

U.S. DISTRICT COURT  
N.D. OF N.Y.  
**ORIGINAL FILE**

APR 20 2010

LAWRENCE K. BAERMAN, CLERK  
ALBANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

-against-

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,

*Defendants, and*

LYNN A. SMITH,

*Relief Defendant.*

1. 10-CV-457 (GLS/RF)

**ORDER TO SHOW CAUSE,  
TEMPORARY RESTRAINING ORDER,  
AND ORDER FREEZING ASSETS AND GRANTING OTHER RELIEF**

On the Application of Plaintiff Securities and Exchange Commission (the "Commission")  
for an Order:

(1) directing defendants McGinn, Smith & Co., Inc. ("MS & Co."); McGinn, Smith  
Advisors LLC ("MS Advisors"); McGinn, Smith Capital Holdings Corp. ("MS Capital"); First  
Advisory Income Notes, LLC ("FAIN"); First Excelsior Income Notes, LLC ("FEIN"); First  
Independent Income Notes, LLC ("FIIN"); Third Albany Income Notes, LLC ("TAIN");  
Timothy M. McGinn; David L. Smith (collectively, the "Defendants") to show cause why an  
Order should not be entered, pending a final disposition of this action:

- (a) preliminarily enjoining:
- (i) MS & Co., MS Capital, FAIN, FEIN, FIIN, TAIN, McGinn and Smith from violating Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) and 77e(c);
  - (ii) MS & Co., MS Advisors, MS Capital, McGinn and Smith from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a) and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;
  - (iii) MS & Co., MS Advisors, McGinn and Smith from violating Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and (2), and Rule 206(4)-8 thereunder, 17 C.F.R. §275.206(4)-8;
  - (iv) MS & Co. from violating Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1), and Smith and McGinn from aiding and abetting this violation; and,
  - (v) FAIN, FEIN, FIIN and TAIN from violating Section 7(a) of the Investment Company Act of 1940 ("Company Act"), 15 U.S.C. § 80a-7.
- (b) freezing the Defendants' and Lynn Smith's (the "Relief Defendant") assets;
- (c) directing McGinn and Smith (the "Individual Defendants") to provide verified accountings for themselves and MS & Co., MS Advisors, MS

- Capital, FAIN, FEIN, FIIN and TAIN (the "Entity Defendants"), and the Relief Defendant to provide a verified accounting for herself;
- (d) appointing a receiver for the Entity Defendants and all other entities McGinn and/or Smith control or have an ownership interest in (collectively the "MS Entities"); and
  - (e) prohibiting the destruction, alteration or concealment of documents
- (2) pending adjudication of the foregoing, an Order:
- (a) temporarily restraining the Defendants from violating the aforementioned statutes and rules;
  - (b) freezing the Defendants' and Relief Defendant's assets;
  - (c) directing each of the Individual Defendants to immediately provide the verified accounts for themselves and the Entity Defendants, and the Relief Defendant to provide the verified accounts for herself;
  - (d) appointing a temporary receiver for the MS Entities;
  - (e) prohibiting the destruction, alteration or concealment of documents by the Defendants; and
  - (f) providing that the parties may take expedited discovery in preparation for a preliminary injunction hearing on this Order to Show Cause.

This Court has considered: (1) the Complaint filed by the Commission, dated April 20, 2010; (2) the Declaration of Israel Maya, executed on April 20, 2010, and the exhibits thereto; (3) the Declaration of Lara Shalov Mehraban, executed on April 20, 2010, and the exhibits thereto; and (4) the memorandum of law in support of Plaintiff Commission's application, dated April 20, 2010.

Based upon the foregoing documents, the Court finds that a proper showing, as required by Section 20(b) of the Securities Act, Section 21(d) of the Exchange Act, Section 209(d) of the Advisers Act, and Section 42(d) of the Company Act, has been made for the relief granted herein, for the following reasons:

1. It appears from the evidence presented that, unless temporarily restrained, (1) Defendant MS & Co. has violated, and will continue to violate, Sections 5(a) and 5(c) of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8, and Section 15(c)(a)(1) of the Exchange Act; (2) Defendant MS Advisors has violated, and will continue to violate, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8; (3) Defendant MS Capital has violated, and will continue to violate, Sections 5(a) and 5(c) of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5; (4) Defendants FAIN, FEIN, FIIN and TAIN have violated, and will continue to violate, Section 7(a) of the Company Act; and (5) Defendants McGinn and Smith have violated, and will continue to violate Sections 5(a) and 5(c) of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, and Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8, and Defendants McGinn and Smith have aided and abetted, and will continue to aid and abet MS & Co.'s violation of Section 15(c)(a)(1) of the Exchange Act.

