of those fees. The investments that were made by the funds -- and the funds probably in

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the aggregate totaled $85 million were in distinct businesses that had their own set of circumstances. So I would not accept that thesis.

BY MR. RATTINER:

Q What do you mean by "they didn't have any fees"?

Did you say that the funds did not have any fees?

MR. FRANCESKI: No. He said "those fees," referencing Mr. McCarthy's reference to 25 percent fees.

BY MR. RATTINER:

Q So, again, elaborate on how the funds --

A Sure they had fees. But the fees were reasonably nominal given the size of the funds and -- and that really had nothing to do with the -- in my opinion, with the difficulties that the funds ultimately got into.

EXAMINATION

BY MR. ROWEN:

Q What is RTC Trust?

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A RTC Trust was a trust created in maybe 2002 which was designed to acquire a central station at a place called Roseville, California. RTC was -- stood for the Roseville Telephone Company.

There was also a component of that trust that had some residential accounts, as I recall.

Q You say "stands for telephone company," what was purchased by RTC Trust?

A It was a central station, a third-party monitoring central station.

Q What is your involvement with RTC Trust?

A What is my involvement? Or what was my involvement?

Q Start with "was."

A In 2002 I ran the investment banking business of McGinn Smith & Company. It was a transaction that was sourced by my -- by a partner of ours in a different business, a fellow by the name of Thomas Few, the father of Jeffrey Few.

Tom few was in the central station alarm business. He owned 80 percent of a company called King Acquisition Corp, which was in northern

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New Jersey. I owned 10 percent of that company and David Smith owned 10 percent of the company.

Tom came to us and said that he wanted to buy this particular asset from the Roseville Telephone Company. We put together the capital to affect that transaction.

Q Can you elaborate on putting together the capital?

A We did a capital raise, which we referred to as RTC Trust. I don't recall the amount. I do recall it was in the spring sometime of 2002. And I do recall that we completed the transaction.

MR. NEWMAN: Do you remember approximately how much was raised?

THE WITNESS: I don't. But I would -- I don't recall specifically how much was raised, but I would guess it to be -- I'd rather not even guess. I just don't know.

BY MR. ROWEN:

Q Who are the owners of RTC Trust?

A Well, it is a grantor trust. And the -- under the terms of the grantor trust, the residual interest in the assets would revert to the

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grantor. And the grantor was a combination of King Acquisition Corp and a thing called IASI, Integrated Alarm Services Inc., which then became part of the public company.

Q Who is the trustee for RTC?

A I would -- I would think it was either McGinn Smith Holdings, McGinn Smith Capital Holdings or McGinn Smith and Co, Inc. I'm not sure.

Q What fees were raised during the offering in 2002?

A I don't know. I don't recall.

Q Were there underwriting fees?

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 & Company, Inc. It may have become part of the records of Integrated Alarm Services Group which is now owned by an entity called Protection One. I

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don't know whether it's at either of those places.

Q What is the status of RTC Trust today?

A I don't know that either.

MR. RATTINER: What is your current role? You mentioned what was your role, but what is your role?

THE WITNESS: Relative to RTC Trust?

MR. RATTINER: Right.

THE WITNESS: I don't have a role.

MR. RATTINER: Does it still exist, the trust?

THE WITNESS: I don't know.

MR. RATTINER: Did you a abolish your interest?

THE WITNESS: No. The ownership interest, I believe, that was at ISAI was morphed into Integrated Alarm Services Group.

MR. RATTINER: So once IASG went public, you no longer held an interest in the trust?

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THE WITNESS: That's correct.

MR. RATTINER: How about any of the McGinn Smith entities, do they still own an interest?

THE WITNESS: I don't believe so.

MR. RATTINER: Are they still deriving fees from the trust?

THE WITNESS: I don't think so.

BY MR. ROWEN:

Q What was your involvement in the 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 involvement?

A Excuse me?

Q What was your involvement starting in

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'03 after IASI was rolled into IASG and you became part of IASG?

A As I said, I was the chairman and CEO of IASG. And my involvement there in that role was basically to pursue large acquisitions, to pursue incremental financing for the company, to supervise and direct senior staff on things such as Sarbanes-Oxley and other corporate matters.

Q How about specific to RTC?

A I had no specific function relative to RTC.

Q Who was -- who was managing RTC after you became part of Integrated Alarm?

THE WITNESS: To the extent that there was a continuing involvement on the residential portfolio side, that business was -- the line manager was a fellow by the name of Douglas Keenholts who had worked for us since being a co-op in college. And he, in turn, reported to Brian Shea, who was the President, Chief Operating Officer, of IASI, which was a division of IASG.

MR. ROWEN: Let's mark this

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Exhibit 8.

(Whereupon Exhibit 8 is marked.)

BY MR. ROWEN:

Q Mr. McGinn, you have been handed Exhibit 8 in this matter.

A Hm-hm.

Q Exhibit 8 is a total of five pages. 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 between First Advisory and RTC.

Please take a minute to review.

A (Reviewing).

Q Mr. McGinn, what was your involvement with this grid note?

A None.

Q Are you familiar with it?

A No.

Q Were you aware that there was a note,

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grid note between First Advisory and RTC?

A No.

Q Were you made aware at any point of all the investments of First Advisory?

A No -- repeat that question, please.

Q Were you made aware at any point of all the investments of First Advisory Income Notes?

A Of all the investments, no.

Q Never provided a list?

A I was aware of the larger investments made by the funds. And I may have testified to this earlier, but there may have been four or five or six names. This was not one of the names that I was familiar with.

Q But you were familiar with RTC Trust in itself?

A I was familiar with RTC Trust from 2002. The assets of the funds that I was familiar with were larger assets, as I described earlier. This is not something that I was familiar with.

Q Does it surprise you today to see there was a grid note between First Advisory and RTC?

MR. FRANCESKI: Objection. You may answer.

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THE WITNESS: Does it surprise me? This is news to me. And this is something I haven't seen before.

So under that definition of "surprise," yes. Does it surprise me to the extent that I am going to jump out of my skin, no. I wasn't aware of this until you handed it to me. I have no 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 whether or not investors in that '02 offering were repaid their principal and interest?

THE WITNESS: I was not.

MR. NEWMAN: Do you know what a grid note is?

THE WITNESS: Sure.

MR. NEWMAN: Can you give us a brief summary of what that's, a grid note in general.

THE WITNESS: I'm sorry?

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MR. NEWMAN: Do you know what a grid note is?

THE WITNESS: Yes.

MR. NEWMAN: Can you give us a brief description of that.

THE WITNESS: Yes. A grid note is merely an open commitment for some level of capital, where that capital can be drawn down over a certain period of time and added to the outstanding principal of the note. And it basically is a convenient and efficient way of handling a credit facility which is expected to have a drawdown schedule over time.

MR. NEWMAN: If I understand -- and correct me if this is -- my description as inaccurate, but the trust itself owns the Alarm Contracts, RTC Trust owns a pool of Alarm Contracts?

THE WITNESS: That's correct.

MR. NEWMAN: Is that correct? Is RTC Trust an operating company?

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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 Integrated Service contracts?

THE WITNESS: There is an agreement between RTC Trust and its outsource provider to service the contract.

MR. NEWMAN: And the outsource provider is paid a certain fee for servicing a contract?

THE WITNESS: That's correct.

MR. NEWMAN: The terms of the operational decisions made to buy or sell contracts within the trust, who makes that decision?

THE WITNESS: Well, that would be made -- anything outside the four corners of operating functions, major capital events would be made by the trustee.

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MR. NEWMAN: And the trustee is paid a fee for that service?

THE WITNESS: I don't -- I don't think in any of these instances the trustee was paid a fee.

MR. NEWMAN: What is the financial benefit to being a trustee in these circumstances?

THE WITNESS: To facilitate the transaction.

MR. NEWMAN: So is your experience that the trustees in the Alarm Contract structures did not receive fees --

THE WITNESS: That's correct.

