SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15514

In the Matter of

DONALD J. ANTHONY, JR.,
FRANK H. CHIAPPONE,
RICHARD D. FELDMANN,
WILLIAM P. GAMELLO,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER,
PHILIP S. RABINOVICH, and
RYAN C. ROGERS,

Respondents.

RESPONDENTS PHILIP S. RABINOVICH, BRIAN T. MAYER, AND RYAN C. ROGERS'S JOINT PRETRIAL MEMORANDUM

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Respondents Philip S. Rabinovich ("Rabinovich"), Brian T. Mayer ("Mayer"), and Ryan C. Rogers ("Rogers"), respectfully submit this joint pretrial memorandum in advance of the hearing scheduled to commence on January 27, 2014.

Preliminary Statement

Rabinovich, Mayer, and Rogers seek an Initial Decision that (1) they each satisfied any due diligence obligations in presenting McGinn Smith private placement offerings ("McGinn Smith Securities") to their accredited investor clients, and thus did *not* violate Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, or Section 17(a) of the Securities Act, (2) they were *not* aware of "red flags," and had no reason to be, when they offered McGinn Smith Securities to their accredited investor clients, (3) they took reasonable steps to avoid participating in any distribution allegedly violative of the registration provisions of Section 5(a) and (c) of the Securities Act, even assuming, *arguendo*, separate and distinct Trust Offerings (as defined), made more than six months apart, could be "integrated," and (4) insofar as the Division's claims against Rabinovich, Mayer, and Rogers are based on offerings or alleged misrepresentations or omissions prior to September 23, 2008, they are time-barred and may not be "entertained" by this or any other tribunal.

Rabinovich, Mayer and Rogers knew the security alarm receivable contract financing that underpinned the Trust Offerings and their consistent, timely performance for years (2001-2009). They reviewed the type of investments to be included in the so-called Four Funds (as defined) -- pooled fund investments. They also were aware of the separate due diligence undertaken by McGinn Smith's investment banking department, the due diligence performed by major investment banking firms on securities in which the Four Funds invested, and that the investments made by the Four Funds were negotiated by sophisticated parties with sophisticated counsel and subject to extensive documentation.

Rabinovich, Mayer and Rogers reviewed the private placement memoranda filed with the SEC for each of the McGinn Smith Securities, which they presented to investors for whom these securities were suitable and after informing their investors of the risks. They did all that is or could be reasonably expected of a registered representative, if not more.

In no manner could their due diligence of the McGinn Smith Securities be remotely characterized as insufficient, let alone with the intent necessary to rise to a level of fraud. No case authority suggests that their due diligence was wanting or actionable. *Compare Hanly v. SEC*, 415 F.2d 589 (2d Cir. 1969); *SEC v. Platinum Inv. Corp.*, No. 02 Civ. 6093, 2006 U.S. Dist. LEXIS 67460 (S.D.N.Y. Sept. 20, 2006); *SEC v. Milan Capital Group, Inc.*, No. 00 Civ. 108, 2000 U.S. Dist. LEXIS 16204 (S.D.N.Y. Nov. 9, 2000).

Rabinovich, Mayer and Rogers reasonably believed that each of the McGinn Smith Securities were offered under Section 4(2) of the Securities Act and Rule 506 of Regulation D's safe harbor exemption. They (1) followed the procedures for offering private placements as detailed in McGinn Smith's Compliance Manual (Ex. 112/Tab B at 39),[1] (2) met with and had clients complete subscription agreements and questionnaires confirming their accredited investor status, (3) spoke with McGinn Smith's law department, compliance department and investment banking department about the exemption applicable to the private placements, and (4) knew that outside counsel prepared the private placement documents and advised McGinn Smith about the exemption covering the McGinn Smith Securities.

At no time did Rabinovich, Mayer and Rogers know, or have reason to know, that more than 35 *un*accredited investors (a) had subscribed to any McGinn Smith Security and

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[1] Citations to exhibits refer to Rabinovich, Mayer, and Rogers's pre-marked hearing exhibits. Rabinovich, Mayer, and Rogers intend to present these exhibits at the hearing. Because of their volume, Rabinovich, Mayer, and Rogers have attached only excerpts of some exhibits in the accompanying appendix as Tabs A-M.

(b) were accepted by McGinn Smith in its Albany headquarters. Rabinovich, Mayer and Rogers -- who were in the New York City branch office -- had no authority to accept subscriptions and had no knowledge of the number of *un*accredited investors that McGinn Smith had accepted on each deal. Nor does the Division allege in the OIP any supposed "red flag" that would have undermined their belief that each McGinn Smith Securities offering was exempt from registration.

The Division admits that no Trust Offering had more than 35 unaccredited investors. OIP ¶32 ("None of the Trust Offerings exceeded 35 unaccredited investors."). However, the Division seeks to integrate eight separate and distinct Trust Offerings, which it calls the "TDM Conduit" (a fictitious name made up by the Division), and four other separate and distinct Trust Offerings, which it calls the "MSF Conduit" (another fictitious Division name), in a strained attempt to create a Section 5 claim. The Division's Section 5 integration theory fails because (1) there were not 35 *un*accredited investors combined in Trust Offerings that occurred within six months of one another, and (2) even assuming the six-month safe harbor does not apply, the Trust Offerings were separate and distinct with each having its own cash-flowing assets, and thus, Rule 502(a)'s five-factor test is *not* satisfied.

In short, no case supports Section 5 liability here. *Compare, e.g.*, *SEC v. Gagnon*, No. 10 Civ. 11891, 2012 U.S. Dist. LEXIS 38818 (E.D. Mich. Mar. 22, 2012); *SEC v. mUrgent Corp.*, No. 11 Civ. 0626, 2012 U.S. Dist. LEXIS 25626 (C.D. Cal. Feb. 28, 2012).

Finally, the allegations of the OIP, together with the Division's purported "more definite statement," establish that the vast majority of the Division's allegations relate to transactions that occurred prior to September 23, 2008. Thus, even if the Division can meet its

burden of proof – and it cannot – these claims are barred by the statute of limitations under 28 U.S.C. § 2462, and this tribunal is without subject matter jurisdiction to "entertain" them.

I.

FACTS

A. Rabinovich, Mayer and Rogers

Rabinovich, Mayer and Rogers are veterans in the securities business with essentially unblemished records. In October 2009, they left McGinn Smith and formed RMR Wealth Management LLC ("RMR"), a registered investment adviser. *See* Ex. 202 (RMR Form ADV Part II), at 4. RMR has a clean record and has not offered *any* private placement securities to its clients since its formation in 2009.

Before establishing RMR, Rabinovich, Mayer and Rogers had been registered representatives with several broker dealers in New York City, including Mercer Partners. They had an established client base that invested in a wide range of securities. In 2001, McGinn Smith acquired Mercer Partners, which suffered financial difficulties when the internet and technology stock bubble burst. Rabinovich, Mayer, and Rogers, along with other registered representatives of Mercer Partners, became the New York City branch office of McGinn Smith.

B. Rabinovich, Mayer and Rogers Knew Their Customers

Rabinovich, Mayer and Rogers knew their customers (who had non-discretionary accounts), their investment goals, what was suitable for them, and their tolerance for risk.

Each of them, as a business practice, met or corresponded with their clients and proposed asset allocations among stocks, bonds, cash equivalents and alternatives. Before offering any private placement, including McGinn Smith Securities, they (i) read, analyzed and understood the nature of the investment; (ii) explained the investment and its risks to their clients; and (iii) provided their clients with the offering documents.

Significantly, in purchasing McGinn Smith Securities, their clients expressly represented, among other things, that they (i) read the offering documents, (ii) had the opportunity to inquire further about the terms and conditions of the offering, and (iii) notwithstanding the foregoing, they relied only on the offering documents and their own independent investigation. *See, e.g.*, Ex. 12/Tab A (email attaching, among other things, FIIN subscription agreement), at ¶ 1(b). Further, investors agreed that Rabinovich, Mayer, and Rogers did not make any representations or warranties with respect to any McGinn Smith Securities that were not expressly set forth in the offering documents. *See, e.g.*, *id.* ¶ 7.