2. It appears that the Defendants and Relief Defendant may attempt to dissipate, deplete, or transfer from the jurisdiction of this Court, funds, property and other assets that could

be subject to an order of disgorgement or an order imposing civil penalties. It appears that an order freezing the Defendants' and Relief Defendant's assets, as specified herein, is necessary to preserve the *status quo*, to protect investors and clients of the Defendants from further transfers of funds and misappropriation, to protect this Court's ability to award equitable relief in the form of disgorgement of illegal profits from fraud and civil penalties, and to preserve the Court's ability to approve a fair distribution for victims of the fraud.

3. It appears that an order requiring each of the Individual Defendants and Relief Defendant to provide a verified accounting of their assets, money and property held directly or indirectly by the Defendants and Relief Defendant, or by others for the direct and indirect beneficial interest of the Defendants and Relief Defendant, is necessary to effectuate and ensure compliance with the freeze imposed on the Defendants' and Relief Defendant's assets.

4. It appears that the Defendants may attempt to destroy, alter or conceal documents.

5. It appears that the appointment of a receiver for the MS Entities is necessary to (i) preserve the *status quo*; (ii) ascertain the extent of commingling of funds among the MS Entities; (iii) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the MS Entities; (v) prevent the encumbrance or disposal of property or assets of the MS Entities and the investors; (vi) preserve the books, records and documents of the MS Entities; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; and (ix) determine whether the MS Entities should undertake bankruptcy filings.

6. Good and sufficient reasons have been shown why procedure other than by notice of motion is necessary.

7. This Court has jurisdiction over the subject matter of this action and over the

Defendants and Relief Defendant, and venue properly lies in this District.

**NOW, THEREFORE,**

**I.**

**IT IS HEREBY ORDERED** that the Defendants show cause, if there be any, to this Court at 3:00 p.m. on the 3<sup>rd</sup> day of May 2010, in Room 6 of the James T. Foley United States Courthouse, 445 Broadway, Albany, NY 12207-2924, why this Court should not enter an Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Section 20 of the Securities Act, and Section 21 of the Exchange Act, Section 209(d) of the Advisers Act, and Section 42 of the Company Act preliminarily enjoining:

- (1) MS & Co., MS Capital, FAIN, FEIN, FIIN, TAIN, McGinn and Smith from violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c);
- (2) MS & Co., MS Advisors, MS Capital, McGinn and Smith from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;
- (3) MS & Co., MS Advisors, McGinn and Smith from violating Sections 206(1), 206(2), and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), and Rule 206(4)-8 thereunder, 17 C.F.R. §275.206(4)-8;
- (4) MS & Co., from violating Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1), and Smith and McGinn from aiding and abetting this violation; and,
- (5) FAIN, FEIN, FIIN and TAIN from violating Section 7(a) of the Company Act, 15 U.S.C. § 80a-7.

## II.

**IT IS FURTHER ORDERED** that the Defendants show cause at that time why this Court should not also enter an Order directing that, pending a final disposition of this action, the Defendants, the Relief Defendant, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants and Relief Defendant, including but not limited to, the MS Entities, including but not limited to, those entities listed on Exhibit A, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of the Defendants and Relief Defendant to hold or retain within its or his control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties including but not limited to, all assets, funds, or other properties held in the accounts listed on Exhibit B, as well as each real estate parcel owned directly or indirectly by the MS Entities, including but not limited to, those entities listed on Exhibit A.

## III.

**IT IS FURTHER ORDERED** that the Defendants show cause at that time why this

Court should not also enter an Order enjoining and restraining them, and any person or entity acting at their direction or on their behalf, or any other person, from destroying, altering, concealing or otherwise interfering with the access of Plaintiff Commission and the receiver to any and all documents, books and records, that are in the possession, custody or control of the Defendants, and each of their officers, agents, employees, servants, accountants, financial or brokerage institutions, attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, including but not limited to, the MS Entities, including but not limited to, those entities listed on Exhibit A, that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books, and records referring, reflecting or relating to the Defendants' finances or business operations.

#### IV.

**IT IS FURTHER ORDERED** that the Defendants show cause at that time why this Court should not also enter an Order directing each of the Individual Defendants to serve upon Plaintiff Commission, within three (3) business days, or within such extension of time as the Commission agrees to, a verified written accounting each signed by Defendants McGinn and Smith and also signed by the officer or employees of the Entity Defendants who are most knowledgeable about the assets, liabilities and general financial condition of each of the Defendants, and verified accountings signed by each of the Individual Defendants and the Relief Defendant identifying their own assets, liabilities and general financial condition, if any, under penalty of perjury. Each of the Defendants and Relief Defendant shall serve such sworn updated written accountings by hand delivery, facsimile transmission to (212) 336-1324 or overnight courier service on the Commission's counsel, David Stoelting, Esq., Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.



V.