MR. NEWMAN: -- for that particular function?

THE WITNESS: Yes.

MR. NEWMAN: The trustee for the RTC was McGinn Smith Capital Holdings?

THE WITNESS: Are you telling me or asking?

MR. NEWMAN: I'm asking you.

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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 --

THE WITNESS: Yes. That's --

MR. NEWMAN: Does that refresh your recollection?

THE WITNESS: Sure.

MR. NEWMAN: And as of April 2006, what was your involvement with McGinn Smith Capital Holdings Corporation?

THE WITNESS: I had no involvement with McGinn Smith Capital Holdings Corporation. I was a 30 percent shareholder at that point. I was an employee of a public company. I did not work for McGinn Smith; McGinn Smith Capital Holdings; McGinn Smith Holdings. I was not involved.

MR. NEWMAN: You had an ownership interest. It was passive.

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You weren't actively involved in the operations of the corporation?

THE WITNESS: That's correct.

MR. FRANCESKI: Wait a minute. What corporation are we talking about?

MR. NEWMAN: McGinn Smith Capital Holdings Corp.

MR. FRANCESKI: Well, no. If I understand, correct me if I am wrong. I don't mean to mess up the record here, but I thought that your ownership was in -- Mr. McGinn's ownership was in McGinn Smith Holdings, which then is 100 percent owner of the McGinn Smith Capital Holdings. Is that right?

THE WITNESS: I think that's correct.

MR. NEWMAN: So you had an interest in the parent company of McGinn Smith Capital Holdings Corp.? You had an ownership interest in that corporation?

THE WITNESS: Yes.

MR. NEWMAN: 30 percent

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interest in the parent company?

THE WITNESS: Yes.

MR. NEWMAN: There's a holding company?

THE WITNESS: Yes.

MR. NEWMAN: This was one of the companies within the holding company?

THE WITNESS: Yes.

MR. NEWMAN: But your testimony is you had no involvement in the operations of McGinn Smith Capital Holdings Corp.?

THE WITNESS: Yes.

MR. FRANCESKI: Yes, you had no involvement?

THE WITNESS: My testimony -- I think the question was: Your testimony was that you had no involvement?

My answer to that question is yes.

MR. NEWMAN: Okay. So this appears -- this grid note appears to be

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an agreement between a borrower and a lender. The borrower is RTC Trust 02. And the lender is First Advisory Income Notes. Correct?

THE WITNESS: Correct.

MR. NEWMAN: And Mr. Smith was the investment advisor for First Advisory Income Notes, correct?

THE WITNESS: Yes.

MR. NEWMAN: And Mr. Smith was the president of McGinn Smith Capital Holdings Corporation?

THE WITNESS: Yes.

MR. NEWMAN: This is an agreement between Mr. Smith wearing one hat and Mr. Smith wearing another hat?

MR. FRANCESKI: Objection.

MR. NEWMAN: He's negotiating the agreement between himself; is that what is happened here?

MR. FRANCESKI: Objection. I think the borrower is RTC trust, isn't it?

MR. NEWMAN: Who is acting on

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behalf of the trust? Who signs on behalf of the trust? Mr. Smith, correct?

THE WITNESS: That's correct.

MR. NEWMAN: This is an agreement between Mr. Smith and Mr. Smith in different capacities?

THE WITNESS: Yes.

MR. NEWMAN: Do you know why your name appears on the first page of the grid note under the Advances Authorized Representative paragraph, fourth line.

THE WITNESS: I don't know.

MR. NEWMAN: It's your testimony you had no involvement with RTC Trust on April 2006?

THE WITNESS: That's my testimony.

MR. NEWMAN: So you had no idea why your name would appear on this document?

THE WITNESS: I have no idea other than to say that I was a

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30 percent owner of the parent company of the trustee.

MR. PAULSEN: Couple of clarifying questions, if I may. I believe you testified you are a 10 percent owner in King Acquisition Corp?

THE WITNESS: Correct.

MR. PAULSEN: Mr. Smith also a 10 percent interest --

THE WITNESS: Yes.

MR. PAULSEN: Who had the -- who owned the remaining 80 percent?

THE WITNESS: Thomas Few, Sr.

MR. PAULSEN: And was there any capital raised for that entity?

THE WITNESS: We did an acquisition -- we procured an acquisition loan from Key Corp in roughly January of 2001 to buy the business from a fellow by the name of Charlie Fisher, who is a New Jersey resident. And that -- that capital was, I think, $17 million.

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MR. PAULSEN: I'm sorry. That was by -- through Key Bank?

THE WITNESS: Key Bank was the lender. We arranged that loan.

MR. PAULSEN: So I am not sure I understand. King Acquisition Corp took a loan through Key Bank? Let me ask you to clarify that.

THE WITNESS: The name of the company prior to the conveyance in January 2001 was King Alarm. King Alarm at that time was owned 80 percent by a fellow by the name of Charlie Fisher and 20 percent by Thomas Few.

Tom Few came to us and said "I would like to buy this company. Can you guys arrange the financing?" We said, "We'll try." He said, "Well, if you can arrange the financing, I will afford you, Tim, a 10 percent ownership interest; and David a 10 percent ownership; Mr. Smith a 10 percent ownership interest; and I will own 80 percent and run the company and be an

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employee" and blah-blah-blah. And we said "Fine, we will attempt to do that."

MR. FRANCESKI: Who is the "we"?

THE WITNESS: McGinn Smith & Company.

So McGinn Smith & Company, largely myself, did procure that financing for Mr. Few. And the deal was closed. The transaction was closed in, I believe, January 2001.

Post that transaction, the name changed to King Acquisition Corp, which company was owned 80-10-10.

EXAMINATION

BY MR. RATTINER:

Q The funding came from which bank?
A Key Bank, Cleveland, Ohio.
Q What was your affiliation with Key Bank?
A I had no affiliation with Key Bank.
Q Did you say you were chairman of a bank at one point?

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A Yes.
Q What bank was that?
A Pointe Bank, P-O-I-N-T-E. Headquartered in Boca Raton, Florida.

EXAMINATION

BY MR. ROWEN:

Q What is SAI?
A SAI was another public company that was in the monitoring space, and we did an -- we did a financing for SAI.

MR. FRANCESKI: "We"?

THE WITNESS: McGinn Smith & Company. I'm sorry.

When? Maybe 1999.

BY MR. ROWEN:

Q Is that SAI Trust or is that a different entity?
A SAI was the name of the public company, Securities Associates International. SAI Trust was the name of the vehicle that we used to raise the capital for SAI.
Q How much money was raised?
A Roughly $23 million.

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Q What fees were collected for that raise.

A I think we earned a fee of a million and a half dollars.

Q And what was that fee classified as?

A Fee income.

Q Underwriting, advisory?

A Loan placement fee.

Q Do you know who the trustee of SAI Trust is?

A I don't.

Q And have investors been paid back in full for SAI Trust?

A No.

Q Is it in default?

A Yes.

Q How much in default?

A I'm sorry?

Q How much is in default?

A I would say that there's probably an outstanding balance of 3 or 4 million dollars.

MR. RATTINER: When did it go into default?

THE WITNESS: Sometime in '08,

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maybe the middle or latter part of '08.

MR. NEWMAN: What happened?

THE WITNESS: SAI had quality problems with their services. They lost a lot of business. They had previously done a number of residential alarm acquisitions where they ended up paying too much. Those accounts performed poorly and they couldn't any longer continue to stay in business.

MR. NEWMAN: When did it first begin experiencing what we'll call financial hardship?

THE WITNESS: I don't know when they first began to experience hardship.

MR. NEWMAN: What involvement did you have in the operations of SAI Trust once the money was raised?

THE WITNESS: None.

MR. NEWMAN: What involvement did Mr. Smith have either individually or through another entity in the operations of SAI Trust?

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THE WITNESS: Mr. Smith was involved in, I think, a round of negotiation modification of the agreement, sometime in the 2004-2005 time frame.

