

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,*

vs.

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

McGINN, SMITH & CO., INC., :  
McGINN, SMITH ADVISORS, LLC :  
McGINN, SMITH CAPITAL HOLDINGS CORP., :  
FIRST ADVISORY INCOME NOTES, LLC, :  
FIRST EXCELSIOR INCOME NOTES, LLC, :  
FIRST INDEPENDENT INCOME NOTES, LLC, :  
THIRD ALBANY INCOME NOTES, LLC, :  
TIMOTHY M. MCGINN, AND :  
DAVID L. SMITH, GEOFFREY R. SMITH, :  
Individually and as Trustee of the David L. and :  
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :  
LAUREN T. SMITH, and NANCY MCGINN, :

*Defendants,*

LYNN A. SMITH and  
NANCY MCGINN,

*Relief Defendants,*

- and-

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

*Intervenor.*

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**MOTION OF WILLIAM J. BROWN, AS RECEIVER, FOR AN  
ORDER (I) APPROVING A PROCEDURE FOR THE ADMINISTRATION OF  
CLAIMS; (II) ESTABLISHING A DEADLINE FOR FILING OF CLAIMS; AND  
(III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

William J. Brown, as Receiver (‘Receiver’) for the entity Defendants in this  
action and certain other entities, by his counsel, Phillips Lytle LLP, moves (the ‘Motion’) for an  
Order: (i) approving a procedure for administration of claims against the MS Entities (as defined  
below) as set forth below; (ii) establishing a deadline for the filing of claims against the MS

Entities; and (iii) approving the form and manner of notice thereof, and respectfully represents as follows:

### **BACKGROUND**

1. On April 20, 2010, the Securities and Exchange Commission (“SEC”) filed a Complaint initiating the above-captioned action (the “Complaint”) (Docket No. 1). Also, on April 20, 2010, this Court granted a Temporary Restraining Order (Docket No. 5), which, among other things, froze certain assets of the above-captioned Defendants and Relief Defendants, and appointed the Receiver as temporary receiver with respect to numerous entities controlled or owned by Defendants Timothy M. McGinn and David L. Smith (collectively, the “MS Entities”).

2. On July 26, 2010, the Court entered an order granting SEC’s Motion for a Preliminary Injunction and appointing the Receiver as permanent receiver with the consent of defendants Timothy M. McGinn and David L. Smith (“Preliminary Injunction Order”) (Docket No. 96).

3. On August 3, 2010, the SEC filed an Amended Complaint (Docket No. 100). On June 8, 2011, the SEC filed a Second Amended Complaint (Docket No. 334).

4. The Preliminary Injunction Order authorizes the Receiver to, among other things, “use, lease, sell, and convert into money all assets of the MS Entities, either in public or private sales or other transactions on terms the Receiver reasonably believes based on his own experience and input from his advisors to be most beneficial to the MS Entities and those entitled to the proceeds...” Preliminary Injunction Order, ¶ VII(m).

### **SUMMARY OF MOTION**

5. By this Motion, the Receiver requests that the Court enter an order substantially in the form attached as **Exhibit A** (“Claims Procedure Order”): (i) approving the procedure for the administration of claims against the MS Entities, as summarized below

(“Claims Procedure”); (ii) establishing a deadline by which creditors and investors of the MS Entities (“Creditors and Investors”) must file a proof of claim<sup>1</sup> against the MS Entities if necessary under the Claims Procedure (“Claims Bar Date”); and (iii) approving the proposed form and manner of publication of notice of the Claims Bar Date and the Claims Procedure. The Receiver expects that the proposed Claims Procedure will permit the majority of Creditors and Investors to participate in the claims administration process without the necessity of preparing and filing a Claim Form. The Claims Procedure is a necessary first step to a motion by the Receiver seeking authority for interim or final distributions to Creditors and Investors.

6. The SEC has reviewed the Claims Procedure and Claims Bar Date proposed in this Motion, and it has expressed no objection.