**IT IS FURTHER ORDERED** that Individual Defendants and Relief Defendant shall file with the Court and serve on the Commission, within three (3) business days following service of this Order, a list of all accounts at all banks, brokerage firms or financial institutions (including the name of the financial institution and the name and number on the account), tax identification numbers, telephone or facsimile transmission numbers (including numbers of pagers and mobile telephones), electronic mail addresses, World Wide Web sites or Universal Records Locators, Internet bulletin board sites, online interactive conversational spaces or chat rooms, Internet or electronic mail service providers, street addresses, postal box numbers, safety deposit boxes, and storage facilities used or maintained by them or under their direct or indirect control, at any time from January 1, 2005 to the present including but not limited to information concerning the MS Entities, including but not limited to, those entities listed on Exhibit A.

VI.

**IT IS FURTHER ORDERED** that the Defendants show cause at that time why this Court should not also enter an Order appointing or continuing the appointment of a receiver for the MS Entities and all entities they control or have an ownership interest in including but not limited to, those entities listed on Exhibit A, to (i) preserve the *status quo*, (ii) ascertain the extent of commingling of funds among the MS Entities; (iii) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the MS Entities and all entities they control or have an ownership interest in; (v) prevent the encumbrance or disposal of property or assets of the MS Entities and the investors; (vi) preserve the books, records and documents of the MS Entities; (vii) be available to respond to investor inquiries; (viii) protect the assets of the MS Entities from further

dissipation; and (ix) determine whether the MS Entities should undertake bankruptcy filings.

To effectuate the foregoing, the receiver would be empowered to:

- (a) Take and retain immediate possession and control of all of the assets and property, and all books, records and documents of the MS Entities including but not limited to, the entities listed on Exhibit A, and the rights and powers of it with respect thereto including the powers set forth in the management agreements and LLC agreements and/or operating agreements applicable to any LLCs or other property or entities owned or controlled by the Defendants;
- (b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of the MS Entities including but not limited to, the entities listed on Exhibit A;
- (c) Pay from available funds necessary business expenses required to preserve the assets and property of the MS Entities including but not limited to, the entities listed on Exhibit A, including the books, records, and documents of the MS Entities and all entities they control or have an ownership interest in, notwithstanding the asset freeze imposed by paragraph II, above;
- (d) Take preliminary steps to locate assets that may have been conveyed to third parties or otherwise concealed;
- (e) Take preliminary steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued by MS Entities including but not limited to, the entities listed on Exhibit A;
- (f) Engage and employ persons, including accountants, attorneys and experts, to

assist in the carrying out of the receiver's duties and responsibilities hereunder;

- (g) Report to the Court and the parties within 45 days from the date of the entry of this Order, subject to such reasonable extensions as the Court may grant, the following information:

1. All assets, money, funds, securities, and real or personal property then held directly or indirectly by or for the benefit of the MS Entities and all entities they control or have an ownership interest in, including but not limited to, real property, bank accounts, brokerage accounts, investments, business interests, personal property, wherever situated, identifying and describing each asset, its current location and value;

2. A list of secured creditors and other financial institutions with an interest in the receivership assets;

3. To the extent practicable, a list of investors in the MS Entities including but not limited to, the entities listed on Exhibit A;

- (h) The receiver's preliminary plan for the administration of the assets of the receivership, including a recommendation regarding whether bankruptcy cases should be filed for all of a portion of the assets subject to the receivership and a recommendation whether litigation against third parties should be commenced on a contingent fee basis to recover assets for the benefit of the receivership.

## **VII.**

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Capital, FAIN, FEIN, FIIN, TAIN, McGinn and Smith and each of them, their agents, servants, employees, and

attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from, directly or indirectly, singly or in concert, in the offer or sale of any security, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails to offer or sell securities through the use or medium of a prospectus or otherwise when no registration statement has been filed or is in effect as to such securities and when no exemption from registration is available in violation of Sections 5(a) and 5(c) of the Securities Act.

#### VIII.

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors, MS Capital, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, are temporarily restrained from violating, directly or indirectly, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

#### IX.

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors, MS Capital, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

#### X.

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., and each of its officers,

agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Section 15(c) of the Exchange Act, 15 U.S.C. § 78(o)(c), and 17 C.F.R. § 240.10b-3, by while acting as a broker or dealer, directly or indirectly, making use of the mails or any instrumentality of interstate commerce, or any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security otherwise than on a national exchange of which it is a member, by means of any manipulative, deceptive or other fraudulent device or contrivance, or to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive or other fraudulent device or contrivance" as such term is used in Section 15(c)(1) of the Exchange Act.

## **XI.**

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, the Individual Defendants, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from aiding and abetting any broker's or dealer's violations of Section 15(c) of the Exchange Act, 15 U.S.C. § 78(o)(c), by providing substantial assistance

to an individual or entity, which, while acting as a broker or dealer, directly or indirectly, makes use of the mails or any instrumentality of interstate commerce, or any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security otherwise than on a national exchange of which it is a member, by means of any manipulative, deceptive or other fraudulent device or contrivance, or to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive or other fraudulent device or contrivance" as such term is used in Section 15(c)(1) of the Exchange Act.