MR. NEWMAN: Tell us about that.

THE WITNESS: SAI had been having difficulties. They came to us to McGinn Smith & Company and said, "We would like to revisit the terms of our relationship."

MR. FRANCESKI: This is SAI, the public company.

THE WITNESS: SAI, the public company. We -- "we," David, from McGinn Smith & Company, negotiated with a fellow by the name of Tom Salvatore who was the Chairman and CEO of SAI. And they came to an agreement whereby SAI would have the benefit of some reduction in coupon if they would make some principal payments. They agreed to do that. They did that for a number of

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years, until they hit a brick wall. And by that time there were lenders to SAI who were senior to our position. And those senior lenders basically foreclosed on the collateral.

MR. NEWMAN: So the relationship between McGinn Smith and SAI was a lending relationship?

THE WITNESS: The relationship between McGinn Smith and SAI began as an advisory cum loan procurement facilitator.

MR. NEWMAN: You are going to have to explain that one.

MR. FRANCESKI: Objection. Asked and answered.

THE WITNESS: What would you like to be explained?

MR. NEWMAN: You will have to provide some more details on what you mean by that.

MR. FRANCESKI: He already explained the financing side of that.

Do you need him to explain

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that again, too?
MR. NEWMAN: Yes.
THE WITNESS: Okay.
MR. FRANCESKI: Go ahead.
Objection; asked and answered.
THE WITNESS: SAI was a public company. They had debt that was owed to a lender who wanted to get repaid, they wanted some incremental capital to expand their operations. They were headquartered in Arlington, Illinois, outside of Chicago. They came to McGinn Smith & Company. McGinn Smith & Company was known at that time as a major player in the financing of that particular sector. They came to me and said "Here is our -- here is our -- here is our problem. What can you do? We'd like to get a -- we'd like to take out the existing lender and we'd like some incremental capital.
I spent a fair amount of time with their operating people in terms of due diligence. Came to the conclusion

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it was something that could be financed. And put together a two-tranche financing.
That two-tranche financing consisted of a senior tranche, which I think was something in the 17, 18 million dollar range. And a subordinate tranche which became the SAI trust, which was in the 5 or 6 million dollar range. The senior tranche was placed 80 percent with Key Bank out of Cleveland Ohio, and 20 percent with Pointe Bank in Boca Raton, Florida. They were on the same level.
The Junior tranche was raised by way of a trust offering by McGinn Smith & Company. And that's how the financing came together.
MR. NEWMAN: Pointe Bank, was that the bank you testified earlier that you had some involvement with?
THE WITNESS: Yes.
MR. NEWMAN: What was your involvement with Pointe Bank at the time

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of that transaction?
THE WITNESS: I was a director. I don't know if I was chairman at that time, but I was a director. I obviously recused myself from any deliberations relative to that particular asset.
MR. NEWMAN: Did you have an ownership interest in Pointe Bank?
THE WITNESS: Yes.
MR. NEWMAN: What was your ownership interest?
THE WITNESS: Pointe Bank was a public company. It went public in June 1998, and I owned stock in the company.
MR. NEWMAN: What was your ownership interest?
THE WITNESS: Oh, I probably owned a couple, $300,000 worth of stock.
MR. NEWMAN: Do you know what percentage of the overall outstanding shares that represented?
THE WITNESS: 2.

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MR. PAULSEN: Were you associated with another broker-dealer at that point in time besides McGinn & Smith?
THE WITNESS: No.
MR. PAULSEN: Have you ever heard of a firm known as Point Capital?
THE WITNESS: Oh, yes, I was. Pointe Capital was a -- I'm not sure it was that time. I don't know if the time lines were coincident. But Point Financial Corp. Was the holding company, was the public company of Pointe Bank. And Pointe Bank at that time was roughly a $250 million institution. And the board of directors of Pointe Financial wanted to have some direct involvement with the capital markets, and so we created -- "we," meaning Pointe Financial Corp., created a broker-dealer by the name of Pointe Capital. We staffed it with a fellow who had come out of Nomura and Key Bank. And he came to Florida and ran that. I was -- I was

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probably a principal -- you can look on the records to make sure, but there was virtually no revenue that came out of Pointe Capital to speak of. And Pointe Capital was closed some number of years later.

MR. PAULSEN: You were just a principal, not an owner?

THE WITNESS: No. The owner was -- the owner of Pointe Capital was Pointe Financial as well as another company called First Integrated Capital Corp. And I was a shareholder of First Integrated Capital Corp.

MR. PAULSEN: What was your role in Pointe Financial again; what capacity?

THE WITNESS: Pointe Financial was the public company. I was a board member. I believe I was also vice chairman of that board. And I later became chairman of its primary subsidiary, which was Pointe Bank.

MR. PAULSEN: So was there an

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indirect ownership, Pointe Financial through to Pointe Capital, by yourself?

THE WITNESS: As I said, I own stock in Pointe Financial, roughly 2 percent. Pointe Financial owned, I think, 50 percent of Pointe Capital. So, yes, there was an indirect ownership interest.

By the way, there's another company which also had a dismal history called on line Capital Corp. And it too was a broker-dealer. I had a broker-dealer license but did no business. And I'm pretty sure I was a principal of on line Capital Corp.

MR. PAULSEN: Thank you.

BY MR. ROWEN:

Q Are you aware of any of the four funds we've discussed loaning money to SAI Trust?

A No.

Q Would you be surprised to hear that those -- any of the four note entities loaned money to?

A No.

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There's not a lot that can surprise me anymore, as I sit here today.

MR. RATTINER: You said -- is the public company bankrupt, SAI?

THE WITNESS: SAI, yeah.

MR. RATTINER: So why has -- has SAI, the trust, been written off on the books of McGinn Smith?

THE WITNESS: Why has it?

MR. RATTINER: Well, has it, number one?

THE WITNESS: Has it?

MR. RATTINER: Has it.

THE WITNESS: I don't know.

It was not an asset that was owned by McGinn Smith & Company. So I am not sure that it would appear on our balance sheet as an asset, which wouldn't require any write-downs per se.

MR. RATTINER: So it would appear on the LLCs books?

THE WITNESS: To the extent that there are loans to SAI, yes.

MR. RATTINER: Okay. As far

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as you know, those have not been written down off the LLC books?

THE WITNESS: I don't even know that they are there.

MR. RATTINER: All right. Let's take a break.

(Whereupon a recess is taken.)

MR. RATTINER: Back on the record.

EXAMINATION

BY MR. ROWEN:

Q We were talking about SAI Trust and its status over time.

Were you aware of the status of SAI Trust in early 2006?

A I don't have any specific awareness of the trust in early 2006. I would guess it was performing at that time.

Q Do you know when it became nonperforming?

A Not specifically. But I would have thought it would have been much later than early 2006.

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Q I guess at what point were they a creditable entity, one that you would be comfortable, one of the four funds, loaning a million dollars to?

A I was not involved in the SAI Trust from January of 2003 on, so I have no particular knowledge of what that curve looks like in terms of their credit worthiness and where the inflection point on that curve would be. I can't help you with that.

MR. RATTINER: From 2003 to 2006 when you were not there, who performed the daily duties that you performed prior to 2003, prior to leaving?

THE WITNESS: The business model at McGinn Smith & Company changed after I left. And the business model was previously that I would, you know, run around and source transactions. And we would execute those transactions.

When I left in January 2003 followed by the successful IPO in July, a number of clients of McGinn Smith & Company received vast amounts of capital

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back to them because the public company basically bought the assets that were in those trusts. And the clients of the firm took in roughly a hundred million dollars.

At that point Mr. Smith and Mr. Livingston -- and at that time Mr. Smith owned 50 percent, Tom Livingston didn't own any, decided they would pursue a different business model, and that business model would be to become advisors to a series of mezzanine funds that they would establish.

And so they went about the business of writing a document, putting together a business plan, talking to clients and raising the capital that became the capital source for FIIN, FAIN, TAIN and FEIN.