#### **RELIEF REQUESTED**

7. The Receiver believes that claims against the MS Entities will primarily, but not exclusively, consist of so-called investor claims. Some of the private placement memoranda used by the MS Entities to raise money from these investors required investors to be “accredited investors.” Other private placement memoranda allowed for 35 or fewer “accredited investors.” Based upon communications with a significant number of these investors, however, the Receiver has determined that some of the investors likely are not “accredited investors” as required by the private placement memoranda. The Receiver estimates that there are approximately 1,200 investors.

8. In light of the Receiver’s concern that some of the investors are truly less sophisticated investors, the Receiver is proposing a simplified claims process which will lower

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<sup>1</sup> For purposes of this Motion, “Claim” is defined to mean the same as in Section 101(5) of the Bankruptcy Code: (5) The term “claim” means – (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

the effort needed to be taken by Creditors and Investors in order to assert claims against the MS Entities.

9. Other potential claims against the MS Entities include wage claims, arbitration awards, trade payables and secured claims.

10. The Receiver expects that the proposed Claims Procedure will permit many of the Creditors and Investors to participate in the claims administration process without the necessity of preparing and filing a Claim Form (as defined below).

11. By comparison, in a Chapter 7 liquidation case under the United States Bankruptcy Code, all creditors would be required to file by paper or electronically with the bankruptcy court or an approved claims agent a written proof of claim in the approved format prior to the bar date. See FED. R. BANKR. P. 3001, 3002.

**A. Claims Procedure**

12. The Receiver proposes the following Claims Procedure:

**I. *Schedules of Claims and Access Thereto***

13. Within fourteen (14) days of entry of the Claims Procedure Order, the Receiver will establish schedules of all known claims<sup>2</sup> against the MS Entities (“Schedules”), substantially in the form attached as **Exhibit B**. The claims administration process will not include at this time proofs of equity interest holders.

14. The Receiver will post the Schedules to an internet site (“Claims Site”) maintained by the Receiver, which is not intended to be accessible to the general public.<sup>3</sup>

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<sup>2</sup> The Claims Procedure proposed in this Motion is limited to claims by Creditors and Investors against the MS Entities and not “interests”. As a result, the Schedules will not include any claims based upon equity interests in the MS Entities, including, without limitation, any shareholder, partnership, or membership interests in the following entities: Health Enterprises Management, McGinn, Smith & Co., Inc., FGF Partners, GPV Associates, IP Investors, Portfolio Partners, Seton Hall Associates Limited Partners, 74 State Capital LLP, TNA Associates, and Upstate Imaging Associates. The Schedules also will not include any such equity interests related to Matthew Rogers, Timothy M. McGinn, David Smith, Geoffrey Smith and Matthew McGinn.

<sup>3</sup> The Receiver considered several methods to provide all creditors, investors and other parties in interest with access to the Schedules. The Receiver further took into account the possibility that the password to the Claims Site may be provided to other persons by Creditors and Investors, notwithstanding the procedure proposed in this

15. The Schedules will list the name of each Creditor and Investor, their address, the nature of their investment or claim, and the scheduled principal amount<sup>4</sup> of the claim as reflected in the Receiver's records. The Schedules will further indicate whether the claim is disputed, contingent or unliquidated.

16. The Receiver will provide each Creditor and Investor listed in the Schedules, by first class mail sent to each such Creditor and Investor at their last known address, post-marked on or before the date which is twenty-one (21) days after entry of the Claims Procedure Order ("Access Notice Deadline"), with (i) a password and written instructions regarding how the Creditor and Investor may access the Claims Site ("Claims Site Access Notice") and (ii) a notice describing the Claims Procedure and the Claims Bar Date ("Claims Notice") substantially in the form attached as **Exhibit C**. The SEC will also be provided with the password.

## **II. Who Must File a Claim Form**

17. Creditors and Investors who agree that the Schedules accurately reflect their claims and the amount thereof and such claims are not listed as disputed, contingent or unliquidated **do not** need to file a written claim.

18. Creditors and Investors will be required to file a written claim (each, a "Claim Form"), substantially in the form attached as **Exhibit D**, only if:

- i. the Creditor and Investor does not receive a Claims Site Access Notice on or before the Access Notice Deadline and, therefore, the claim of the Creditor and Investor is not scheduled by the Receiver or the address of the Creditor and Investor is not current;

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Motion. The Receiver has, nevertheless, concluded that establishing the Claims Site is the most efficient and cost-effective method to ensure an open and transparent claims administration process in which all Creditors and Investors and other parties in interest have access to the Schedules and other relevant information.