Rabinovich, Mayer and Rogers presented McGinn Smith Securities, where suitable, to family, friends and other clients between 2003 and 2009. They were confident in their due diligence, McGinn Smith's due diligence and the assets supporting the Trust Offerings or the assets that would be acquired by the Four Funds. Rabinovich's parents and father-in-law purchased over $4 million of McGinn Smith Securities; Mayer's father-in-law purchased $225,000; and Rogers' family members purchased over $200,000. *See* Exs. 215A, 215B, and 215C/Tab J.

Rabinovich, Mayer and Rogers considered the estimated debt coverage and expenses in evaluating these investments. *See* Ex. 97 (October 2005 notes concerning FAIN transaction). The balance sheets for each of the transactions reflect that the transactions were backed by real companies with real assets.[2]

Based on their knowledge of the investment banking department's due diligence process, and after seeing and understanding the investments included in FIIN, and the cash flow

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[2] *See* Exs. 207-10/Tabs E-H (balance sheets of the FIIN, FEIN, TAIN and FAIN transactions from 2003 through 2009). These documents were filed in the SEC Action. No. 10 Civ. 457, Dkt. Nos. 4-40 – 4-43.

projections, Rabinovich, Mayer and Rogers offered the Four Funds to clients for whom they were suitable. Rabinovich, Mayer and Rogers, and their family, friends and other clients, are victims of Mr. McGinn and Mr. Smith's secret theft and diversion of money.

C. McGinn Smith

McGinn Smith was a well established, full service, regional investment banking and brokerage firm that sponsored underwritings, participated in numerous, Wall Street syndicated transactions (headed by Tom Livingston), offered private placement debt and equity securities, and transacted retail brokerage business.[3]

McGinn Smith was formed in September 1980 with headquarters in Albany, New York. By 2001, as widely reported in the press, McGinn Smith had underwritten tens of millions of dollars in financings, and had established itself nationally in the home security financing business – a lower middle market niche.

Its due diligence process was thorough, *see, e.g.*, Ex. 211/Tab I (McGinn Smith affiliate M&S Partners Securitization and Due Diligence Process), and its history of performance was impressive:

> M&S Partners has over the last eight years securitized in excess of $400 million of monitoring contracts, and has become a leading provider of capital to the industry. Through this involvement M&S Partners has built a vertically integrated corporate structure that is capable of handling all aspects of the transaction including due diligence, billing, collection, monitoring, accounting, and sales.

Id. at 1. McGinn Smith's alarm contract due diligence operation was extensive: "it entail[ed] dealership qualification, customer satisfaction reporting, credit scoring, maintenance of books and records, UCC-1 filings to secure collateral, lockbox installments, collections procedures,

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[3] *See* Exhibit 224 for examples of syndicate transactions from the years 2002, 2003 and 2004.

billing and servicing, and sample legal documents." Ex. 217/Tab K (Security Monitoring Contract Financing, Program Summary) at 5. By 2001, Mr. McGinn and Mr. Smith had substantial investment experience and access to the lower middle market sector:

> The portfolio manager, M&S Partners, is a partnership wholly owned by Timothy M. McGinn and David L. Smith. Mr. McGinn and Mr. Smith have a combined 55 years in the investment business and have been the principals of McGinn, Smith & Co., Inc. since its founding in 1980. M&S Partners has been engaged in the acquisition and management of security monitoring contract receivables since 1993 and has been directly involved in over $300 million of financing of such contracts.

Ex. 218/Tab L (Security Participation Trust, Program Summary) at 10.

At the end of 2001, McGinn Smith was acting as trustee for some $66,000,000 in contract certificate trusts. Ex. 1 (McGinn Smith, SEC Annual Audited Report) at 8d. In contrast to the internet/technology equity stock debacle at that time (2001 – 2002), fixed income home security private placements were a desirable and sensible offering for accredited investors, as well as some investors knowledgeable and experienced in financial and business matters.

In 2003, Mr. McGinn and Mr. Smith consolidated smaller firms that had been in the alarm financing business, formed Integrated Alarm Services Group Inc. ("IASG") and took it public. Jeremy Boyer, *Security Alarm Monitoring Company Eyes IPO*, THE TIMES UNION (Nov. 14, 2002). The offering raised over $200 million, with Friedman Billings Ramsey as the lead manager, and Stifel Nicolaus & Company and Wells Fargo Securities, LLC as the co-managers. Ex. 2 (IASG Prospectus dated July 23, 2003) at 1. As part of the IPO, IASG acquired 41 trusts and three LLCs that McGinn Smith had previously offered to its clients. *Id.* at 26.

IASG's successful IPO was met with positive analyst commentary and institutional interest.[4] In November 2004, IASG closed a Rule 144A offering of $125 million in 12% Senior Secured Notes ("IASG Notes") (*see* Ex. 35, Purchase Agreement dated November 10, 2004), and a $30,000,000 revolving credit facility with LaSalle Bank, N.A. Ex. 37 (Credit Agreement dated November 16, 2004). In December 2006, Protection One, Inc. acquired IASG. Ex. 126 (IASG Press Release, *Protection One and IASG to Merge* (Dec. 20, 2006)); Ex. 127 (IASG / Protection One Presentation, *A Diversified Market Leader in Security* (Dec. 21, 2006)).

In November 2005, to improve brokerage services, McGinn Smith transferred client accounts to National Financial Services (Fidelity). After conducting its due diligence of McGinn Smith, Fidelity accepted the accounts and priced the McGinn Smith Securities in those accounts at par.

D. Mr. Smith's Financing Experience

Mr. Smith had extensive capital raising experience outside of the alarm financing industry. Mr. Smith advised the endowment of Empire State College (Ex. 226, Donors Report Letters), arranged financing for small and mid-sized companies, and was a principal of Pine Street Capital Partners, LP ("Pine Street"), a fund formed in 2004 to provide mezzanine capital for middle market companies much like the Four Funds. *See* Ex. 33 (Pine Street Presentation – September 2004), Ex. 107 (Pine Street Amended Confidential PPM – February 2006). To this day, Pine Street has continued as a profitable investment vehicle. *See* Ex. 206 (Pine Street May 15, 2013 Quarterly Letter with first quarter unaudited financials and 12/31/12 audited figures).

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[4] *See, e.g.*, Ex. 6 (Friedman Billings Ramsey, *Account Acquisition Plan Drives IASG's Valuation* (Sept. 3, 2003), Ex. 9 (Wells Fargo Securities LLC, *Finding Security in Alarm Contract Acquisition; Initiating Coverage with Buy Rating and 12-month Price Target of $11.75*).

Mr. Smith remained President of McGinn Smith when Mr. McGinn left to operate IASG in 2003. He was responsible for the day-to-day operation and supervision of the broker-dealer business (some 45 registered representatives and 60 employees) from the Albany, New York headquarters.[5]

E. McGinn Smith's Four Funds

In parallel with his work at Pine Street, Mr. Smith devised the investment strategy for the Four Funds: (1) First Independent Income Notes, LLC (FIIN, 2003); (2) First Excelsior Income Notes, LLC (FEIN, 2004); (3) Third Albany Income Notes, LLC (TAIN, 2004); and (4) First Advisory Income Notes, LLC (FAIN, 2005) (collectively, the "Four Funds"). These investment vehicles were formed to gain access to higher quality institutional investments and mezzanine finance transactions. They offered investors an opportunity to invest in portfolios with many public and private entities, including, for example, alarm contract financing receivables, a core McGinn Smith competency, trust preferred securities issued by major financial institutions (Dekania Ex. 209/Tab G (FIIN Balance Sheet)), and an investment in CMET, a specialty finance company that conducted a $100 million offering underwritten by Friedman Billings Ramsey. *See* Exs. 207-10/Tabs E-G (balance sheets for the Four Funds).

F. McGinn Smith's Trust Offerings

Following Mr. McGinn's return to McGinn Smith from IASG in 2006, along with Brian Shea who had a wealth of experience in alarm contract acquisitions and Matthew Rogers, a senior executive at Tyco International's ADT division, alarm contract trusts again were formed, as well as other trusts backed by recurring revenue streams from, for example, cable television,

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[5] *See* Ex. 29 (Barbara Pinckney, *McGinn Smith Embarks on Ambitious Plan*, THE BUSINESS REVIEW (June 21, 2004) (*available at* http://www.bizjournals.com/albany/stories/2004/06/21/story1.html)).

phone and internet services ("Triple Play") offered to homeowners' associations and condominium developments (e.g., the TDM Cable Trust and Benchmark offerings); and luxury cruise businesses (e.g., the TDM Luxury Cruise offering) (collectively, "Trust Offerings").

