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**ANNUAL AUDITED REPORT  
FORM X-17A-5  
PART III**

FACING PAGE

**Information Required of Brokers and Dealers Pursuant to Section 17 of the  
Securities Exchange Act of 1934 and Rule 17a-5 Thereunder**

REPORT FOR THE PERIOD BEGINNING 01/01/08 AND ENDING 12/31/08  
MM/DD/YY MM/DD/YY

**A. REGISTRANT IDENTIFICATION**

NAME OF BROKER-DEALER: Smither & Company Capital Markets, LLC

OFFICIAL USE ONLY
FIRM I.D. NO.

ADDRESS OF PRINCIPAL PLACE OF BUSINESS: (Do not use P.O. Box No.)

4337 Cox Road

(No. and Street)

Glen Allen  
(City)

VA  
(State)

23060

(Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT IN REGARD TO THIS REPORT

Kenneth W Smither

804-270-5488

(Area Code - Telephone Number)

**B. ACCOUNTANT IDENTIFICATION**

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this Report\*

Kanter Stephens Hurst Gary & Sheaves

(Name - If individual, state last, first, middle name)

Suite 300

4401 DOMINION BLVD Glen Allen VA 23060

(Address) (City) (State) (Zip Code)

CHECK ONE:

- Certified Public Accountant
- Public Accountant
- Accountant not resident in United States or any of its possessions.

SEC Mail Processing  
Section

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Washington, DC

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\*Claims for exemption from the requirement that the annual report be covered by the opinion of an independent public accountant must be supported by a statement of facts and circumstances relied on as the basis for the exemption. See Section 240.17a-5(e)(2)

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3/22/09

OATH OR AFFIRMATION

I, Kenneth W Smither, swear (or affirm) that, to the best of my knowledge and belief the accompanying financial statement and supporting schedules pertaining to the firm of Smither & Company Capital Markets, LLC, as of 12/31, 2008, are true and correct. I further swear (or affirm) that neither the company nor any partner, proprietor, principal officer or director has any proprietary interest in any account classified solely as that of a customer, except as follows:



Synda Humphreys  
Notary Public

Kenneth W Smither  
Signature  
President  
Title

This report \*\* contains (check all applicable boxes):

- (a) Facing Page.
- (b) Statement of Financial Condition.
- (c) Statement of Income (Loss).
- (d) Statement of Changes in Financial Condition.
- (e) Statement of Changes in Stockholders' Equity or Partners' or Sole Proprietors' Capital.
- (f) Statement of Changes in Liabilities Subordinated to Claims of Creditors.
- (g) Computation of Net Capital.
- (h) Computation for Determination of Reserve Requirements Pursuant to Rule 15c3-3.
- (i) Information Relating to the Possession or Control Requirements Under Rule 15c3-3.
- (j) A Reconciliation, including appropriate explanation of the Computation of Net Capital Under Rule 15c3-1 and the Computation for Determination of the Reserve Requirements Under Exhibit A of Rule 15c3-3.
- (k) A Reconciliation between the audited and unaudited Statements of Financial Condition with respect to methods of consolidation.
- (l) An Oath or Affirmation.
- (m) A copy of the SIPC Supplemental Report.
- (n) A report describing any material inadequacies found to exist or found to have existed since the date of the previous audit.

\*\*For conditions of confidential treatment of certain portions of this filing, see section 240.17a-5(e)(3).

# **SMITHER & COMPANY CAPITAL MARKETS, LLC**

## **Statement of Financial Condition and Independent Accountants' Report on Internal Control Required by SEC Rule 17a-5**

**December 31, 2008**

SEC ID 8-50007

Filed pursuant to Rule 17a-5(e)(3) as a PUBLIC  
DOCUMENT.

 **KEITER, STEPHENS,  
HURST, GARY & SHREAVES**  
CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

P.O. Box 32066 ♦ Richmond, Virginia 23294 ♦ Telephone (804) 747-0000 ♦ Fax (804) 747-3632

# SMITHER & COMPANY CAPITAL MARKETS, LLC

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**KEITER, STEPHENS,  
HURST, GARY & SHREAVES**  
CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

**INDEPENDENT ACCOUNTANTS' REPORT**

Managing Member  
Smither & Company Capital Markets, LLC  
Glen Allen, Virginia

We have audited the accompanying statement of financial condition of Smither & Company Capital Markets, LLC (the "Company") as of December 31, 2008, that you are filing pursuant to Rule 17a-5 under the Securities Exchange Act of 1934. This financial statement is the responsibility of the Company's management. Our responsibility is to express an opinion on this financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statement referred to above presents fairly, in all material respects, the financial position of Smither & Company Capital Markets, LLC as of December 31, 2008, in conformity with accounting principles generally accepted in the United States.