<sup>4</sup> For the purposes of establishing the scheduled amount of each claim, the Receiver has determined that all payments made to investors shall constitute payments of principal unless the applicable MS Entity provided the investor with a Form 1099 in connection with the payment, indicating that the payment constituted a payment of interest, rather than principal. It is unlikely that all principal amounts due investors will be repaid because recoverable assets are unlikely to be sufficient. For this reason, interest is not included in the Receiver's calculation.

- ii. the claim of the Creditor and Investor is listed on the Schedules as contingent, disputed, or unliquidated; or
- iii. the Creditor and Investor objects to the claim amount as listed on the Schedules.

**III. *Consequences for Failure to File a Claim Form***

19. Unless otherwise ordered by the Court, any Creditor and Investor who is required to file a Claim Form in accordance with the Claims Procedure Order, but fails to do so, on or before the Claims Bar Date, shall be barred, estopped and enjoined from asserting such claim against the MS Entities or the Receiver or receiving a distribution on account of such claim.

**IV. *Method for Filing a Claim Form***

20. In accordance with the Claims Procedure Order, all Claim Forms must be delivered by first-class mail, overnight courier, or hand-delivery to Phillips Lytle LLP, Attn: Jourdan L. Stevenson, 3400 HSBC Center, Buffalo, New York 14203, so as to be **actually** received by 5:00 p.m. (Eastern Time) on the Claims Bar Date. Claim forms **may not** be delivered by facsimile or electronic mail.

**B. Claims Bar Date**

21. In order to timely complete the claims administration process, the Receiver proposes that the Claims Bar Date be established as sixty (60) days following entry of the Claims Procedure Order. The Receiver anticipates that Claims Bar Date would be in approximately June 2012.

22. The Receiver believes that the proposed Claims Bar Date will provide all Creditors and Investors with ample opportunity to review the Schedules, consult with the

Receiver, if they so choose, or to submit a Claim Form in accordance with the Claims Procedure Order, if required.

**C. Notice of Claims Procedure and Claims Bar Date**

23. In order to assure that any Creditors and Investors who wish to assert claims against the MS Entities which are not listed on the Schedules have an opportunity to participate in the claims administration process, the Receiver proposes to publish notice of the Claims Procedure and the Claim Bar Date as follows:

- i. The Receiver will publish the Claims Notice and/or an advertisement describing the material terms of the Claims Procedure and the Claims Bar Date, two (2) times per week for two (2) weeks, in the Albany Times Union;
- ii. The Receiver will provide the Claims Notice and/or a press release describing the material terms of the Claims Procedure and the Claims Bar Date to news media in the Albany, New York area, including: Albany Times Union, Troy Record, The Daily Gazette, Albany Business Journal, and the ABC, NBC, CBS and Fox News affiliates in the Albany-Troy-Schenectady market;
- iii. The Receiver will prominently post to the Receiver's website copies of this Motion, the Claims Procedure Order, the Claim Form, and the Claims Notice; and
- iv. The Receiver will provide the Claims Notice and/or a press release describing the material terms of the Claims Procedure and the Claims Bar Date to DLG Wealth Management, LLC and RMR Wealth Management, LLC, successor investment managers to certain former investors of the MS Entities.

24. As noted above, the Receiver will provide a copy of the Claims Notice by first class mail to each Creditor or Investor listed in the Schedules.

**CONCLUSION**

25. The Receiver believes that the simplified Claims Procedure proposed in this Motion will permit efficient administration of the claims against the MS Entities, while at the same time avoiding complex procedures which might impede Creditors and Investors – particularly less sophisticated investors – from meaningfully participating in the claims administration process.

26. Based upon the foregoing, the Receiver respectfully requests that the Court find that the proposed Claims Procedure and Claims Bar Date serve the best interests of the receivership estate and the Creditors and Investors, and that the proposed notice of the Claims Procedure and Claims Bar Date is adequate.