G. The Great Recession of 2008

The losses incurred in McGinn Smith Securities were not the result of any alleged "fraud" by Rabinovich, Mayer, and Rogers. In fact, most of the Trust Offerings continued to pay interest through 2009 and continued to produce cash flow since the Receiver was appointed in April 2010. Until the economy fell into a steep recession in 2008, investors in the Four Funds received regular interest payments on their investments. Yet, with liquidity evaporating in the second half of 2007 and the financial markets collapsing in 2008, investors worldwide in blue chip stocks and mutual funds lost more than 30% of their money.[6] *See* Ex. 305 (email dated Jan. 2, 2009 from Guzzetti to McGinn Smith brokers).

From its peak of more than 14,000 in October 2007, the Dow Jones Industrial Average plummeted to below 7,000 in March 2009. The federal government-appointed Financial Crisis Inquiry Commission ("FCIC") described the recession as follows:

> The profound events of 2007 and 2008 were neither bumps in the road nor an accentuated dip in the financial and business cycles we have come to expect in a free market economic system. This was a fundamental disruption – a financial upheaval, if you will – that wreaked havoc in communities and neighborhoods across the country. . . .
>
> [T]here are more than 26 million Americans who are out of work, cannot find full-time work, or have given up looking for work. About four million families have lost their homes to foreclosure

[6] Messrs. McGinn and Smith's secret theft and diversion of funds – $4.1 million according to the Superseding Indictment (¶ 55) in the criminal action against them – had far less of an impact on the value of McGinn Smith Securities than did the Great Recession. The Division does not contend or suggest that Rabinovich, Mayer, or Rogers participated in, or knew about, the secret theft and diversion by Messrs. McGinn and Smith.

> and another four and a half million have slipped into the foreclosure process or are seriously behind on mortgage payments. Nearly $11 trillion in household wealth has vanished, with retirement accounts and life savings swept away. Businesses, large and small, have felt the sting of a deep recession.

Ex. 307 (FCIC, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (the "FCIC Report")), at xv-xvi; *see also* Ex. 308 (U.S. Securities and Exchange Commission, 2008 Performance and Accountability Report) at 2 ("The mortgage meltdown and ensuing global credit crisis during the past year have confronted our markets with unprecedented challenges."); *id.* at 10 ("In 2008, the subprime mortgage crisis and the resulting turmoil in the credit markets led to rapid and dramatic changes in U.S. financial markets."). It is therefore unsurprising that, in January 2008, interest payments on the junior notes of the Four Funds were cut.

What is surprising, however, is that the Division has alleged that the events of 2008 were somehow unique to McGinn Smith and should have caused Rabinovich, Mayer, and Rogers to request a "probing investigation into what happened." OIP ¶ 47. According to reports published by the Division, the most common complaint of investors in fiscal year 2009 was "Problems with Redemption, Liquidation or Closing." *See* Ex. 309 (U.S. Securities and Exchange Commission, Select SEC and Market Data Fiscal 2009 (the "SEC 2009 Report")) at 21 (noting a 61% increase in such complaints from fiscal year 2008). The SEC 2009 Report also disclosed that investment accounts with broker-dealers suffered more than $55 billion in losses in calendar year 2008, after posting gains for each of the calendar years 2004 through 2007. *Id.* at 22. In a table reflecting the revenues and expenses for carrying/clearing broker-dealers, the SEC 2009 Report showed that losses in investment accounts had changed more than 800% from 2007 to 2008. *Id.* at 25. Simply put, the Division's post-hoc assessment that losses were incurred in McGinn Smith Securities because of alleged "fraud" by Rabinovich, Mayer, and

Rogers is misguided and baseless. The Division ignores the tumultuous events that devastated the value of financial investments at the time. Rabinovich, Mayer, and Rogers did not know – and had no reason to suspect – that anything was amiss with the McGinn Smith Securities beyond the market turmoil.

H. The SEC and Criminal Actions

In April 2010, the SEC sued Messrs. McGinn and Smith, McGinn Smith, and their related entities. Notably, Rabinovich, Mayer and Rogers were not named as defendants in the SEC Action. In January 2012, the United States indicted Messrs. McGinn and Smith. In October 2012, a superseding indictment was filed alleging that they secretly stole and diverted investor funds to enrich themselves and to give the appearance that their investments were performing well during the economic downturn of 2007 and 2008.

Rabinovich, Mayer and Rogers had no knowledge of this secret theft and diversion. Nor does the Division suggest otherwise. In fact, they cooperated as non-party witnesses in the SEC's action against Messrs. McGinn and Smith. In the United States' action, they helped bring Messrs. McGinn and Smith to justice by testifying before the grand jury, being listed as government trial witnesses, and in the case of Rabinovich, testifying at trial.

I. The OIP and the Division's Purported "More Definite Statement"

In the OIP, the Division alleged that Rabinovich, Mayer, and Rogers, and seven other Respondents, each violated Section 5(a) and (c) of the Securities Act of 1933 "by offering and selling notes for which no registration statements were in effect", and Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder "by knowingly or recklessly, or negligently, failing to perform reasonable due diligence to form a reasonable basis for their recommendations to customers, and made misrepresentations and omissions in recommending the Four Funds and Trust Offerings." OIP ¶ 20. The Division did not, however,

plead any facts regarding each of Rabinovich, Mayer, and Rogers' alleged conduct. Accordingly, Rabinovich, Mayer, and Rogers requested a more definite statement.

Subsequently, the Division provided a purported "more definite statement" in the form of (1) charts that show alleged sales of McGinn Smith Securities by Rabinovich, Mayer, and Rogers, (2) charts that show allegedly unaccredited investors in the Four Funds and the Trust Offerings, and (3) a self-serving narrative authored by the Division which purportedly contains the basis for its fraud claim.

J. Alleged Red Flags

The Division contends there were three red flags: (1) a (non-existent) "redemption policy" supposedly announced in December 2006; (2) a meeting in January 2008 at which Messrs McGinn and Smith explained that, because of poor performance particularly affecting auction rate securities (Dekania), CDOs (GSC Capital) and mortgage-backed securities (Deerfield), interest payments on the junior notes of the Four Funds would be reduced and maturities extended so that investors eventually would be paid their interest and principal; and (3) a meeting in September 2009 at which Messrs. McGinn and Smith informed brokers that Firstline had filed for bankruptcy in January 2008.[7]

1. *The (Nonexistent) Redemption Policy*

Contrary to the Division's assertion, McGinn Smith did not announce a policy in December 2006 that clients only could redeem their investment in a McGinn Smith Security if their brokers found a replacement investor. Neither Rabinovich, nor Mayer, nor Rogers was told this by anyone in December 2006 or in 2007. In fact, their clients redeemed their McGinn Smith

[7] By September 2009, Rabinovich, Mayer and Rogers already were planning to leave because McGinn Smith was not renewing the New York City office lease and was planning to drop its retail brokerage business.

Securities during 2006 and 2007, and timely received interest payments from 2003 through 2007. There was no such announced policy and there was no such red flag.

2. *The January 2008 Meeting*

At a meeting in Albany in January 2008, Messrs. McGinn and Smith informed brokers that interest would be reduced on the junior notes of the Four Funds from 10.25% to 5%. (There were three tranches of notes: senior secured notes, carrying 5% interest; junior secured notes carrying 7.5% interest; and junior notes carrying 10.25% interest). Messrs. McGinn and Smith explained that assets in the Four Funds had been negatively impacted by the liquidity crisis, which began in the summer of 2007 with the collapse of the auction rate market, and the recession which was particularly impacting the housing market and financial institutions.

Rabinovich, Mayer and Rogers were aware from the financial press that hedge funds were suspending or "gating" redemptions and that venerable financial institutions were teetering on bankruptcy, liquidation or conservatorship (such as Bear Stearns, Washington Mutual and Freddie Mac and Fannie Mae). Messrs. McGinn and Smith's plan to reduce interest and extend maturities was very disappointing, particularly in light of prior experience with McGinn Smith's long history of steady performance in alarm contract receivable financing. But given broader market conditions, it was unsurprising that investments in the Four Funds were underperforming their anticipated returns.