*Keiter, Stephens, Hurst, Gary & Shreaves*

February 4, 2009

**SMITHER & COMPANY CAPITAL MARKETS, LLC**

Statement of Financial Condition  
December 31, 2008

Assets

Cash	\$	26,062
Securities owned, at market value		25,435
Other assets		<u>232</u>
Total assets	\$	<u>51,729</u>

Liabilities and Member's Equity

Liabilities:		
Accrued expenses	\$	10,398
Member's equity		<u>41,331</u>
Total liabilities and member's equity	\$	<u>51,729</u>

See accompanying notes to financial statement.

# SMITHER & COMPANY CAPITAL MARKETS, LLC

## Notes to Financial Statement

### 1. Summary of Significant Accounting Policies:

**Nature of Business:** Smither & Company Capital Markets, LLC (the "Company"), is a limited liability company organized in the Commonwealth of Virginia. The Company operates as a broker/dealer in the United States. As a broker/dealer, the Company is subject to regulations of the Securities and Exchange Commission (the "SEC") and is a member of the Financial Industry Regulatory Authority ("FINRA") formerly the National Association of Securities Dealers (the "NASD"). The Company is an investment banking firm that provides financial advisory services.

**Revenue Recognition:** Investment banking fees are earned from providing financial advisory services. Fees are recorded as revenue when the related service has been rendered and the client is contractually obligated to pay. Certain fees received in advance are recognized as revenue over the service period.

**Risks and uncertainties:** Financial instruments which potentially expose the Company to concentrations of credit risk consist primarily of cash. The Company maintains its cash balances in financial institutions insured by the Federal Deposit Insurance Corporation up to \$250,000.

**Use of Estimates:** The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the period reported. Actual results could differ from those estimates.

**Securities Owned:** Securities transactions are recorded in the accounts on a trade-date basis.

All securities are classified as trading securities and are carried at fair market value as of December 31, 2008, as determined based on quoted market prices for identical assets (Level I in the fair value hierarchy). The resulting unrealized gains and losses are reflected in the results of operations. Realized gains and losses are computed using the specific identification method.

**Income taxes:** The Company has elected to be taxed as a partnership under the provisions of the Internal Revenue Code, which provides that, in lieu of corporate income taxes, the member is taxed on their proportionate share of the Company's taxable income. Similar provisions apply for state income tax reporting. Accordingly, no provision for income taxes is provided in the accompanying financial statements.

## SMITHER & COMPANY CAPITAL MARKETS, LLC

### Notes to Financial Statement, Continued

#### 2. Net Capital Requirements:

The Company is subject to the Securities and Exchange Commission Uniform Net Capital Rule (Rule 15c3-1), which requires the maintenance of minimum net capital and the ratio of aggregate indebtedness to net capital, of not more than 15 to 1. At December 31, 2008, the Company had net capital of \$35,711 which was \$30,711 in excess of required minimum net capital of \$5,000. The Company's net capital ratio was 0.29 to 1.

#### 3. Lease Commitments:

The Company leases commercial office space in Glen Allen, Virginia. The lease expires in 2011. The minimum future rental payments under the lease are as follows:

Year ending <u>December 31</u>	
2009	\$ 22,782
2010	23,466
2011	<u>20,041</u>
	<u>\$ 66,289</u>

#### 4. Guarantees:

As permitted or required under Virginia corporation law, the Company has certain obligations to indemnify its managers and officers for certain events or occurrences while the manager or officers are, or were serving, at the Company's request in such capacities. The maximum liability under these obligations is unlimited; however, the Company's insurance policies serve to limit its exposure.

#### 5. Recent Accounting Pronouncement:

In June 2006, the Financial Accounting Standards Board issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"), an interpretation of FASB Statement No. 109 ("SFAS 109"). This interpretation clarifies the accounting for uncertainty in income taxes and details how companies should recognize, measure, present and disclose uncertain tax positions that have been or are expected to be taken.