## **XII.**

**IT IS FURTHER ORDERED** that pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors and each of their officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), and Rule 206(4)-8 thereunder, 17 C.F.R. §275.206(4)-8, while acting as an investment advisor, by the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to employ any device, scheme or artifice to defraud any client or prospective client; to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client; to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

### **XIII.**

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, FAIN, FEIN, FIIN, and TAIN and each of their officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Section 7(a) of the Company Act, 15 U.S.C. § 80a-7, while acting as an investment company, shall directly or indirectly, offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce; purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the meals or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; control any investment company which does any of the acts enumerated above; engage in any business in interstate commerce; or control any company which is engaged in any business in interstate commerce.

### **XIV.**

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, the Defendants, and each of their



financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants, including but not limited to, entities owned or controlled by, related to, or associated or affiliated with the MS Entities including but not limited to, those entities listed on Exhibit A, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of the Defendants to hold or retain within its or his control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties including but not limited to, all assets, funds, or other properties held in the accounts listed in Exhibit B, as well as each real estate parcel owned directly or indirectly by the MS Entities including but not limited to, those entities listed on Exhibit A.

#### XV.

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, the Defendants, any person or entity acting at their direction or on their behalf, and any other third party including but not limited to any investor, be and hereby are enjoined and restrained from destroying, altering, concealing or

otherwise interfering with the access of Plaintiff Commission and the receiver to any and all documents, books, and records that are in the possession, custody or control of the Defendants and each of their respective officers, agents, employees, servants, accountants, financial or brokerage institutions, or attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, including but not limited to, the MS Entities, that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books and records referring, reflecting or relating to the Defendants' finances or business operations, or the offer, purchase or sale of securities and the use of proceeds therefrom; and (2) ordered to provide all reasonable cooperation to the receiver in carrying out his duties set forth herein.

#### **XVI.**

**IT IS FURTHER ORDERED** that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, each of the Defendants shall file with this Court and serve upon Plaintiff Commission, within three (3) business days, or within such extension of time as the Commission agrees to, a verified written accounting signed by each of the Individual Defendants, and the officers or employees of the MS Entities who are most knowledgeable about the assets, liabilities and general financial condition of the each of the Defendants, if any, under penalty of perjury, of:

- (1) All assets, liabilities and property currently held, directly or indirectly, by or for the benefit of each Defendant, including, without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount;
- (2) All money, property, assets and income received by each such Defendant for his

direct or indirect benefit from the other Defendants, at any time from January 1, 2005 through the date of such accounting, describing the amount, disposition and current location of each of the items listed;

- (3) The names and last known addresses of all bailees, debtors, and other persons and entities that currently are holding the assets, funds or property of each Defendant; and
- (4) All assets, funds, securities and real or personal property invested by each such Defendant, or any other person controlled by them, and the disposition of such assets, funds, securities, real or personal property.

Each Individual Defendant and the officers or employees of the Entity Defendants who are most knowledgeable about the assets, liabilities and general financial condition of the Defendants, if any, shall verify the Entity Defendant's accounting and serve such sworn statements of asset identifying information by hand delivery, facsimile transmission to (212) 336-1324 or overnight courier service on the Commission's counsel, David Stoelting, Esq., Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281. Each of the Individual Defendants is required to provide the Commission with an accounting for his own personal assets, liabilities and general financial condition, and also provide an accounting for each of the Entity Defendants. The Relief Defendant is required to provide the Commission with an accounting for her own personal assets, liabilities and general financial condition.

#### XVII.

IT IS FURTHER ORDERED that William T. Brown, pending further order of this Court, be and hereby is appointed to act as receiver for the MS Entities including

but not limited to, those entities listed on Exhibit A, to (1) preserve the *status quo*; (2) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (3) determine the extent of commingling of funds between the MS Entities; (4) prevent further dissipation of the property and assets of the MS Entities; (5) prevent the encumbrance or disposal of property or assets of the MS Entities; (6) preserve the books, records and documents of the MS Entities; (7) be available to respond to investor inquiries; and (8) determine if the MS Entities and all entities they control or have an ownership interest in should undertake a bankruptcy filing. To effectuate the foregoing, the receiver is hereby empowered to:

- (a) Take and retain immediate possession and control of all of the assets and property of the MS Entities including but not limited to, those entities listed on Exhibit A, and all books, records and documents of MS Entities, and the rights and powers of it with respect thereto;
- (b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of MS Entities including but not limited to, those entities listed on Exhibit A;
- (c) succeed to all rights to manage all properties owned or controlled, directly or indirectly, by the MS Entities, including but not limited to, those entities listed on Exhibit A, pursuant to the LLC and operating agreement relating to each entity;
- (d) Pay from available funds necessary business expenses required to preserve the assets and property of MS Entities and all entities they control or have an ownership interest in, including the books, records, and documents of the Defendants, notwithstanding the asset freeze imposed above;