And then subsequent to that, they spent their efforts sourcing business for those funds and taking an active role and running the funds. And they continued to do that for all of the

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time that I was not at the firm.

MR. RATTINER: And then you return in November '06?

THE WITNESS: Right.

MR. RATTINER: What duties do you take on at that point and continue today?

THE WITNESS: Basically I reverted to my former business practice. And the first transaction I did was TDM Cable Funding. And have done in concert with a fellow by the name of Matthew Rogers, who I think you will meet in the next week or two. Various transactions: Verifier, Luxury Cruise, TDM, TDMM, so forth.

MR. RATTINER: I guess -- what are you aware of Mr. Livingston's role with regard to the four notes? What role did he play?

THE WITNESS: He had two roles. The first role was that he was sort of an adjunct to Mr. Smith relative to the investment decisions in the

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funds.

Secondly he became a principal in a company called alseT, which was a borrower of capital from the funds, and pursued an intellectual property monetization business model which didn't work.

MR. RATTINER: You're also a registered investment advisor?

THE WITNESS: I don't know.

MR. RATTINER: Okay. Did you maintain --

MR. FRANCESKI: "You're" meaning?

MR. RATTINER: You, Mr. McGinn.

Whether or not --

MR. FRANCESKI: No. An individual cannot be a registered investment advisor.

MR. RATTINER: Is there an RIA entity McGinn Smith?

THE WITNESS: I believe so.

MR. RATTINER: You're

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affiliated with that entity?

THE WITNESS: Well, I think the entity that's the RIA is MS Advisors. And MS Advisors has four clients, and those are the: FIN, FEIN, FAIN and TAIN.

MR. FRANCESKI: There are actually two.

THE WITNESS: Two?

MR. FRANCESKI: MSC, I believe, is duly registered as an advisor.

MR. RATTINER: And while you were at IASG from '03 to '06 did you maintain your registrations with the broker-dealer?

THE WITNESS: Yes. I also retained my physics books. I'm an engineer by education. So just in case, I've still got my physics books.

MR. RATTINER: We will not need those. And we will not request those.

We will request you to answer

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questions about the next exhibit. We are going to introduce Exhibit Number 9.

(Whereupon Exhibit 9 is marked.)

EXAMINATION

BY MR. RATTINER:

Q For the record, Mr. McGinn, you have in front of you Exhibit Number 9. This is an e-mail from Brian Cooper to yourself, Wednesday, May 28, 2008. And the subject is TDM Cable Interest.

Which TDM company are we speaking of in this e-mail?

A I would say TDM Cable Funding LLC.

Q And I think you previously testified they did not borrow money to pay investor interest?

A That's correct.

Q Does this contradict that statement?

A Yes, it does.

Q Did you not recall that at the time?

A Correct.

Q Do you recall it now?

A Well I'm reading it now, sure.

Q What was the circumstances behind

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this e-mail?

A Well, the circumstances were that, as I testified earlier, TDM Cable Funding LLC bought two properties from a group called Primevision Communications LLC. I also testified that Primevision Communications LLC went out of business. And when they did that, we had to expend a significant amount of dollars to get them to wrap things up. They sort of extorted money from us. We had to invest some money in -- in plant at both of these locations.

And so that consequently used capital that we would otherwise have used to pay investor interest.

So apparently what we did here was borrowed money from FEIN, $25,000, to make up that shortfall.

Q Was First Excelsior paid back?

A You know what... I don't know. This would suggest... I don't know.

Q Okay. Was there a raise subsequent to this borrowing?

A A capital raise.

Q Correct?

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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 clear, it is an e-mail string.

MR. RATTINER: Correct.

BY MR. RATTINER:

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Q I guess the first question is: Who is BO?

A I would think it's a fellow by the name of Barack Obama.

Q And what deal is ongoing at this time that we are implying here?

A You know, I don't know. It could have been a roll. It could have been cleaning up the CMS offering and the repayment to the funds and to a fellow by the name of [redacted]. But it's not specific. So I am not sure what it refers to.

Q And did you know what you meant by the third sentence, "We need to keep the pressure on"; pressure on who?

A Pressure on sales people to get them to sell whatever it was we were trying to sell.

Q And "I need $2 million by 1/30"; what was meant by that?

A Well, obviously we were looking to procure another $2 million for some purpose by the end of that month. And I am not -- as I said, I am not sure exactly what that was for.

Q Was there an open CMS deal at the end of 2008?

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A I don't believe there was an open CMS deal. I don't think there was an open CMS deal.

Q Was there a TDM Cable or any TDM deal open in that time frame?

A There may have been TDMM -- TDMM deal open at that time. But I don't -- I can't say that 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, don't go home at 3 o'clock. Do what you get paid to do.

MR. ROWEN: Before we move on, I know you don't know the specific deal, was this 2 million in pressure regarding a private placement?

THE WITNESS: More than likely, yes.

MR. ROWEN: Do you have sales practice concerns about the idea of pressuring representatives to sell private placements?

MR. FRANCESKI: Can I hear

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that question again?

MR. ROWEN: Do you have sales practice-related concerns over a comment about keeping the pressure on registered representatives about selling private placements?

MR. FRANCESKI: Does he have that concern today about having made that statement then?

MR. ROWEN: Sure, yes.

THE WITNESS: No.

MR. ROWEN: Did you have any concern at the time?

THE WITNESS: If I did, I wouldn't have written it.

MR. PAULSEN: What was the call about?

THE WITNESS: I have no idea. We typically did a sales call every Monday. I would -- as I look at the dates, I think Monday, January 19, 2009 was Martin Luther King day. And we probably didn't do that call that day because the markets were closed. So we

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may -- may have done that call earlier in the morning on Tuesday, the very next day, January 20th.

MR. PAULSEN: In writing, "Not 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 Mr. Obama.

MR. PAULSEN: Was Mr. Obama on the call?

THE WITNESS: No, I don't believe he was on the call. He very rarely comes on our calls.

MR. PAULSEN: It seems the way I read it, Not a lot of enthusiasm seen on the call this morning that he did not participate. So would that have any impact?

MR. FRANCESKI: Objection.

THE WITNESS: Would the fact

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that Mr. Obama did not participate have any impact?

MR. PAULSEN: I think your testimony just was -- you referred -- can you read the last response back, including Mr. Obama in there.

(Whereupon the answer is read back.)

MR. NEWMAN: Is it your testimony you don't know what this $2 million was in reference to?

THE WITNESS: Yes.

MR. FRANCESKI: Objection; asked and answered.

MR. NEWMAN: That's fine.

This is a stream of e-mails, correct, captioned "Subject, Regarding thoughts."

Do you see that?

THE WITNESS: I do.

MR. NEWMAN: All the subject lines say "Thoughts." And it's all in reference to what? What are all the e-mails in reference to.

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THE WITNESS: Well, the participants in the e-mail string are Bob Haldeman, who is with CMS Financial Services Corp.; David Smith. And David then sent it along to a fellow by the name of Tim Kolojay and myself. Haldeman is the -- was at the time the co-CEO of CMS, along with Mr. Kolojay. David Smith was the chairman of the board of CMS. Any reference to Tim in these e-mails is a reference to Tim Kolojay, not me. And our involvement with Haldeman over the years had been a continuing contentious involvement. And without reading each of these e-mails, I would bet that this is further discussion of -- discussion of those contentious matters.

MR. NEWMAN: Okay. So is it possible the $2 million relates to the Coventry slash CMS offering?

MR. FRANCESKI: Objection.

THE WITNESS: You know, as I said earlier, I don't know specifically

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what the $2 million being referred to here was.

MR. NEWMAN: So having looked at this string of e-mails, your memory is not refreshed as to what the $2 million was in reference to?

THE WITNESS: No. Because I don't recall doing an offering for CMS or any of its subsidiaries at that time.

MR. NEWMAN: So you have no idea sitting here today what "I need $2 million by 1/30" means?