Rabinovich, Mayer and Rogers did not understand the reduction in interest payments to be a "red flag." The markets and investments generally were experiencing severe financial distress, which grew more acute during 2008 (and has been chronicled in the FCIC Report (Ex. 307)). The Division – tasked with regulating the securities market – ignores one of the largest economic downturns since the Great Depression. The Division also ignores the fact

that FINRA, as well as the SEC's OCIE, examined McGinn Smith and did not see any "red flags" from 2003-2008.[8]

3. *September 2009 Firstline Revelation*

In September 2009, Messrs. McGinn and Smith revealed that Firstline Securities, Inc. – a residential alarm contract company that borrowed funds from the Firstline Trust offering of October 2007 – filed for bankruptcy on January 25, 2008 in Utah.

Neither Rabinovich nor Mayer nor Rogers knew of the bankruptcy. Nor did they have any reason to know, as their accredited investor clients were timely receiving quarterly interest. There did not appear to be any problem with the investment in Firstline.

II.

RABINOVICH, MAYER AND ROGERS DID NOT ACT IMPROPERLY, LET ALONE WITH KNOWING OR RECKLESS MISCONDUCT

While a broker has a duty to make a reasonable investigation under the circumstances in connection with making a recommendation to buy or sell a particular security, *Hanly*, 415 F.2d at 597, only knowing or recklessly deceptive conduct can form the basis of a Section 10(b) violation. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 201 (1976). "Reckless conduct is, at the least, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *Milan Capital*, 2000 U.S. Dist. LEXIS 16204, at *14 (quoting *Rolf v. Blyth, Eastman Dillon & Co., Inc.*, 570 F.2d 38, 47 (2d Cir. 1978) (internal quotations omitted)).

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[8] *See, e.g.*, Ex. 310/Tab M (OCIE Report dated Feb. 26, 2004) at 12 ("The staff's research revealed that reputable financial institutions, which included Sandler O'Neill & Partners, L.P., Friedman, Billings, Ramsey & Co. Inc., and Merrill Lynch International, underwrote the aforementioned investments purchased by FIIN.").

Dramatically unlike here, all of the cases imposing Section 10(b) liability against individual brokers for recommending investments to their customers involve highly unreasonable, knowing misrepresentations and omissions, or such obvious misstatements or failures to disclose that the brokers were proceeding in reckless disregard of the truth. *See Hanly*, 415 F.2d at 593-95 (willfully fraudulent misrepresentations and omissions made in recommending a speculative over-the-counter stock); *SEC v. Hasho*, 784 F. Supp. 1059, 1107 (S.D.N.Y. 1992) ("The defendants here operated a boiler room operation; they recommended speculative securities to mostly unsophisticated investors using high pressure and fraudulent sales pitches via long distance telephone solicitations."); *Platinum*, 2006 U.S. Dist. LEXIS 67460 (defendant "undoubtedly reckless" because he "failed to take even the most rudimentary steps to make sure his recommendations to his clients were responsible and reasoned," "did nothing to confirm his price or performance predictions," "did nothing to familiarize himself with private placements," and failed even to read the materials going to his customers); *Milan Capital*, 2000 U.S. Dist. LEXIS 16204, at *5-6, *13-21 (broker, in reckless disregard of the truth, enabled the sale of phony IPO securities).

The bald allegations of the OIP do not identify knowing or reckless misrepresentations or omissions by Rabinovich, Mayer, or Rogers in connection with any McGinn Smith Securities. The Division's purported "more definite statement" is similarly insufficient. Nor could these pleading deficiencies overcome investors' express agreement that they were not relying on any statements other than those contained in the offering documents, and the subscription agreement's broad merger clause. *See, e.g.*, Ex. 12/Tab A (email attaching, among other things, FIIN subscription agreement), at ¶¶ 1(b), 7.

Moreover, neither the SEC nor FINRA (formerly NASD) published guidance during 2003 through 2009 regarding the "reasonable investigation" *an individual broker* should perform before offering a private placement. In 2010, FINRA published guidance, however, regarding the "reasonable investigation" a *brokerage firm* is to perform before offering private placements. FINRA, REGULATORY NOTICE 10-22, Regulation D Offerings: Obligation of Broker-Dealer to Conduct Reasonable Investigations in Regulation D Offerings (Apr. 2010) at 3-4. The FINRA Notice describes examples of appropriate due diligence including: (1) "reasonable investigations of the issuer and its management concerning the issuer's history and management's background and qualifications to conduct the business"; (2) "reasonable investigations of the issuer's business prospects, and the relationship of those prospects to the proposed price of the securities being offered"; or (3) "reasonable investigations of the quality of the assets and facilities of the issuer." *Id.* at 8-10. Although not relevant to the claims against Rabinovich, Mayer and Rogers individually, the evidence at the hearing will establish that McGinn Smith, as a brokerage firm, satisfied these obligations.

No case or regulatory guidance imposes an obligation on each registered representative to conduct the same level of due diligence that the brokerage firm or its investment banking personnel had already performed. Rather, registered representatives are required to conduct a reasonable investigation of the investment opportunities for their clients, comply with the antifraud provisions of the securities law, and ensure, pursuant to NASD Rule 2310, the transactions are suitable for their clients' investment objectives. Rabinovich, Mayer and Rogers neither prepared nor participated in the preparation of the PPMs. *See BNP Paribas Mortg. Corp. v. Bank of Am., N.A.*, 866 F. Supp. 2d 257, 268 (S.D.N.Y. 2012) (dismissing action and finding that "[m]ore significantly, there is no duty, under the industry notices and treatise

cited...to investigate or verify representations made in the PPM absent participation in preparation of the PPM.") (citing FINRA REGULATORY NOTICE 10-22 (Apr. 2010) at 4; Charles J. Johnson & Joseph McLaughlin, CORPORATE FINANCE AND SECURITIES LAWS 7-79 (4th ed. 2011 Supp.)).

A. Rabinovich, Mayer and Rogers Made a Reasonable Investigation

Rabinovich, Mayer and Rogers made a reasonable investigation of the McGinn Smith Securities. They performed due diligence on the issuers and their management by reviewing the offering documents, learning about the investment opportunity, and knowing the due diligence that McGinn Smith generally performed. McGinn Smith's "Due Diligence Procedures" note:

> When McGinn, Smith acts as underwriter in connection with limited partnerships/DPPs and/or private placement offerings, it will make a reasonable investigation of the project to include inspection of completed projects, conversations with in-house counsel where applicable, a complete examination of financial documents and any other documents deemed necessary to deal fairly with the investing public. Paperwork recording the due diligence will be kept in the legal files.

Ex. 112/Tab B (McGinn Smith Compliance Manual) at 39. Given McGinn Smith's investment banking, legal and compliance departments and the offering documents, Rabinovich, Mayer and Rogers had a strong basis to believe – and did believe – that due diligence had been performed. The offering documents for the McGinn Smith Securities also contained a wealth of information about the investments, including (i) a statement of the proposed business purpose and use of funds, (ii) financial statements of the issuer or underlying agreements with third parties evidencing the quality of the assets and investment opportunity, and (iii) a detailed statement of the known or reasonably ascertainable risks of investing in the issuer or in the private placement securities themselves. *See, e.g.*, Ex. 12/Tab A (email attaching, among other things, FIIN

Confidential PPM); *see also* Exs. 20, 34, 94, 125, 130, 136, 137, 143, 155, 162, 167, 173-74, 185-88, 195-96, 199.

Rabinovich, Mayer and Rogers also were aware of Mr. Smith's involvement in capital raising and mezzanine finance at Pine Street and elsewhere. Their confidence in McGinn Smith's history of security alarm financings and other offerings informed their analysis of the McGinn Smith Securities. The business model described in the offering documents made sense to them, and they believed in Messrs. McGinn and Smith's ability to manage the assets. Thus, their own families invested more than $3,000,000 in the FIIN, FEIN, TAIN and FAIN notes. *See* Exs. 215A, 215B, and 215C/Tab J.

In fact, Rabinovich did *not* offer the initial Four Funds transaction (FIIN) to investors. He first wanted to see the types of investments that were included in its portfolio. Each of Rabinovich, Mayer and Rogers made his own judgment about each McGinn Smith Security and whether to present it to his accredited investor clients.

Rabinovich, Mayer and Rogers knew that the interest rates offered on McGinn Smith Securities were neither outlandish nor unreasonable in light of the prevailing interest rate environment during the relevant time period. The cost of capital and debt coverage estimates that Rabinovich, Mayer and Rogers learned from Messrs. McGinn and Smith were also consistent with a reasonable investigation of the issuer's prospects against the proposed price of securities being offered.