- (e) Take preliminary steps to locate assets that may have been conveyed to third parties or otherwise concealed;
- (f) Take preliminary steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued by the Defendants and the entities they control;
- (g) Engage and employ persons, including accountants, attorneys and experts, to assist in the carrying out of the receiver's duties and responsibilities hereunder;
- (h) Take all necessary steps to gain control of the Defendants' interests in assets in foreign jurisdictions, including but not limited to taking steps necessary to repatriate foreign assets; and
- (i) Take such further action as the Court shall deem equitable, just and appropriate under the circumstances upon proper application of the receiver.

#### **XVIII.**

**IT IS FURTHER ORDERED** that no person or entity, including any creditor or claimant against any of the Defendants, or any person acting on behalf of such creditor or claimant, shall take any action without further order of this Court to interfere with the taking control, possession, or management of the assets, including but not limited to the filing of any lawsuits, liens or encumbrances or bankruptcy cases to impact the property and assets subject to this order.

#### **XIX.**

**IT IS FURTHER ORDERED** that the Defendants shall pay the reasonable costs, fees and expenses of the receiver incurred in connection with the performance of his duties described

herein, including but not limited to the reasonable costs, fees and expenses of all persons who may be engaged or employed by the receiver to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses of the receiver and those employed by him shall be made by application to the Court setting forth in reasonable detail the nature of such costs, fees and expenses and shall conform to the Fee Guidelines that will be supplied by the U.S. Securities and Exchange Commission.

**XX.**

**IT IS FURTHER ORDERED** that discovery is expedited as follows: pursuant to Rules 26, 30, 31, 33, 34, 36 and 45 of the Federal Rules of Civil Procedure, and without the requirement of a meeting pursuant to Fed. R. Civ. P. 26(f), the parties and the receiver may:

- (1) Take depositions, subject to two (2) calendar days' notice by facsimile or otherwise;
- (2) Obtain the production of documents, within three (3) calendar days from service by facsimile or otherwise of a request or subpoena from any persons or entities, including non-party witnesses; and
- (3) Service of any discovery requests, notices, or subpoenas may be made by personal service, facsimile, overnight courier, or first-class mail on an individual, entity or the individual's or entity's attorney; and
- (4) The receiver may take discovery in this action without further order of the Court.

**XXI.**

**IT IS FURTHER ORDERED** that a copy of this Order and the papers supporting the Commission's Application be served upon the Defendants and Relief Defendant on or before Wednesday, April 21, 2010, by personal delivery, facsimile, overnight courier, or first-class

mail.

**XXII.**

**IT IS FURTHER ORDERED** that the Defendants and Relief Defendant shall deliver any opposing papers in response to the Order to Show Cause above no later than Tuesday, April 27, 2010, at 4:00 p.m. Service shall be made by delivering the papers, using the most expeditious means available, by that date and time, to the New York Regional Office of the Commission at 3 World Financial Center, Room 4300, New York, New York 10281, Attn: David Stoelting Esq., or such other place as counsel for the Commission may direct in writing. The Commission shall have until Thursday, April 29, 2010, at 5:00 p.m., to serve, by the most expeditious means available, any reply papers upon the Defendants and Relief Defendants, or upon their counsel, if counsel shall have made an appearance in this action.

**XXIII.**

**IT IS FURTHER ORDERED** that this Order shall be, and is, binding upon the Defendants and Relief Defendants and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise.

  
UNITED STATES DISTRICT JUDGE

Issued at : 2 : 00 P.m.  
April 28, 2010  
Albany, New York

## EXHIBIT A



**Exhibit A**  
**List of Known Entities Controlled By McGinn and/or Smith**

107<sup>th</sup> Associates LLC Trust 07  
107<sup>th</sup> 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  
Pine Street Capital Management LLC  
Pine Street Capital Partners LP  
Point Capital LLC  
Prime Vision Communications LLC  
Prime Vision Communication 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 B