THE WITNESS: That's correct.

MR. NEWMAN: You're able to describe for us -- or explain to us that you were able to re-create over 15 promissory note agreements four or five years after the fact.

MR. FRANCESKI: Objection.

THE WITNESS: Yes. You pointed that out earlier.

EXAMINATION

BY MR. RATTINER:

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Q When did TDMM benchmark close?

A December of '09.

MR. FRANCESKI: I just want to note for the record, not to argue, Mike, with the thrust of your question, but it is not unusual to see someone use prior string of e-mails as the a mechanism of responding which will then carry the same re: line but it's not necessarily related to the previous subjects of the e-mail string.

I am not suggesting that's what this is, but it's also not unusual.

BY MR. RATTINER:

Q Do you recall any specific deals that closed on 1/30/2009?

A No.

MR. RATTINER: Introduce the next exhibit. Number 11.

(Whereupon Exhibit 11 is marked.)

BY MR. RATTINER:

Q Mr. McGinn, in front of you is an exhibit, Number 11. It's one page. It's two e-mails

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in total. The first e-mail is from Timothy McGinn to Brian Cooper; Tim McGinn and Dave Smith, cc to Brian Shea. Subject is Note Terms. And the date is May 5, 2009.
A Hm-hm.
Q Similar to the Exhibit Number 9 we have discussed, is this another loan from one of the four LLCs to TDM Cable Funding?
A Yes.
Q And this one you are not aware of prior to now?
A I didn't remember this one prior to now.
Q Okay. What is the current status of this loan?
A I don't know.
Q Was it paid back on January 31, 2010?
A I don't know.
Q Who would be responsible for ensuring that payment?
A Mr. Smith.
Q And what is the current assets of TDM Cable Funding, liquid assets?
A Probably not a lot, probably $10,000.

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Q So they wouldn't have the 40,000 to pay?
A Correct.
Q Do you know if this note was extended?
A If it wasn't paid, it was extended.
Q Do you know if it was extended?
A I know that if it wasn't paid it was extended.
Q Would you have had to sign off on the note?
A Probably.
Q Do you recall signing off on the note?
A I do not.
Q Why are you giving the terms of the note?
A Because I was asked to by Cooper. And it went to Smith. And the times are a little peculiar here, because it looks as though I responded to his question before he asked the question.
Do you see that?
Q I do.
Again, this e-mail was received from

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the firm. So that I can't answer.
MR. NEWMAN: What was TDM Cable Funding status on March 19, 2009?
THE WITNESS: On March 19, 2009?
MR. NEWMAN: Yes. $40,000 was sent to TDM Cable Funding March 19th.
THE WITNESS: Oh, I don't know.
MR. NEWMAN: Generally what was the firm's financial -- or the entity's financial condition in the first quarter 2009?
THE WITNESS: I think in the first quarter 2009 it was fine. There might have been, you know, timing issues. But by and large it was fine.
MR. NEWMAN: Did you ask for the $40,000 on behalf of TDM Cable Funding?
THE WITNESS: I may have.
MR. NEWMAN: Why did you ask for it?
THE WITNESS: Well, if I asked

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for it, there was some need for liquidity.
MR. NEWMAN: What was the source of capital for TDM Cable Funding in March of 2009, if any?
THE WITNESS: Well, the source of capital was its -- basically its operations. We did not have an offering alive at that time for TDM Cable Funding.
MR. NEWMAN: So whatever funds the entity had to operate with were the funds that were obtained from the offering of TDM Cable Funding?
THE WITNESS: No. They were the operations of TDM Cable Funding, which consisted of two homeowners associations, one called Cutler K and one called Keys Cove.
MR. NEWMAN: Did TDM Cable Funding have any lines of credit -- have access to lines of credit?
THE WITNESS: No.
MR. NEWMAN: Did you ever

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attempt to seek a line of credit or a loan from anyone besides Mr. Smith?

THE WITNESS: In March 2009 you may recall there were -- the credit markets were closed. There were no credit markets in this country.

MR. NEWMAN: Prior to March 2009, did TDM Cable Funding ever obtain or seek a loan or line of credit from any entity or bank other than through Mr. Smith or one of his companies?

THE WITNESS: No.

MR. NEWMAN: Given your experience with Alarm Contracts, your business experience, your background, do you believe TDM Cable Funding would have been able to obtain a loan for $40,000 in March 2009 from a bank or other lending facility?

THE WITNESS: Do I believe TDM could procure such a loan from a depository institution?

MR. NEWMAN: At this

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particular time.

THE WITNESS: No.

MR. NEWMAN: Was there an agreement, written loan agreement that was entered into in connection with this loan?

THE WITNESS: I don't know.

MR. NEWMAN: Would Mr. Cooper have had access to any loan agreements that were entered into between McGinn Smith entities and third parties?

THE WITNESS: Yes.

MR. NEWMAN: So presumably when he's asking for terms of the loan, would there be some indication he didn't have a copy of a loan agreement?

THE WITNESS: It would be indication to me he wanted to enter that into his notes, perhaps in the Quicken fields for notes and perhaps have Mr. Carr draft a note containing those terms.

MR. NEWMAN: Is Mr. Carr copied on this e-mail?

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THE WITNESS: Doesn't look that way.

MR. NEWMAN: Was Mr. Cooper given copies of loan -- let me rephrase that.

Other than the agreements that we have discussed earlier today that were completed November of last year, for any other loan agreements that were entered into between any of the McGinn Smith companies, affiliates, was Mr. Cooper given copies of those notes or loan agreements?

THE WITNESS: I think he probably was. I think he kept copies of all of the notes.

MR. NEWMAN: Was it your practice to get Mr. Cooper a copy of any loan or note agreement that you entered into on behalf of Mr. McGinn Smith or any of its affiliates?

THE WITNESS: Mr. Cooper is very conscientious in documenting transactions. And to the extent that he

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is, he maintains a file for these financial arrangements.

MR. NEWMAN: So based on practice, if there was a document associated with a financial arrangement, to use your word, Mr. Cooper would, in terms of standard practice, usually have a copy of that?

THE WITNESS: I think so, yes.

MR. NEWMAN: Did -- Mr. Cooper reports to Mr. Shea; is that correct?

THE WITNESS: That's correct.

MR. NEWMAN: And prior to that he reported to Mr. Rees?

THE WITNESS: Yes.

MR. NEWMAN: And his duties are to do what, specifically?

THE WITNESS: Mr. Shea is the chief financial officer of the company. And Mr. Cooper acts as essentially a controller.

MR. NEWMAN: Is he the one that makes the financial entries, Mr. Cooper?

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THE WITNESS: I believe so, yes.
MR. NEWMAN: That would be on behalf of McGinn Smith and all of its affiliates or just certain companies?
THE WITNESS: Correct.
MR. NEWMAN: All its companies?
THE WITNESS: I think so, yes.
MR. NEWMAN: Is he involved with any of your personal accounts or finances?
THE WITNESS: No.
MR. NEWMAN: Does he have any involvement with Mr. Smith's personal accounts or finances?
THE WITNESS: I doubt it.
MR. NEWMAN: Does Mr. Shea have any involvement with your personal accounts or finances?
THE WITNESS: No.
MR. NEWMAN: How about Mr. Smith's?
THE WITNESS: No.

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MR. NEWMAN: Is that -- is there anybody within McGinn Smith who has that function for you?
THE WITNESS: No.
MR. NEWMAN: How about Mr. Smith?
THE WITNESS: I doubt it.
MR. NEWMAN: Does McGinn Smith have an outside accounting firm?
THE WITNESS: Yes.
MR. NEWMAN: Who is that accounting firm?
THE WITNESS: The name of the firm is Piaker Lyons. They are domiciled in Binghamton, New York.
MR. NEWMAN: Who is the accountant or auditor who has the McGinn Smith account?
THE WITNESS: I think the engagement partner is a fellow by the name of Ron Simons.
MR. NEWMAN: What interaction have you had with Mr. Simons over the last three or four years?