When liquidity dried up in the second half of 2007, and the economy collapsed in 2008, lower and middle market companies had trouble obtaining financing. Rabinovich, Mayer and Rogers believed this created opportunities for McGinn Smith private placement offerings. *See, e.g.*, Ex. 192 (Pine Street Investor Letter, March 30, 2009, at 7) ("The prime rate has moved

from 8.25% at the end of 2006 to 5.25% in 2007 to 3.25% today. LIBOR (the base rate for many companies' loans) has dropped from 5.35% to 2.50% to 0.52% today.").

While Rabinovich, Mayer and Rogers' trust was ultimately betrayed by secret theft and diversion, their trust was not blind or misguided, as Mr. McGinn and Mr. Smith had considerable success over many years, and these appropriate alternative investments were sound given their historical risk-reward. That trust, supplemented by their own knowledge and due diligence, was consistent with a "reasonable investigation of the issuer and its management concerning the issuer's history and management's background and qualifications to run the business." FINRA, REGULATORY NOTICE 10-22 (Apr. 2010) at 8.

III.

RABINOVICH, MAYER AND ROGERS (A) TOOK REASONABLE STEPS TO AVOID VIOLATING SECTION 5, AND (B) REASONABLY BELIEVED THAT THE MCGINN SMITH SECURITIES WERE EXEMPT FROM REGISTRATION

The Division's Section 5 claim is based on offerings to investors in the Four Funds and the Trust Offerings. The Division's draft sales and investor charts (in their purported "more definite statement") identify nearly two-thousand (2000) alleged sales across the Four Funds and the Trust Offerings; yet *at least* 75% of those sales occurred *prior to* September 23, 2008 and are therefore time-barred. *See infra* Section IV. Even accepting the Division's draft charts as accurate – they are not – Rabinovich and Mayer presented McGinn Smith Securities to only two *allegedly unaccredited* investors each since September 23, 2008, and Rogers presented McGinn Smith Securities to *no* such investors since September 23, 2008. For the reasons explained below, Rabinovich, Mayer, and Rogers did not violate Section 5 in connection with these alleged sales (or any other sales of McGinn Smith Securities).

A. Section 5 Does Not Apply to Private Offerings

While Section 5 of the Securities Act requires the registration of all securities offered to the public by prohibiting the sale of unregistered securities (*see* 15 U.S.C. § 77e(a) (2012)), Section 4(2) of the Securities Act exempts private offerings from the registration requirement. 15 U.S.C. § 77d(a)(2) (2012) ("The provisions of section 5 shall not apply to...(2) transactions by an issuer not involving any public offering"). The availability of the exemption turns in part on "whether the particular class of persons affected needs the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering.'" *SEC v. Ralston Purina Co.*, 346 U.S. 119, 125 (1953).

To determine if an offering is exempt under Section 4(2), courts typically focus on "(1) the number of offerees, (2) the sophistication of the offerees, (3) the size and manner of the offering, and (4) the relationship of the offerees to the issuer." *SEC v. Murphy*, 626 F.2d 633, 644-45 (9th Cir. 1980) (collecting cases) (internal citations omitted). Offerings made via private placement memoranda to a limited number of accredited or otherwise sophisticated investors who have access to the type of information that a registration statement would provide, and who represent that they are able to evaluate the risks and merits of their investment, are entitled to the private offering exemption. *See Feldman v. Concord Equity Partners, LLC*, No. 08 Civ. 4409, 2010 U.S. Dist. LEXIS 49613, at *17 (S.D.N.Y. May 19, 2010) (applying Section 4(2) exemption "[i]n light of the limited nature of the offering, the self-professed sophistication of the investors, and the restrictions placed on resale" of membership units).

B. Section 5 Does Not Apply to Offerings Within Regulation D's Safe Harbor

The SEC enacted Regulation D in 1982 to provide a safe harbor that would streamline the requirements for obtaining various limited offering exemptions, including the private offering exemption. Securities Act Release No. 6389, [1981-1982 Transfer Binder] Fed.

Sec. L. Rep. (CCH) ¶ 83,106, at 84,907-08 (Mar. 8, 1982), ("The new regulation is designed to simplify and clarify existing exemptions, to expand their availability, and to achieve uniformity between federal and state exemptions in order to facilitate capital formation consistent with the protection of investors").

Rule 506 of Regulation D provides a safe harbor for offerings that are deemed to fall within the private offering exemption. 17 CFR § 230.506(a) (2012). Under Rule 506, offerings may be made to an unlimited number of "accredited investors", as defined in Rules 501(a)(1)-(8). 17 CFR § 230.501(e) (2012). There must be no more than, or the issuer must reasonably believe that there are no more than, 35 additional *un*accredited investors. 17 CFR § 230.506(b)(2)(i) (2012). Any such additional *un*accredited investor must have "such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description." 17 CFR § 230.506(b)(2)(ii) (2012).

C. Rabinovich, Mayer, and Rogers Took Reasonable Steps to Avoid Violating Section 5(a) and (c)

Rabinovich, Mayer and Rogers took all reasonable steps to avoid participation in any distribution violative of the registration provisions of Section 5(a) and (c) of the Securities Act. They followed McGinn Smith's written procedures for offering private placements; they had their clients complete subscription agreements and questionnaires to confirm their accredited status; they spoke with and were informed by McGinn Smith's law, compliance and investment banking departments that the McGinn Smith Securities were exempt from registration; and they knew outside counsel had advised McGinn Smith that the McGinn Smith Securities were exempt from registration.

D. Rabinovich, Mayer and Rogers Did Not Violate Section 5

Rabinovich, Mayer and Rogers were not aware, and had no reason to know, that McGinn Smith had accepted subscriptions from more than 35 *un*accredited investors (if, indeed, it did). Subscriptions were sent to the Albany headquarters for review and acceptance by Mr. Smith or Mr. McGinn. Rabinovich, Mayer and Rogers had no responsibility for accepting subscriptions submitted by approximately 40 other registered representatives. *See* Ex. 29. At no time did Mr. Smith, Mr. McGinn, the General Counsel, the Chief Compliance Officer or anyone else advise Rabinovich, Mayer or Rogers that more than 35 *un*accredited investors had been accepted on any Regulation D offering.

Unlike here, the SEC has typically filed Section 5 charges, and the courts have found violations, only (a) where there has been an obvious failure to comply with the registration requirement or with any claimed exemption, *and* (b) where there has been knowing or recklessly deceptive conduct. *See* Complaint ¶¶ 1, 10, *SEC v. Platinum*, 2006 U.S. Dist. LEXIS 67460 (general solicitation of unregistered securities through cold-calls and internet advertisements); *SEC v. Cavanagh*, No. 98 Civ. 1818, 2004 U.S. Dist. LEXIS 13372, at *83 (S.D.N.Y. July 16, 2004) (defendants "merged a shell company with a small and not yet successful operating company, sold stock...in an unregistered transaction, took control of virtually the entire market float, created a false impression of interest in the stock...issued a false press release, and drove the stock price north of $5 in a 'pump and dump' scheme from which they...pocketed millions of dollars."); *Gagnon*, 2012 U.S. Dist. LEXIS 38818, at *2-14, *19-27 (defendant helped orchestrate and promote a massive Ponzi scheme and made outlandish recommendations without basis, soliciting investors on his website, via email and in online chatrooms); *mUrgent*, 2012 U.S. Dist. LEXIS 25626, at *2 (defendants sold unregistered securities, "cold-called investors, used high pressure sales tactics, and made material misrepresentations about...mUrgent's

allegedly imminent IPO"). *See also SEC v. Ishopnomarkup.com, Inc.*, No. 04 Civ. 4057, 2007 U.S. Dist. LEXIS 70684, at *28 n.6 (E.D.N.Y. Sept. 24, 2007) (where the Division seeks equitable relief and the Regulation D safe harbor is at issue, the applicable standard is negligence and a Defendant's state of mind is relevant) (citing *SEC v. Univ. Major Indus. Corp.*, 546 F.2d 1044, 1047 (2d Cir. 1976)). That is simply not the case regarding Rabinovich, Mayer and Rogers.