WHEREFORE, the Receiver respectfully requests entry of an Order (i) granting this Motion, (ii) approving the Claims Procedure and the Claims Bar Date; (iii) approving the proposed form and manner of notice of the Claims Procedure and Claims Bar Date as set forth in the Motion, and (iv) for such other relief as may be appropriate.

Dated: March 9, 2012

PHILLIPS LYTTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Joshua P. Fleury (Bar Roll #515418)  
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Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No. (518) 472-1224

and

3400 HSBC Center  
Buffalo, New York 14203  
Telephone No.: (716) 847-8400



# **Exhibit A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

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

McGINN, SMITH & CO., INC., :  
McGINN, SMITH ADVISORS, LLC :  
McGINN, SMITH CAPITAL HOLDINGS CORP., :  
FIRST ADVISORY INCOME NOTES, LLC, :  
FIRST EXCELSIOR INCOME NOTES, LLC, :  
FIRST INDEPENDENT INCOME NOTES, LLC, :  
THIRD ALBANY INCOME NOTES, LLC, :  
TIMOTHY M. MCGINN, AND :  
DAVID L. SMITH, GEOFFREY R. SMITH, :  
Individually and as Trustee of the David L. and :  
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :  
LAUREN T. SMITH, and NANCY MCGINN, :

*Defendants,* :

LYNN A. SMITH and  
NANCY MCGINN,

*Relief Defendants,* :

- and- :

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

*Intervenor.* :  
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**ORDER (I) APPROVING A PROCEDURE FOR THE ADMINISTRATION OF  
CLAIMS; (II) ESTABLISHING A DEADLINE FOR FILING OF CLAIMS; AND  
(III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

Upon the Motion of William J. Brown, as Receiver, for an Order (I) Approving a  
Procedure for the Administration of Claims; (II) Establishing a Deadline for Filing of Claims;  
and (III) Approving the Form and Manner of Notice Thereof dated March \_\_, 2012 (“Motion”)  
(Docket No. \_\_), the Court having held a hearing thereon and no objections being sustained  
thereto, and good cause appearing therefor, it is hereby

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

ORDERED, that all claims against the MS Entities (as defined in the Motion) shall be asserted in accordance with the Claims Procedure (as defined in the Motion); and it is further;

ORDERED, to the extent required by the Claims Procedure, claims against the MS Entities shall be filed in writing with Phillips Lytle LLP, Attn: Jourdan L. Stevenson, 3400 HSBC Center, Buffalo, NY 14203, substantially in the form of the Claim Form attached as Exhibit D to the Motion, and it is further

ORDERED, that the last day for Creditors and Investors (as defined in the Motion) to file a claim against the MS Entities is fixed as \_\_\_\_\_, 2012 (“Claims Bar Date”). Unless otherwise ordered by the Court, any Creditor and Investor who is required to file a Claim Form in accordance with this Order, but fails to do so, on or before the Claims Bar Date, shall be barred, estopped and enjoined from asserting such claim against the MS Entities or the Receiver or receiving a distribution on account of such claim, and it is further

ORDERED, that the form and substance of the Claims Notice attached to the Motion as Exhibit C and the manner of publication of the Claims Notice and other notice of the Claims Procedure and Claims Bar Date as set forth in the Motion is appropriate. The Claims Notice shall be served by U.S. Mail, First Class postage prepaid within 21 days after entry of this Order on each Creditor and Investor known to the Receiver at the most recent address contained in the Receiver’s records, and otherwise published as set forth in the Motion, and it is further

ORDERED, that the right of the Receiver to file appropriate proceedings in this Court to object to claims and/or establish a procedure for resolution of claims disputes is reserved.

Dated: \_\_\_\_\_, 2012

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Hon. David R. Homer  
United States Magistrate Judge

Doc # 01-2553721.3

# Exhibit B

S.E.C. vs. McGinn, Smith & Co., Inc., et al.

SCHEDULE OF CREDITORS

HOLDING UNSECURED CLAIMS

<u>Creditor's Name, Mailing Address Including Zip Code</u>	<u>Description of Investment or Nature of Claim</u>	<u>Amount of Claim (Principal)</u>	<u>Disputed Yes/No</u>	<u>Unliquidated Yes/No</u>	<u>Contingent Yes/No</u>
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# **Exhibit C**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,*

vs.