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THE WITNESS: Mr. Simons does our personal taxes. He has been the engagement partner for the audit of McGinn Smith & Company since the late '80s -- he may not have been the engagement partner, but he's been involved in the accounts since then. He's had a long history of involvement with, not only the firm, but the principal of the firm.
MR. NEWMAN: When you say "he does our personal taxes," are you referring to yourself and Mr. Smith?
THE WITNESS: Yes, I am.
MR. NEWMAN: Does Mr. Simons also prepare the tax returns for the McGinn companies or entities or affiliates?
THE WITNESS: Yes.
MR. NEWMAN: You said he's audited McGinn Smith & Company since the late '80s; is that what you said?
THE WITNESS: Yes.
MR. NEWMAN: Has he audited

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any other of the McGinn Smith companies, entities or affiliates?
THE WITNESS: First of all, I don't think it was he who performed the audit on McGinn Smith & Company. He may be the engagement partner, but he did not do the audit work.
MR. NEWMAN: His firm?
THE WITNESS: I believe McGinn Smith and Co., Inc. is the only entity where we do a full-blown audit. And we do that for regulatory purposes, as you know.
MR. FRANCESKI: How do you spell Piaker?
THE WITNESS: Piaker, P-I-A-K-E-R, Lyons, L-Y-O-N-S.
MR. NEWMAN: What is your involvement in the filing of tax returns for any of the McGinn Smith companies or affiliates?
THE WITNESS: I sign them.
MR. NEWMAN: Can you tell us what tax returns you signed?

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THE WITNESS: I sign numerous tax returns. I signed a bunch of them last week. I don't sign for the funds for the FIIN, FEIN, TAIN and FAIN.

MR. NEWMAN: Who signs those returns?

THE WITNESS: Mr. Smith.

MR. NEWMAN: Are you given a copy of those returns?

THE WITNESS: No.

MR. NEWMAN: Tell us what returns you sign.

THE WITNESS: I sign MS Partners. I may sign McGinn Smith & Company; McGinn Smith Holdings; M&S Finance, M&S Financing LLC; McGinn Smith Transaction Funding; Three Rock Partners; McGinn Smith Acceptance Corp.; Seton Hall Associates; JV Associates; Upstate Imaging Associates; TNA Associates. There may be more.

MR. NEWMAN: Do you want to think about it for a second?

THE WITNESS: I am not going

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to come up -- I mean, that's -- that's about what I can recall. There may be more. I'm just not sure.

MR. NEWMAN: Are all the tax returns for these entities current?

THE WITNESS: Yes.

MR. RATTINER: Did you say you signed for MS Holdings?

MR. FRANCESKI: He did say.

THE WITNESS: I did say.

MR. RATTINER: Is MS Holdings current?

THE WITNESS: I don't know. I don't know. I signed a bunch of these things last week, maybe ten of them, and that could have been one of them.

MR. RATTINER: Signing that last week, were those the ones that were due September 15th -- or I forget the tax deadline, but I think it's September 15, 2009 for 2008?

THE WITNESS: No. They were more recent than that. They were not delinquent tax returns.

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MR. RATTINER: So what are they for, what year?

THE WITNESS: Probably 2009.

MR. RATTINER: So you think the ones you signed within the last week or so are for 2009?

THE WITNESS: Correct.

MR. RATTINER: Do you know what entities you signed? Are those the ones that you just discussed?

THE WITNESS: I don't. But I can certainly get you a list.

MR. MCCARTHY: Okay. A couple of times during the course of your testimony, I sense something in your voice when you speak about these four funds, kind of distancing.

Do you have some problem with the way these four funds were run?

MR. FRANCESKI: Objection.

You may answer.

THE WITNESS: I think that these funds were run professionally. I think that they were run with thought

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and intelligence. And I think the results of the funds' investments were less than I would have contemplated.

And I further think that the large determinate in that performance was, as I described earlier, macroeconomic events that were beyond anyone's control. It would be hard for me to sit here and tell you, Mr. McCarthy, that I was pleased with the way these funds ended up.

We have -- Mr. Smith and I have built a business over 30 years. And I think we've garnered a pretty good reputation in the marketplace. And I think the performance of these funds have to a large extent tarnished that reputation, sullied that reputation, and that does not make me a happy person. It does not make Mr. Smith a happy person. And it's regrettable.

But if you sense any attitude from me in terms of the funds, it is only in that I am deeply disappointed at

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the results of the funds, as is Mr. Smith. And I know that he approached these funds with care, with diligence, with integrity; and unfortunately, we are where we are.

MR. MCCARTHY: So is it just coincidence the entities that you had no part in have appeared to have led to the downfall?

MR. FRANCESKI: Objection.

Do you understand the question?

THE WITNESS: Is it coincidence?

MR. FRANCESKI: He's asking, would they have turned out differently if you were involved?

THE WITNESS: I don't think so, no. If that's the question, I don't think so. Because I would have been dealing in the same economic environment that Mr. Smith dealt in.

I don't think I have any particular insights into the coming

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economic events any better than anybody else in this room or anybody else on the street. So no, I don't think it would have been different if I was involved.

MR. MCCARTHY: So the business plan for these -- for these LLCs was something that you would have approved of?

THE WITNESS: I think that -- in hindsight or at that date?

MR. MCCARTHY: Let's start in hindsight.

THE WITNESS: In hindsight, yeah. You know, you're -- everybody has the ability in hindsight to say, Well, I would have done this differently; I would have done that differently. So that's an easy comment. That's a throw-away comment.

At the time would I have done things differently? Perhaps. And let me tell you why I say perhaps.

Because the returns that we were looking for, the funds were looking

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for, that MS Advisors was looking for, were in the 14-percent range with maybe some equity kickers here and there. And yet the cost of those funds, unlike other firm's CIT, for instance, who had access to the commercial paper markets, the cost of those funds, between underwriting, coupons to the three tranches of the funds, advisory, you know, administerial fees for tax returns and that kind of thing, there was a spread there of maybe 250 basis points. 250 basis points is a great spread if you are involved in an asset class that's of low risk. And clearly the asset class that the funds were involved with was not an asset class of low risk. So the higher the risk profile in the asset class, the greater the spread has to be, because you know you're going to have some deals that blow up.

So I would have -- I would have tempered the activities in that particular asset class or -- or sought

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significantly higher returns on assets to grow that spread.

MR. MCCARTHY: So the investments made by these LLCs, if I am reading what you just said right, were speculative?

THE WITNESS: Well --

MR. FRANCESKI: Objection.

THE WITNESS: Let me say that these investments were certainly not treasury bonds, treasury notes, treasury bills. They were loans to small to mid-size companies.

With that there is a much higher element of risk. We -- "we," MS Advisors through the offering documents laid out very carefully what the risks were in each of these transactions. We went through that in great detail a month ago in Philadelphia at an arbitration with a guy by the name of Chang. And in that instance he signed 25 times a subscription document that said, "I read the private placement

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memorandum. I understand the terms. I understand the risks. I'm willing to assume those risks." 25 times.
The risk factors are complete. They are exhaustive. And when people invest capital and expect a return of ten-and-a-quarter percent when completing money market instruments are paying two, two-and-a-half percent, you have to assume that there is a gradient not only of return but a gradient of risk. And that's what we did. And that's -- that's the fact of the matter.
Now, getting back to your question: Would I have done things differently? Perhaps. But, you know, I am not going to speculate what I may have done if I was running these funds. I had another job at the time.
MR. MCCARTHY: During the course of the years of 2003 and 2004, do you recall what -- what the percentage interest payment for treasury bills was?
THE WITNESS: In 2003 and