E. The Division's "Integration" Theory Fails

The Division admits that none of the Trust Offerings had more than 35 *unaccredited* investors (OIP ¶ 32), and implicitly admits that each Trust Offering was exempt from registration. The Division instead argues that eight separate and distinct Trust Offerings (the fictitious "TDM Conduit") – and four separate and distinct Trust Offerings (the fictitious "MSF Conduit") should be "integrated" and treated as if each "Conduit" were but one offering for purposes of evaluating its Section 5 Claim. The Division's integration argument fails.

Under Rule 502, "[o]ffers and sales that are made more than six months before the start of a Regulation D offering or are made more than six months after completion of a Regulation D offering will not be considered part of that Regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under Regulation D . . ." 17 CFR § 230.502(a). Within the fictitious TDM Conduit, there is a *sixteen*-month gap between TDM Luxury Cruise, 10% (7/16/2007) and TDM Cable Trust 06, 10% (11/17/2008). OIP ¶ 31. Similarly, within the fictitious MSF Conduit, there is a *twelve*-month gap between TDM Verifier Trust 08, 8.5%/10% (12/17/2007) and TDM Verifier Trust 09, 10% (12/15/2008). *Id.* Thus, none of the Trust Offerings on either side of these gaps may be integrated as a matter of law.

When properly *segregated* by the six-month safe harbor, there are fewer than 35 unaccredited investors in each "Conduit" grouping offered within six months of one another.

The Trust Offerings also cannot be integrated because the factors for integration under Rule 502 are *not* satisfied. *See* Rule 502(a). There was no single plan of financing. There were different securities and classes of securities. The offerings were made at different times, for different consideration and for different purposes.[9] As the Division has acknowledged, the Trust Offerings "were created to fund entities engaged in specific areas, such as burglar alarm service, triple play service, or luxury cruises" (OIP ¶ 30) among other operating businesses. Each Trust Offering had its own separate and distinct assets. In the absence of integration, the Division's Section 5 claim falls apart at its seams. *See* OIP ¶ 32 ("None of the Trust Offerings exceeded 35 unaccredited investors.").

IV.

THE DIVISION'S CLAIMS ARE TIME-BARRED

Insofar as the Division's claims against Rabinovich, Mayer, and Rogers are based on offerings or alleged misrepresentations or omissions prior to September 23, 2008, they are time-barred and may not be "entertained." *See* 28 U.S.C. § 2462. On the face of the OIP, together with the Division's purported "more definite statement," it is clear that the vast majority of alleged conduct by Rabinovich, Mayer, and Rogers occurred prior to September 23, 2008.

---

[9] For example, TDM Cable Trust 06, 7.75%/9.25%, was offered pursuant to a PPM dated November 13, 2006, whose stated purpose was to invest in triple play service. Ex. 125/Tab C (TDM Cable Trust 06, 7.75%/9.25% PPM) at 4. TDM Verifier Trust 07R, 9%, was offered pursuant to a PPM dated February 2, 2009, whose stated purpose was to invest in alarm contracts. Ex. 188/Tab D (TDM Verifier Trust 07R, 9% PPM) at 4. Yet, the Division contends that these separate offerings, made more than two years apart, and for different purposes, should be integrated.

Section 2462 will bar any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, . . . unless commenced within five years from the date when the claim first accrued." 28 U.S.C. § 2462. As the Supreme Court made clear in *Gabelli v. SEC*, there is no discovery rule that *might* otherwise toll the statute of limitations, and a claim accrues "when the plaintiff has a complete and present cause of action." 133 S. Ct. 1216, 1220 (2013) (citation omitted). No civil fine, penalty, or forfeiture relating to conduct prior to September 23, 2008 may be imposed. *See SEC v. Jones*, 476 F. Supp. 2d 374, 381 (S.D.N.Y. 2007) (claim for "civil monetary penalties" is "unquestionably a penalty" under section 2462); *see also SEC v. Bartek*, 484 F. App'x 949, 957 (5th Cir. 2012) (SEC's sought-after remedies of a permanent injunction and an officer and director bar were time-barred "penalties," where they did not "address the prevention of future harm in light of the minimal likelihood of similar conduct in the future").

With respect to the Section 5 claim, the Division has identified only two transactions offered to allegedly unaccredited investors by Rabinovich which took place after September 23, 2008, two transactions offered to allegedly unaccredited investors by Mayer which took place after September 23, 2008, and no such transactions offered by Rogers which took place after September 23, 2008. Thus, even accepting the Division's sales charts as accurate – and they are not – it is clear that the Section 5 claim is based primarily on stale conduct that is not actionable.

With respect to the fraud claim, the Division has failed to identify the dates of any alleged misrepresentations or omissions in the OIP. Nevertheless, in its self-serving narrative (the "more definite statement"), the Division has identified various statements that it claims were

misrepresentations. The majority of these statements, however, relate to offerings that took place before September 23, 2008. These claims are also time-barred and may not be "entertained."

CONCLUSION

The Division charges against Rabinovich, Mayer and Rogers should be dismissed in their entirety.

New York, New York
January 17, 2014

Respectfully submitted,

SEWARD & KISSEL LLP

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Brian P. Maloney
Michael B. Weitman

One Battery Park Plaza
New York, NY 10004
212-574-1500

Attorneys for Respondents Philip S. Rabinovich, Brian T. Mayer, and Ryan C. Rogers

SK 27029 0001 1439567

Appendix

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15514

In the Matter of

DONALD J. ANTHONY, JR.,
FRANK H. CHIAPPONE,
RICHARD D. FELDMANN,
WILLIAM P. GAMELLO,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER,
PHILIP S. RABINOVICH, and
RYAN C. ROGERS,

Respondents.

APPENDIX OF EXHIBITS TO RESPONDENTS PHILIP S. RABINOVICH, BRIAN T. MAYER, AND RYAN C. ROGERS'S JOINT PRETRIAL MEMORANDUM

Tab	Description	Hearing Exhibit No.*
A	Email from B. Mayer to Nycbrokers@mcginnsmith.com dated Sept. 18, 2003; Subject: FINN MEMO, SUB AGR & QUEST.; Attachments: FINN Investor Questionaire.pdf, FINN Memorandum.pdf, FINN Subscription Agreement.pdf	Ex. 12
B	Excerpts from McGinn Smith Compliance Manual (Mar. 27, 2006)	Ex. 112
C	Excerpts from TDM Cable Trust 06 PPM (Nov. 13, 2006)	Ex 125
D	Excerpts from TDM Verifer Trust 07R PPM (Feb. 2, 2009)	Ex 188
E	FAIN Balance Sheet	Ex 207
F	FEIN Balance Sheet	Ex 208
G	FIIN Balance Sheet	Ex 209
H	TAIN Balance Sheet	Ex 210

* The reference to "Hearing Exhibit No." is to the pre-marked exhibits of Rabinovich, Mayer, and Rogers.

Tab	Description	Hearing Exhibit No.*
I	M&S Partners Securitization and Due Diligence process	Ex 211
J	Rabinovich, Mayer and Rogers' Family Investments	Ex. 215A, 215B, 215C
K	Security Monitoring Contract Financing, Program Summary	Ex 217
L	Security Participation Trust, Program Summary	Ex 218
M	Excerpts from Office of Compliance Inspections and Examinations Report on McGinn, Smith dated Feb. 26, 2004	Ex. 310