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

McGINN, SMITH & CO., INC., :  
McGINN, SMITH ADVISORS, LLC :  
McGINN, SMITH CAPITAL HOLDINGS CORP., :  
FIRST ADVISORY INCOME NOTES, LLC, :  
FIRST EXCELSIOR INCOME NOTES, LLC, :  
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THIRD ALBANY INCOME NOTES, LLC, :  
TIMOTHY M. MCGINN, AND :  
DAVID L. SMITH, GEOFFREY R. SMITH, :  
Individually and as Trustee of the David L. and :  
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :  
LAUREN T. SMITH, and NANCY MCGINN, :

*Defendants,*

LYNN A. SMITH and  
NANCY MCGINN,

*Relief Defendants,*

- and-

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

*Intervenor.*

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**NOTICE OF CLAIMS BAR DATE  
AND CLAIMS PROCEDURE**

NOTICE IS HEREBY GIVEN that William J. Brown, as Receiver (“Receiver”) in this action, with approval of the Court, has established a procedure for asserting claims against



McGinn, Smith & Co., Inc. and the other entities listed on Schedule 1 (collectively, the “MS Entities”) to this Notice.

**1. Filing Deadline**

The deadline for filing claims against any of the MS Entities is **June \_\_\_\_, 2012.**

**2. Procedure for Review and Filing of Claims**

The Receiver will establish schedules (“Schedules”) of all known claims against the MS Entities. Each known creditor or investor listed on the Schedules established by the Receiver should receive a letter postmarked on or before \_\_\_\_\_, 2012, which will contain, among other things, a password and instructions for access to a secure website maintained by the Receiver (“Access Notice”). The website will contain Schedules listing the names, addresses, nature of the claim or investment, amount of the claim as reflected in the Receiver’s records, and whether the claim is contingent, disputed, or unliquidated. If the creditor or investor agrees with the description for their claim(s) and the amount(s) as scheduled by the Receiver on the Schedules on the website and the claim(s) is/are not listed as disputed, contingent or unliquidated, the creditor or investor does not need to take any further action. The claims in that event will be treated in the amount set forth on the Schedules, subject to the right of the Receiver to object to the claim at a later date or amend the amount of the claim, but only after giving notice by first class mail of such an intention with an opportunity to object to any such creditor.

**3. Who Must File a Claim Form**

Each creditor or investor **MUST** submit a properly completed claim form to the Receiver if the creditor or investor: (A) does not receive the Access Notice and, therefore, the claim is not scheduled by the Receiver or the address of the creditor or investor on the Receiver’s records is incorrect; (B) is the holder of a claim which is listed on the Schedules as contingent,

disputed, or unliquidated; or (C) objects to the amount listed on the Schedules in respect of any claim.

Claim is defined as: (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

**4. When and Where to File a Claim Form**

All claim forms must be delivered by first-class mail, overnight courier, or hand-delivery to Phillips Lytle LLP, Attn: Jourdan L. Stevenson, 3400 HSBC Center, Buffalo, New York 14203, *so as to be actually received* by 5:00 p.m. (Eastern Time) on the Claims Bar Date. Claim forms **may not** be delivered by facsimile or electronic mail.

**5. What to File**

The form for submitting any such claim is available on the Receiver's website ([www.mcginnsmithreceiver.com](http://www.mcginnsmithreceiver.com)) in the 'Claims' section at the \_\_\_\_\_ of the page. A copy of the form may also be requested in writing addressed to:

Phillips Lytle LLP  
Attn: Jourdan L. Stevenson  
3400 HSBC Center  
Buffalo, NY 14203

If you require a receipt for your claim, please enclose an extra copy of the claim form (without exhibits) and a stamped, self-addressed envelope.

Dated: March \_\_, 2012

PHILLIPS LYTTLE LLP

By \_\_\_\_\_  
William J. Brown (Bar Roll #601330)  
Joshua P. Fleury (Bar Roll #515418)  
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Telephone No.: (716) 847-8400

Doc # 01-2553708.3

**Schedule of Receivership Entities**  
(Exhibit A to Order to Show Cause)

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

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

# Exhibit D