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2004, short-term bills were trading at 4 1/2 to 5 percent level, maybe 3 1/2 to 5 percent.
MR. MCCARTHY: What about -- talk to you about macroeconomics. What about investment Grade A bond, "A" corporate bond, do you know what the interest rate was?
THE WITNESS: What maturity?
MR. MCCARTHY: Let's go out five years.
THE WITNESS: An A-rated bond in 2004 with a five-year maturity was probably trading at 6 1/2 percent, 6 to 6 1/2 percent.
MR. MCCARTHY: Okay. What about junk?
THE WITNESS: Well, junk bonds have had an interesting history in that the spread over treasuries has expanded and contracted quite violently over the years. And that spread has run anywhere from 400 basis points to a thousand basis points, depending upon --

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depending upon the sentiment of the market at the time and the risk aversion at the time.
MR. MCCARTHY: And the basis points spread between a BBB corporate in 2003-2004 in junk would be?
THE WITNESS: BBB is just one notch up from junk. So it probably wouldn't have been more than 3- to 500 basis points. Most of that's function of liquidity. Because a BBB bond and investment grade bond can be purchased by a number of accounts that a junk bond can't be purchased by. So it's really not a reflection of the credit differential, it's a reflection of the liquidity differential.
MR. MCCARTHY: So would you say that it would be fair to say that a bond in 2003-2004 that was paying 10 percent would have been classified as junk?
THE WITNESS: More than likely, yes.

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MR. NEWMAN: Would you consider the LLC investments to be equivalent of junk bonds?
THE WITNESS: Yes.
MR. NEWMAN: Are you familiar with suitability -- suitability requirements, generally speaking?
THE WITNESS: Generally speaking, yes.
MR. NEWMAN: What -- given your experience in the brokerage industry, what type of investor would these LLC investments have been suitable for?
THE WITNESS: As stated in the offering document, they would have been suitable for a sophisticated investor who could afford to lose his investment, who didn't have any lifestyle requirement that caused him to depend upon the return from these investments, who had sufficient liquidity in other aspects of their financial portfolio to withstand a loss that might be taken on

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these investments.

MR. NEWMAN: We have seen a number of the agreements questionnaires that were completed by investors who were in their 70s, 80s -- 70s and 80s. I think there's even some 90-year old investors who invested in the LLCs.

Generally speaking, is that -- would this be an appropriate investment for someone that age?

MR. FRANCESKI: Objection. Is that the only factor you're putting in, the age? That's a question?

MR. NEWMAN: That's the question.

MR. FRANCESKI: Factor is age.

THE WITNESS: I understand. I don't think that the matrix of suitability would be a one-element matrix: age. If a person was 80-years old and had significant resources and significant liquidity, sure. If a person was 60-years old and did not have significant resources or sophistication

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or other income, then the answer would be no.

So it's not an answer that's in my opinion any way dependent solely upon age or any other one particular item.

MR. NEWMAN: Fine. Would you consider this to be a short-term or long-term investment, the LLC investment?

MR. FRANCESKI: Well, I think you need to be a little more specific, because there were three tranches with different maturities.

MR. NEWMAN: Are you familiar with the three tranches?

THE WITNESS: I am.

MR. NEWMAN: So what -- in terms of the three tranches, how would you characterize each of the tranches from a short-term, long-term investment perspective, time horizon?

THE WITNESS: The three tranches were a senior tranche, a senior

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subordinate tranche and a junior tranche.

The senior tranche, I believe, had a maturity of one year. And I would characterize that as short term. The senior subordinate tranche had a maturity of three years, and I would characterize that as short to intermediate term. The junior tranche had a maturity of five years, and I would characterize that as intermediate to long.

MR. NEWMAN: Are you familiar with McGinn Smith's new account form?

MR. FRANCESKI: Again --

MR. NEWMAN: The clearing firm.

MR. FRANCESKI: -- NFS version?

MR. NEWMAN: NFS. The one the clearing firm provided to McGinn Smith.

THE WITNESS: No.

MR. NEWMAN: Are you familiar with the new account forms in general?

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THE WITNESS: Generally. I mean, I haven't opened a new account probably since 1998, so I am not -- I am not enmeshed or involved in that area of the business where, you know, I do conduct a retail trade.

MR. NEWMAN: You're a securities principal?

THE WITNESS: I am a principal, yes.

MR. NEWMAN: How long have you held your principal's license?

THE WITNESS: Since 1980.

MR. NEWMAN: Are you aware that generally speaking most new account forms have an investment objective that has to be designated on the new account form?

THE WITNESS: Of course.

MR. NEWMAN: Typically three of the items or potential objectives are growth, income, and speculation?

THE WITNESS: Yes.

MR. NEWMAN: There might be

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one or two more, but those are the typical ones?
THE WITNESS: Correct.
MR. NEWMAN: Do you agree with that statement?
THE WITNESS: I do.
MR. NEWMAN: Where in those objective investments would you classify the LLC investments?
THE WITNESS: I would say that the senior tranche is clearly on the income side. The senior subordinate would be also income. And because the junior tranche is junior, I would say that would be a mix of income, maybe 70 percent. Speculative -- speculative income 30 percent.
MR. NEWMAN: Are you familiar with the term "accredited investor"?
THE WITNESS: I am.
MR. NEWMAN: Are you aware there were non-accredited investors who invested in the LLC?
THE WITNESS: Yes.

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MR. NEWMAN: How do you know that?
THE WITNESS: Because I have been told that by Mr. Smith.
MR. NEWMAN: That's the source of that knowledge?
THE WITNESS: That's right.
MR. NEWMAN: Are the LLCs an appropriate investment suitable investment for a non-accredited investor?
THE WITNESS: It could be.
MR. NEWMAN: Can you explain that?
THE WITNESS: Depending upon the number of dollars being invested; the financial resources of that particular investor away from the funds; the income requirements to support a lifestyle for that particular investor; I think an unaccredited investor in those instances would be a suitable investment.
MR. NEWMAN: Just by your

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testimony, you seem to acknowledge there are a lot of factors that go into a suitability determination --
THE WITNESS: Yes.
MR. NEWMAN: -- of this magnitude?
THE WITNESS: Yes.
MR. NEWMAN: Someone who invested a substantial amount of money into an LLC investment like this.
THE WITNESS: Yes.
MR. FRANCESKI: You mean like the FINRA rules indicate, Mike?
MR. NEWMAN: Is that an objection or comment?
MR. FRANCESKI: Just a comment.
Would you like me to cite the rule?
MR. NEWMAN: I'm sorry?
MR. FRANCESKI: Do you want me to cite the rule?
MR. NEWMAN: Would you agree that from a supervisory standpoint if

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somebody has been a principal in the securities industry for a number of years, would you agree that it's important to know from a supervisory standpoint when you were reviewing an investment in a product like this, you would want to know as a supervisor, a set of detailed information so you can make an assessment whether or not the investment is suitable for the particular customer who is investing?
MR. FRANCESKI: Could I hear that read back? That was kind of a long one.
(Whereupon, question is read back.)
MR. FRANCESKI: Objection to form.
But just to place the objection on the record, I want the witness to focus on -- I think you do, too, Mike -- the word "supervisor."
MR. NEWMAN: That's what I said, "as supervisor."

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MR. FRANCESKI: As a supervisor?

MR. NEWMAN: Right. As a supervisory person.

THE WITNESS: Yes.

MR. NEWMAN: Would you agree that in order to supervise the suitability of a recommendation made involving investments of this nature, an LLC private offering, that the supervisor needs to have a certain set of information to supervise and assess the suitability recommendation made by the broker?

THE WITNESS: Yes.

MR. NEWMAN: What set of information would you need to know to supervise that recommendation?

MR. FRANCESKI: Objection.

You can answer.

THE WITNESS: Net worth, income, anticipated liquidity needs, investment experience; whether or not the investor is relying upon an advisor,

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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?

THE WITNESS: No.

MR. NEWMAN: Do you know how McGinn Smith supervised these LLC offerings to ensure that these recommendations were suitable for the people who invested in them?