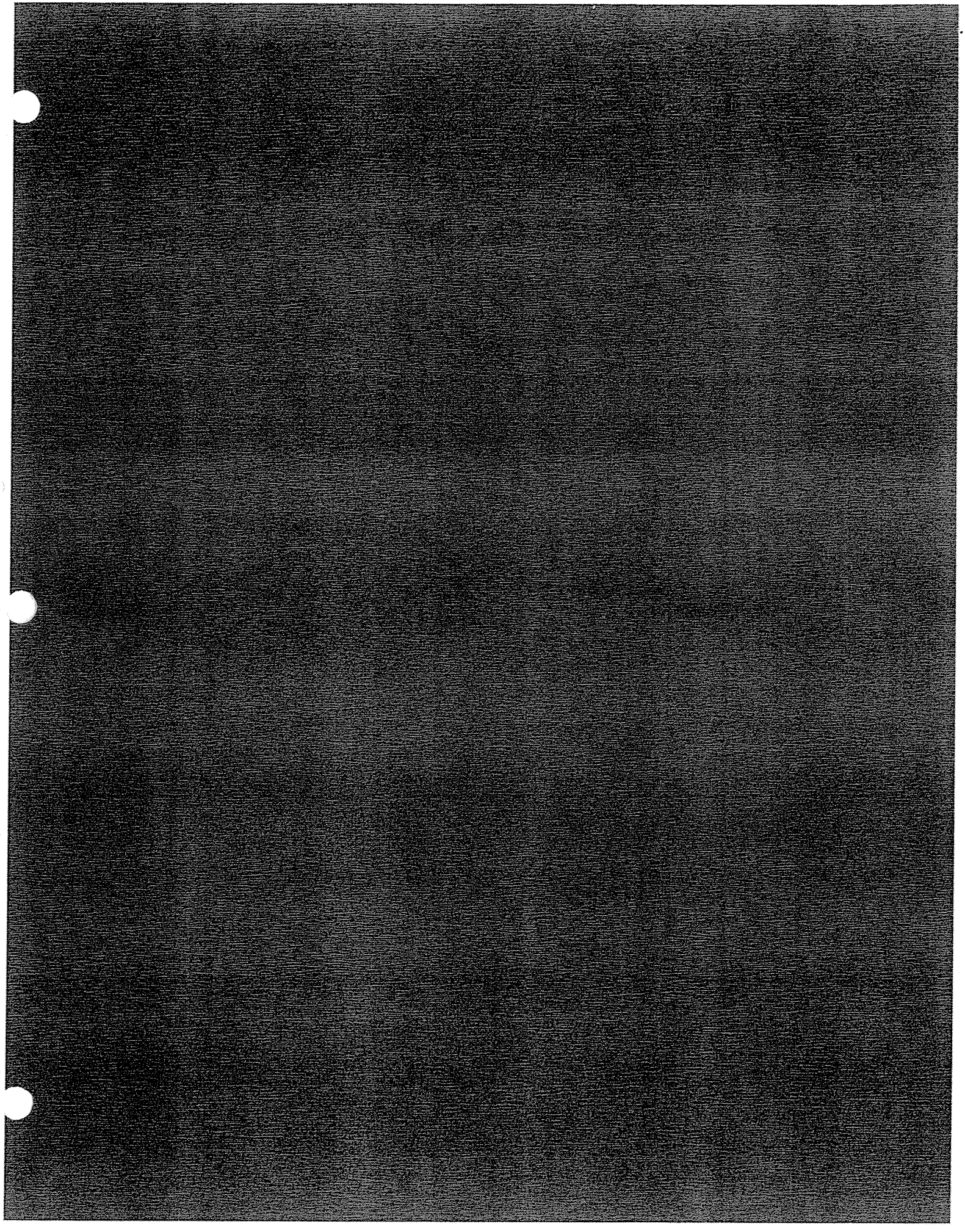
SK 27029 0001 1444085

A

From:	Brian Mayer <mayerb@mcginnsmith.com>
Sent:	Thursday, September 18, 2003 4:05 PM (GMT)
To:	NYC Brokers <nycbrokers@mcginnsmith.com>
Subject:	FINN MEMO, SUB AGR & QUEST.
Attach:	FINN Investor Questionnaire.pdf; FINN Memorandum.pdf; FINN Subscription Agreement.pdf

Please read and we will have a meeting shortly to discuss.

RMR EXHIBIT
12



CONFIDENTIAL

PURCHASER QUESTIONNAIRE FOR INDIVIDUALS

FIRST INDEPENDENT INCOME NOTES, LLC
(A New York Limited Liability Company)

The offering is being made pursuant to Regulation D under the Securities Act of 1933 (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment;

(ii) the undersigned is acquiring the Notes for investment purposes only and not with a view towards resale; and

(iii) the undersigned is aware that this offering will involve Notes for which no resale market exists, thereby requiring this investment to be maintained for the stated term of each Note.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the questionnaire hereby agrees that the Company may present this questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Notes to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Company in connection with the sale of the Notes.

Please complete this questionnaire as thoroughly as possible and sign, date and return to the Company c/o McGinn, Smith & Co., Inc., 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name: _____

Home Address: _____

_____

Date of Birth: _____

Social Security No.:_____

Occupation: _____

Business Address: _____

Business Telephone: _____

Home Telephone: _____

Communications should be sent to:

Home Address _____ or Business Address _____

1. What is your approximate net worth?

_____$50,000 - $100,000
_____$100,000 - $250,000
_____$250,000 - $500,000
_____$500,000 - $1,000,000
_____Greater than $1,000,000

2. Did your individual income exceed $200,000.00 in 2001 and 2002, or did your joint income with your spouse exceed $300,000.00 in each of those years?

Yes _____ No_____

3. If the answer to #2 above is "yes", do you expect to reach the same income level in 2003?

Yes _____ No _____

4. What was your approximate gross income for calendar year 2002?

_____ $25,000 - $100,000
_____ $100,000 - $200,000
_____ $200,000 - $300,000
_____ $300,000 - $500,000
_____ Greater than $500,000

5. What will your approximate gross income be for calendar year 2003?

_____ $25,000 - $100,000
_____ $100,000 - $200,000
_____ $200,000 - $300,000
_____ $300,000 - $500,000
_____ Greater than $500,000

6. I understand that in order to qualify as a purchaser of Notes, I must have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Company or I must engage an attorney, accountant or other financial advisor for the purpose of this particular transaction.

I hereby represent, by initialing on the Representation A or Representation B line below, that:

A. I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Notes and will not require a Purchase Representative.

Representation A._____

B. I have relied upon the advice of the following Purchaser Representative(s) in evaluating the merits and risks of an investment in the Notes:

Representation B._____

_____ _____
Name Name

_____ _____
Relationship Relationship

To the best of my information and belief, the above information is accurate and complete in all respects. I agree to notify the Company promptly of any changes which occur prior to sale of the Notes.

Purchaser: Date:

_____ _____
Name (printed)

_____
Signature

CONFIDENTIAL

PURCHASER QUESTIONNAIRE FOR CORPORATIONS AND PARTNERSHIPS

FIRST INDEPENDENT INCOME NOTES, LLC
(A New York Limited Liability Company)

The offering is being made pursuant to Regulation D under the Securities Act of 1933 (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) that the Offeree and its Offeree Representative(s), together, have such knowledge and experience in financial and business matters, that they are capable of evaluating the merits and risks of the prospective investment and that the Offeree is able to bear the economic risk of the invest.

The purpose of this Questionnaire is to assist FIRST INDEPENDENT INCOME NOTES, LLC (the "Company") in complying with the above requirement.

Please contact McGinn, Smith & Co, Inc., 5th Floor, 99 Pine Street, Albany, New York 12207 (518-449-5131) if you have any questions in answering this questionnaire.

If the answer to any questions is "None" or "Not Applicable", please so state.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the Questionnaire hereby agrees that the Company may present this Questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Notes to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Company in connection with the sale of the Notes.

Please complete this Questionnaire as thoroughly as possible and sign, date and return one (1) copy to the Company c/o McGinn, Smith & Co., Inc., 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name of Organization:_____

Business Address: _____

Business Telephone: _____

Federal ID Number:_____

1. Was the organization formed for the specific purpose of acquiring the Company's Notes?

   Yes_____ No_____

2. Does the organization possess total assets in excess of $5,000,000?

   Yes_____ No_____

3. Does each equity owner of the organization:

   A. Have a net worth, exclusive of home, furnishings, and automobiles, of at least $1,000,000?

   Yes_____ No_____

B. Have an individual net income in excess of $200,000 in 2001 and 2002, or joint income with that person's spouse in excess of $300,000 in each of those years, and have a reasonable expectation of reaching the same income level in 2003?

Yes_____ No_____

4. I am aware that the Notes proposed to be offered will not be readily marketable or transferable.
Yes_____ No_____

5. The organization can afford the complete loss of its investments in the Notes and has no need for liquidity in this investment.

Yes_____ No_____

6. Stated below are the organization's previous investments in similar securities and other private placements during the past five years:

_____
_____
_____

7. I understand that, unless the organization satisfies certain criteria, in order to qualify as a purchaser of Notes, I must have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Company or I must engage an attorney, accountant or other financial advisor for the purpose of this particular transaction.

I hereby represent, by initialing on the Representation A or Representation B line below, that:

A. I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Notes and will not require a Purchase Representative.

Representation A._____

B. I have relied upon the advice of the following Purchaser Representative(s) in evaluating the merits and risks of an investment in the Notes:

Representation B._____

_____ _____
Name Name

_____ _____
Relationship Relationship

To the best of my information and belief, the above information is accurate and complete in all respects. I agree to notify the Company promptly of any changes which occur prior to sale of the Company's Notes.