**Exhibit B**  
**Known Bank Accounts**

Institution	Account Number	Name of Account Holder	Account Name 2
Mercantile Bank	1998	107th Assoc. LLC Trust 07	
Mercantile Bank	1987	107th Associates LLC	
M&T Bank	6850	107th Associates LLC	
M&T Bank	3478	74 State Street Capital LP	Operating
M&T Bank	7062	74 State Street Capital LP	
M&T Bank	5288	Acquisition Trust 03	Operating Account
Whitney National Bank	9335	Benchmark Communication LLC	
M&T Bank	0805	Capital Center Credit Corp	Operating
M&T Bank	2250	Capital Center Credit Corp	Careclub Depository, 99 Pine St
JPMorganChase	6587	Capital Center Credit Corp	Special Account Michael Lewy Attn: David Rees
NFS/Fidelity	8178	Capital Center Credit Corp	C/O MCGINN SMITH & CO INC ATTN DAVID P REES
JPMorganChase	4817	Capital Center Credit Corp c/o McGinn Smith & Co	
Monterey Bank	6854	Charter Cruise Ventures	dba YOLO Cruises
M&T Bank	3133	CMS Financial	
M&T Bank	6985	CMS Financial Services Corp.	
M&T Bank	2064	CMS Financial Services Corp.	
Monterey Bank	6846	Cruise Charter Ventures	dba YOLO Cruises
Mercantile Bank	3972	Cruise Charter Ventures LLC	
Mercantile Bank	1307	Cruise Charter Ventures LLC	
Mercantile Bank	2808	Cruise Charter Ventures Trust 08	
M&T Bank	3528	First Advisory Income Notes	Operating
M&T Bank	7489	First Advisory Income Notes	Escrow
M&T Bank	9147	First Excelsior Income Notes LLC	Alarm Accum Account
M&T Bank	9139	First Excelsior Income Notes LLC	Operating
Charter One Bank	363-8	First Excelsior Income Notes LLC	Escrow
JPMorganChase	6928	First Excelsior Income Notes LLC	
NFS/Fidelity	9280	First Excelsior Income Notes LLC	
M&T Bank	6013	First Independent Income Notes	Operating
M&T Bank	9279	First Independent Income Notes	Monitoring Contract Accum
Charter One Bank	003-6	First Independent Income Notes	Timothy McGinn
JPMorganChase	6893	First Independent Income Notes	
JPMorganChase	0087	First Independent Income Notes	
NFS/Fidelity	8934	First Independent Income Notes	
Mercantile Bank	1921	FirstLine Senior Trust 07 DTD 5/19/07	McGinn Smith Capital Holdings Corp. TTEE
M&T Bank	5028	FirstLine Sr Trust 07	
M&T Bank	5366	FirstLine Sr Trust 07 Series B	
Mercantile Bank	0733	FirstLine Sr Trust 07 Series B	McGinn Smith & Co Inc Trustee
M&T Bank	5010	FirstLine Trust 07	
Mercantile Bank	910	FirstLine Trust 07 DTD 5/19/07	McGinn Smith Capital Holdings Corp. TTEE
Mercantile Bank	0722	FirstLine Trust 07 Series B	McGinn Smith & Co Inc Trustee, UAD 10/16/07
M&T Bank	5358	FirstLine Trust 07 Series B	
M&T Bank	6413	Fortress Trust 08	c/o McGinn Smith Capital Holdings Corp.
Mercantile Bank	9187	Fortress Trust 08 UTD 9/10/08	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	6165	Integrated Excellence Jr Trust	
Mercantile Bank	3994	Integrated Excellence Jr Trust 08 DTD 5/28/08	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	6173	Integrated Excellence Sr Trust	

**Exhibit B**  
**Known Bank Accounts**

Institution	Account Number	Name of Account Holder	Account Name 2
Mercantile Bank	██████3983	Integrated Excellence Sr Trust 08 DTD 5/27/08	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████6868	IP Investors LLC	
M&T Bank	██████3783	James J. Carroll Charitable Fund	
M&T Bank	██████6815	JGC Trust 00	Operating c/o McGinn Smith
Mercantile Bank	██████1674	Luxury Cruise Center Inc	
Mercantile Bank	██████0446	Luxury Cruise Center Inc	
Mercantile Bank	██████0435	Luxury Cruise Charter Inc. Payables	
M&T Bank	██████3996	M&S Partners	
JPMorganChase	██████3443	McGinn Smith & Co	
JPMorganChase	██████5670	McGinn Smith & Co	
NFS/Fidelity	██████0167	MCGINN SMITH & CO DELIGIANNIS MASTER ACCOUNT	
NFS/Fidelity	██████0035	MCGINN SMITH & CO AVERAGE PRICE ACCOUNT	
JPMorganChase	██████4300	McGinn Smith & Co Capital A/C	
JPMorganChase	██████4302	McGinn Smith & Co Corporate Bond A/C Attn: David Rees	
JPMorganChase	██████4306	McGinn Smith & Co Deposit Account Attn: David Rees	
JPMorganChase	██████4305	McGinn Smith & Co Error Account Attn: David Rees	
JPMorganChase	██████4301	McGinn Smith & Co Firm Trading A/C Attn: David Rees	
JPMorganChase	██████4303	McGinn Smith & Co Govt Bond A/C Attn: David Rees	
NFS/Fidelity	██████1007	MCGINN SMITH & CO INC	
NFS/Fidelity	██████0051	MCGINN SMITH & CO INC ALBANY BTAM \$ DIFFERENCE	
NFS/Fidelity	██████0043	MCGINN SMITH & CO INC ALBANY BTAM MASTER ACCOUNT	
NFS/Fidelity	██████1007	MCGINN SMITH & CO INC DAVID L SMITH	
NFS/Fidelity	██████0175	MCGINN SMITH & CO INC DELIGIANNIS \$ DIFFERENCE	
NFS/Fidelity	██████0086	MCGINN SMITH & CO INC NYC BTAM UNALLOCATED	
NFS/Fidelity	██████0728	MCGINN SMITH & CO INC REVENUE ACCOUNT	
NFS/Fidelity	██████0060	MCGINN SMITH & CO INC ALBANY BTAM UNALLOCATED	
NFS/Fidelity	██████0205	MCGINN SMITH & CO INC BOYLAN \$ DIFFERENCE	
NFS/Fidelity	██████0191	MCGINN SMITH & CO INC BOYLAN MASTER ACCOUNT	
NFS/Fidelity	██████0183	MCGINN SMITH & CO INC DELIGIANNIS UNALLOCATED	
NFS/Fidelity	██████0116	MCGINN SMITH & CO INC ERROR ACCOUNT	
NFS/Fidelity	██████0230	MCGINN SMITH & CO INC RABINOVICH \$ DIFFERENCE	
NFS/Fidelity	██████0221	MCGINN SMITH & CO INC RABINOVICH MASTER ACCOUNT	
NFS/Fidelity	██████0248	MCGINN SMITH & CO INC RABINOVICH UNALLOCATED	