THE WITNESS: I do not know specifically how McGinn Smith & Company did that. All I can say is that I suspect that each of the subscription documents and investor questionnaires

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were reviewed by the appropriate parties at McGinn Smith and dealt with accordingly.

MR. MCCARTHY: Someone who is retired and is living on their investment income, maybe with a little bit of Social Security help, what would be the percentage of their portfolio that you would recommend for this type of investment, specifically investments in LLCs?

MR. FRANCESKI: If they're living on the investment income?

MR. MCCARTHY: That's correct.

THE WITNESS: Well, if I were -- if I were the signatory --

MR. MCCARTHY: As principal of McGinn Smith, what would you --

THE WITNESS: You know what, it depends whether or not that investor had a hundred thousand dollars to invest or ten million dollars to invest.

MR. MCCARTHY: Let's pretend here. Let's say they have a half a

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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?

MR. MCCARTHY: 24,000 a year?

THE WITNESS: Yeah. No, no, no, no. 24,000 a year coming from Social Security.

MR. MCCARTHY: We are getting a little lost because I don't know. I don't know if that was an offer of some sort.

MR. NEWMAN: Don't repeat yourself in your own questions.

MR. MCCARTHY: Half a million

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dollars, and the other income is Social Security.

THE WITNESS: What are his lifestyle demands? How much money does he need to support his lifestyle?

MR. MCCARTHY: I don't know.

THE WITNESS: That's a key question. That's a key matrix. If he plays a lot of golf, belongs to a fancy country club, he may need more money.

But ordinarily, I would say that in that instance I would not probably exceed 25 percent of that money. And I would spread that out over the senior or the senior subordinated in the junior, and that spread would probably be 50-30-20.

MR. MCCARTHY: What are the factors you would want to know?

THE WITNESS: Well, as I said, I would want to know what his lifestyle demands are. I would want to know if he had any looming liquidity needs that could be identified. I would want to

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know what kind of health he was in. I would want to know what kind of healthcare insurance he might carry to address any health concerns. I would want to know if he had any particular needs to support children or grandchildren.

MR. MCCARTHY: Would you want to know what other investments he had?

THE WITNESS: Sure.

MR. MCCARTHY: Would you want to know what other investments he had in similar products?

THE WITNESS: Absolutely.

MR. MCCARTHY: As a principal of McGinn Smith would you sign off on a trade like this without knowing some of those details?

THE WITNESS: Most likely not.

MR. MCCARTHY: How would the principals of McGinn Smith know these details?

THE WITNESS: They would know these details either through the

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investor questionnaire or through conversations with the client's broker, who is -- rule 405 is charged with the notion of knowing your customer.

MR. MCCARTHY: Rule 3010 says you have to supervise too.

Are you going to go rule for rule? That's a New York Stock Exchange rule.

Are you guys a member of the stock exchange?

THE WITNESS: No.

MR. MCCARTHY: Then that may not be as germane.

Where on the investor questionnaire for these four LLCs does it give a history of the other holdings for the investor?

THE WITNESS: I don't know.

MR. MCCARTHY: Does it?

THE WITNESS: I don't know.

MR. MCCARTHY: Do any of your previous private placements give you a history of the holdings of the

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customers?

MR. FRANCESKI: For clarity, Bob, holdings at McGinn Smith or holding anywhere?

THE WITNESS: I think there's a line on the questionnaire that asks the size of their investment portfolio, and have they had any experience in investments in this particular asset class.

MR. MCCARTHY: I think you might be mistaken as far as their investment portfolio. Is that under network or income?

THE WITNESS: That would be under net worth.

MR. MCCARTHY: Then net worth -- does that mean investment portfolio too?

THE WITNESS: Well, it encompasses investment portfolio.

MR. MCCARTHY: Okay. In the 2003-2004 era, were there not a lot of people that you knew personally that had

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million dollars' net worth but most of it was there house?

MR. FRANCESKI: Objection. You may answer.

MR. MCCARTHY: Asking for personal knowledge.

THE WITNESS: I'm sure that I knew people who had million-dollar net worths and that million-dollar net worth was comprised largely of their real estate.

I also knew a number of people who had substantially higher net worths with a substantially lower portion of their net worth being comprised of residential real estate.

MR. MCCARTHY: And in a figure that says net worth $1 million, how do you know the difference?

THE WITNESS: Yell, if the answer is just net worth without any reference to the makeup of that net worth, then you wouldn't know the difference.

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MR. MCCARTHY: So if I wouldn't know the difference, how do I make a suitability determination if I am a principal?

THE WITNESS: Well, as I said earlier, there are two levels of information input here.

The first level is from the broker. And the -- sort of the First Line of communication is with the customer. And the presumption is that the broker has some incremental knowledge of what that investor's financial profile looks like.

MR. MCCARTHY: As a principal, would you have that conversation with the broker?

THE WITNESS: I would, yes.

MR. MCCARTHY: As a principal at McGinn Smith, do you believe Mr. Smith had that conversation with the broker?

THE WITNESS: I don't know for sure, but I guess that he did.

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MR. MCCARTHY: Did you have any specific conversations regarding suitability with the registered representative?

THE WITNESS: Relative to these transactions?

MR. MCCARTHY: Yes.

THE WITNESS: No.

MR. MCCARTHY: As a principal of McGinn Smith, do you know if there was any procedure in 2003 or 2004 that would have documented such a review?

THE WITNESS: No.

MR. FRANCESKI: Earlier in a series of questions the term "junk bond" was used. Do you recall that?

THE WITNESS: I do.

MR. FRANCESKI: And that has some pejorative ring to it. Are you familiar with the term "high yield bond"?

THE WITNESS: I am.

MR. FRANCESKI: Do you equate high yield and junk bond as the same

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thing?

THE WITNESS: I do.

MR. FRANCESKI: That's it.

(Whereupon a recess is taken.)

BY MR. RATTINER:

Q We are back on the record. We have a few more questions. And I think we are coming down the home stretch here.

Question with regard to Exhibit Number 11 real quick.

Was this $40,000 used to pay investor interest?

A It may have been.

Q Was there an interest payment due at the end of March?

A I don't know.

Q Okay. That's all I have with that.

And as far as you know, has there been -- has any McGinn Smith entity or affiliate borrowed money from a financial institution -- yes or no, first. Sorry.

MR. FRANCESKI: I'm sorry?

BY MR. RATTINER:

Q Has any McGinn Smith entity or party

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borrowed money from a financial institution; i.e., a bank?

A Yes.

Q And let's take down year by year. When was the last time that happened?

MR. FRANCESKI: Any McGinn Smith entity?

BY MR. RATTINER:

Q Or affiliate.

MR. FRANCESKI: Got that?

THE WITNESS: The last year that that was done, I don't know. I don't know. Not in the recent past, that's for sure.

BY MR. RATTINER:

Q Since the time you have been back?

A No.

Q So prior to 2003?

A Correct.

Q Okay.

MR. NEWMAN: I don't have anything else at this point.

MR. FRANCESKI: I have one clarifying question.

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Mr. McGinn, there were a series of questions earlier in which you were asked about labels, such as, income growth speculative -- speculation from new account form.

Do you recall those questions?

THE WITNESS: I do.

MR. FRANCESKI: Do you recall in the prospectus and/or subscription agreement how the LLC notes were classified?

THE WITNESS: In each case the offering document described the investment of a speculative nature.

MR. FRANCESKI: That's all.

MR. RATTINER: That concludes today's record. Obviously, reserve the right to call you back or ask additional questions.

We don't have any questions at this time. And we are going off the record.

(Whereupon OTR Concluded at 4:01 p.m.)

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I, S. Arielle Santos, C.S.R., a Certified Shorthand Reporter do hereby certify:

That prior to being examined, the witness named in the forgoing deposition, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth.

That said deposition was taken before me at the time and place set forth and was taken down by me in shorthand and thereafter reduced to computerized transcription under my direction and supervision, and I hereby certify the foregoing deposition is a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

____

S. Arielle Santos

Certified Shorthand Reporter