## SMITHER & COMPANY CAPITAL MARKETS, LLC

### Notes to Financial Statement, Continued

#### 5. **Recent Accounting Pronouncement, Continued:**

As such, financial statements will reflect or disclose expected future tax consequences of uncertain tax positions presuming the taxing authorities' full knowledge of the position and all relevant facts. The Company has elected to defer the adoption of FIN 48 until its fiscal year ending December 31, 2009, pending additional clarification of FIN 48's applicability to pass-through entities such as the Company. In instances where the Company has taken or expects to take a tax position in its tax returns and the Company believes that it is more likely than not that such tax position will be upheld by the relevant tax authorities, the Company has not disclosed such tax position in the financial statements. Management has evaluated the impact of FIN 48 and does not expect it to have a material impact on the Company's financial condition, results of operations or income tax disclosure practices.

**INDEPENDENT ACCOUNTANTS' REPORT ON INTERNAL  
CONTROL REQUIRED BY SEC RULE 17A-5(g)(1) FOR A  
BROKER-DEALER CLAIMING AN EXEMPTION FROM SEC RULE 15C3-3**

Managing Member  
Smither & Company Capital Markets, LLC  
Richmond, Virginia

In planning and performing our audit of the financial statement of Smither & Company Capital Markets, LLC (the "Company"), as of December 31, 2008, in accordance with auditing standards generally accepted in the United States of America, we considered the Company's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we do not express an opinion on the effectiveness of the Company's internal control.

Also, as required by Rule 17a-5(g)(1) of the Securities and Exchange Commission ("SEC"), we have made a study of the practices and procedures followed by the Company including consideration of control activities for safeguarding securities. This study included tests of such practices and procedures that we considered relevant to the objectives stated in Rule 17a-5(g) in making the periodic computations of aggregate indebtedness and net capital under Rule 17a-3(a)(11) and for determining compliance with the exemptive provisions of Rule 15c3-3. Because the Company does not carry securities accounts for customers or perform custodial functions relating to customer securities, we did not review the practices and procedures followed by the Company in any of the following:

1. Making quarterly securities examinations, counts, verifications, and comparisons and recodation of differences required by Rule 17a-13
2. Complying with the requirements for prompt payment for securities under Section 8 of Federal Reserve Regulation T of the Board of Governors of the Federal Reserve System

The management of the Company is responsible for establishing and maintaining internal control and the practices and procedures referred to in the preceding paragraph. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of controls and of the practices and procedures referred to in the preceding paragraph and to assess whether those practices and procedures can be expected to achieve the SEC's above-mentioned objectives. Two of the objectives of internal control and the practices and procedures are to provide management with reasonable but not absolute assurance that assets for which the Company has responsibility are safeguarded against loss from unauthorized use or disposition and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in conformity with generally accepted accounting principles. Rule 17a-5(g) lists additional objectives of the practices and procedures listed in the preceding paragraph.

Because of inherent limitations in internal control or the practices and procedures referred to above, error or fraud may occur and not be detected. Also, projection of any evaluation of them to future periods is subject to the risk that they may become inadequate because of changes in conditions or that the effectiveness of their design and operation may deteriorate.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control was for the limited purpose described in the first and second paragraphs and would not necessarily identify all deficiencies in internal control that might be material weaknesses. We did not identify any deficiencies in internal control and control activities for safeguarding securities that we consider to be material weaknesses, as defined above.

We understand that practices and procedures that accomplish the objectives referred to in the second paragraph of this report are considered by the SEC to be adequate for its purposes in accordance with the Securities Exchange Act of 1934 and related regulations, and that practices and procedures that do not accomplish such objectives in all material respects indicate a material inadequacy for such purposes. Based on this understanding and on our study, we believe that the Company's practices and procedures, as described in the second paragraph of this report, were adequate at December 31, 2008, to meet the SEC's objectives.

This report is intended solely for the information and use of the Board of Directors, management, the SEC, FINRA, and other regulatory agencies that rely on Rule 17a-5(g) under the Securities Exchange Act of 1934 in their regulation of registered brokers and dealers, and is not intended to be and should not be used by anyone other than these specified parties.

*Keiter, Stephens, Hurst, Gary & Shreeves*

February 4, 2009