**Exhibit B**  
**Known Bank Accounts**

Institution	Account Number	Name of Account Holder	Account Name 2
NFS/Fidelity	██████0140	MCGINN SMITH & CO INC SANCHIRICO \$ DIFFERENCE	
NFS/Fidelity	██████0132	MCGINN SMITH & CO INC SANCHIRICO MASTER ACCOUNTS	
NFS/Fidelity	██████0159	MCGINN SMITH & CO INC SANCHIRICO UNALLOCATED	
NFS/Fidelity	██████0108	MCGINN SMITH & CO INC SYNDICATE ACCOUNT	
JPMorganChase	██████4304	McGinn Smith & Co Municipal Bond Account Attn: David Rees	
JPMorganChase	██████9815	McGinn Smith & Co Reserve A/C Residual Bal	
NFS/Fidelity	██████0019	MCGINN SMITH & CO RISKLESS PRINCIPAL	
JPMorganChase	██████4307	McGinn Smith & Co Syndicate A/C	
M&T Bank	██████1081	McGinn Smith & Company	Dividend
M&T Bank	██████4734	McGinn Smith & Company	
M&T Bank	██████3569	McGinn Smith Advisors LLC	
M&T Bank	██████5044	McGinn Smith Alarm Trading LLC	
M&T Bank	██████4351	McGinn Smith Capital Holdings	MSCH Paying Agent for Vidsoft Inc.
M&T Bank	██████3551	McGinn Smith Capital Holdings	Payment Agent for Vigilant Privacy Corp.
M&T Bank	██████3803	McGinn Smith Capital Holdings	
JPMorganChase	██████3573	McGinn Smith Capital Holdings	
NFS/Fidelity	██████5734	MCGINN SMITH CAPITAL HOLDINGS	
M&T Bank	██████5783	McGinn Smith Capital Holdings Corp	Hannan Reserve Account
Mercantile Bank	██████1635	McGinn Smith Funding LLC	
Monterey Bank	██████6838	McGinn Smith Funding LLC	
M&T Bank	██████3925	McGinn Smith Holdings LLC	
NFS/Fidelity	██████2944	MCGINN SMITH INCENTIVE PL CUST IRA OF TIMOTHY MCGINN	
JPMorganChase	██████3246	McGinn Smith Incentive Savings Plan	
Mercantile Bank	██████9022	McGinn Smith Independent Services Corp	
M&T Bank	██████6975	McGinn Smith Independent Services Corp	
M&T Bank	██████5051	McGinn Smith Licensing Company LLC	
Mercantile Bank	██████3083	McGinn Smith Transaction Funding Corp	
M&T Bank	██████6207	McGinn Smith Transaction Funding Corp	
Mercantile Bank	██████3857	McGinn Smith Transaction Funding Corp	2nd Offering Account
M&T Bank	██████5036	McGinn Smith Acceptance Corp	
JPMorganChase	██████0294	McGinn, Tim (Union Bank of California Cust Adams Keegan Retirement Svgs Plan, FBO Tim McGinn A/C # ██████5003)	
NFS/Fidelity	██████2745	McGinn, Timothy M.	
M&T Bank	██████2675	McGinn, Timothy M.	
M&T Bank	██████9504	McGinn, Timothy M.	
Mercantile Bank	██████2171	MR Cranberry LLC	c/o Timothy McGinn
NFS/Fidelity	██████4272	MR Cranberry LLC	
M&T Bank	██████6421	MSFC Security Holdings LLC	
Mercantile Bank	██████9220	NEI Capital LLC	
M&T Bank	██████5833	Pacific Trust 02	Operating
M&T Bank	██████9626	Pine Street Capital Management LLC	
M&T Bank	██████5478	Pine Street Capital Partners	
M&T Bank	██████9535	Pine Street Capital Partners LP	Operating
Mercantile Bank	██████9687	Prime Vision Communication Mgmt Keys Cove LLC	c/o McGinn Smith & Co
Bank of Florida	██████5976	Prime Vision Communications LLC	

**Exhibit B**  
**Known Bank Accounts**

Institution	Account Number	Name of Account Holder	Account Name 2
Mercantile Bank	██████9698	Prime Vision Communications of Cutler Cay LLC	c/o McGinn Smith & Co
Mercantile Bank	██████9518	Prime Vision Funding of Cutler Cove LLC	c/o McGinn Smith & Co
Mercantile Bank	██████9529	Prime Vision Funding of Key Cove LLC	c/o McGinn Smith & Co
M&T Bank	██████5767	RTC Trust 02	Accum
M&T Bank	██████5775	RTC Trust 02	Operating
JPMorganChase	██████6792	RTC Trust II	
M&T Bank	██████3635	SAI Trust 00	
Charter One Bank	██████323-3	SAI Trust 00	
M&T Bank	██████8966	SAI Trust 03	Jr
M&T Bank	██████4620	SAI Trust 03	Sr
M&T Bank	██████7729	Security Participation Trust I	
M&T Bank	██████9410	Security Participation Trust II	Accum
M&T Bank	██████9288	Security Participation Trust II	Operating
M&T Bank	██████8123	Security Participation Trust III	Operating
M&T Bank	██████8115	Security Participation Trust III	Accum
M&T Bank	██████5460	Security Participation Trust IV	
Charter One Bank	██████023-6	Security Participation Trust Oper	
M&T Bank	██████4492	Seton Hall Associates	McGinn & Smith
NFS/Fidelity	██████2208	Smith, David L.	
M&T Bank	██████9965	Smith, David L.	
NFS/Fidelity	██████0916	Smith, Lynn A.	
NFS/Fidelity	██████0912	Smith, Lynn A.	
Bank of America		Smith, Lynn A.	
Mercantile Bank	██████9507	TDM Cable Funding LLC	c/o McGinn Smith & Co
Mercantile Bank	██████9573	TDM Cable Funding LLC / TDM Cable Trust 06	c/o McGinn Smith & Co
M&T Bank	██████4765	TDM Cable Funding LLC TDM Verifier Trust 07	TDM Verifier Trust 07 Operating
M&T Bank	██████4500	TDM Cable Funding LLC Trust 06 Account	Trust 06 Account
M&T Bank	██████5234	TDM Luxury Cruise Trust 07	
Mercantile Bank	██████2086	TDM Luxury Cruise Trust 07 DTD 7/16/07	McGinn Smith Capital Holdings Corp - TTEE
Mercantile Bank	██████437	TDM Verifier Trust 07	Escrow
Mercantile Bank	██████4216	TDM Verifier Trust 07R	
M&T Bank	██████5738	TDM Verifier Trust 08	
Mercantile Bank	██████1030	TDM Verifier Trust 08 DTD 12/11/07	McGinn Smith Capital Holdings Corp - TTEE
Mercantile Bank	██████9132	TDM Verifier Trust 08R DTD 12/11/07	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████6736	TDM Verifier Trust 09	
Mercantile Bank	██████4007	TDM Verifier Trust 09 DTD 12/15/08	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████7064	TDM Verifier Trust 11	
M&T Bank	██████0409	TDM Verifier Trust 11	
M&T Bank	██████7056	TDMM Benchmark Trust 09	
Mercantile Bank	██████9077	TDMM Cable Funding LLC	
Mercantile Bank	██████4139	TDMM Cable Jr Tr 09 DTD 1/16/09	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████6728	TDMM Cable Jr Trust 09	
Mercantile Bank	██████4150	TDMM Cable Sr Tr 09 DTD 1/16/09	McGinn Smith Capital Holdings Corp - TTEE
M&T Bank	██████6710	TDMM Cable Sr Trust 09	
M&T Bank	██████5462	Third Albany Income Notes	Escrow
NFS/Fidelity	██████9884	Third Albany Income Notes	
M&T Bank	██████9550	Third Albany Income Notes	Operating
M&T Bank	██████3593	Third Albany Income Notes	Alarm Accum
JPMorganChase	██████6988	Third Albany Income Notes	

**Exhibit B**  
**Known Bank Accounts**

Institution	Account Number	Name of Account Holder	Account Name 2
NFS/Fidelity	██████████0671	██████████ TTEE David L Smith & Lynn A Smith, Irrev Tr U/A ██████████04	