Purchaser: Date:

_____ _____
Print Name of Organization

By:
Title

PURCHASER REPRESENTATIVE QUESTIONNAIRE

FIRST INDEPENDENT INCOME NOTES, LLC

The information contained herein is being furnished to FIRST INDEPENDENT INCOME NOTES, LLC (the "Company") in order to facilitate a determination as to whether the undersigned may act as a Purchaser Representative, as such term is used in Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"), in connection with the proposed offer and sale by the Company of its Notes. The answers below are correct, and the Trustee is entitled to rely on them in making the foregoing determination.

REPRESENTATIONS

I represent, warrant and covenant to you that:

(a) the information contained herein is complete and accurate and may be relied upon by you in determining whether I may act as a Purchaser Representative pursuant to Regulation D in connection with offers and sales of the Notes;

(b) I will notify you immediately of any material change in any of such information occurring within ninety (90) days of the close of sale of the Notes to the Purchaser;

(c) (i) I have been designated, or will be designated, pursuant to the Purchaser Questionnaire of each Purchaser, as the Purchaser Representative of such Purchaser, in connection with evaluating the merits and risks of his prospective investment in the Notes;

(ii) I have disclosed or will disclose, to each Purchaser, in writing, prior to the designation referred to above, any material relationship between me or my affiliates and the Company, which now exists or is mutually understood to be contemplated, or which has existed at any time during the previous two (2) years, and any compensation received as a result of such relationship, including any compensation received in connection the offering of Notes herein; and

(iii) I will deliver to each of you a counterpart of the disclosure statement referred to in (ii) above, and such other documents or information as each of you may request relating to the performance by me of my duties as a Purchaser Representative.

(Attach additional sheets if required)

1. Name: _____

   Age: _____

   Social Security No.: _____

2. Names of offerees I am representing:

   _____

   _____

   _____

3. Firm name: _____

   Empl. Iden. No.: _____

   Position: _____

   Nature of Duties: _____

   Business Address: _____

   Business telephone number: (_____) _____

4. Prior occupations or positions during the past five years:

_____

_____

_____

_____

5. Description of prior experience in advising clients with respect to investments, including a description of the types of investments, the dollar amounts involved, and the number of years of experience which you have in financial, business and tax oriented matters:

General Investments (specify)

_____

_____

_____

Private Placements (specify)

_____

_____

Other Investments (specify)

_____

_____

6. The Professional licenses or registrations (including bar admissions, accounting licenses, real estate brokerage licenses, broker-dealer or investments advisory registrations) held by me are as follows:

Registration	Year Received	Is License or Registration Still Effective?

7. My educational background, including degrees obtained and date of attendance:

_____

_____

_____

8. (a) Neither I nor any of my affiliates now have or have had any material relationship with the Company or any of its affiliates, are not affiliates or the Company, and no such relationship is contemplated in the future, except as follows:

_____

_____

_____

(b) The amounts of compensation received or to be received as a result of the material relationship(s) described in Item 8(a)(including any compensation received or to be received in connection with this transaction) are as follows:

_____

_____

_____

9. Neither I nor any of my affiliates own beneficially any interest in the Company except as follows:

_____

10. I have received and read the Company's Private Placement Memorandum dated September 15, 2003 and Exhibits thereto and have reviewed it with the Offeree.

11. Other comments or disclosures:

_____

_____

_____
Purchaser Representative Signature

_____
Type Purchaser Representative Name

_____
Firm Name

_____
Street Address

_____
City and State

(_____) _____
Telephone

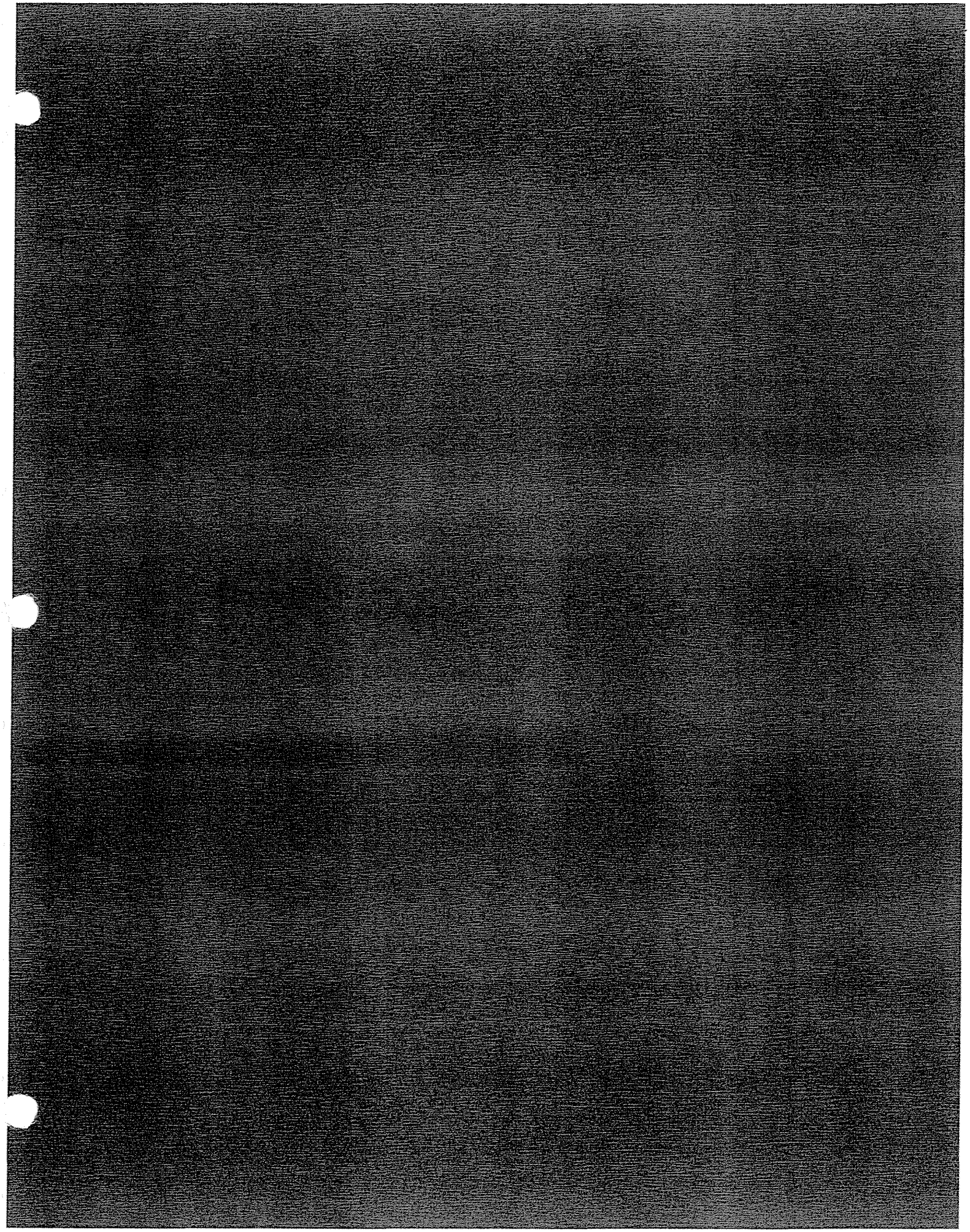
Acknowledgement of Investor(s)

I acknowledge receipt of the foregoing disclosures this _____ day of _____, 2003, and this represents my acknowledgment in writing to the Company that I have read the foregoing and desire that the above stated person serve as my Purchaser Representative with respect to the offering of the Company's Notes.

_____
Investor's Signature

_____
Investor's Signature

_____
Investor's Signature



CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

FIRST INDEPENDENT INCOME NOTES, LLC

$4,000,000 Minimum Offering
$20,000,000 Maximum Offering

5.0% Secured Senior Notes due 2004
7.5% Secured Senior Subordinated Notes due 2008
10.25% Secured Junior Notes due 2008

We are offering up to $20 million aggregate principal amount of our 5.0% secured senior notes due 2004, (the "original senior notes"), 7.5% secured senior subordinated notes due 2008 (the "senior subordinated notes") and 10.25% secured junior notes due 2008 (the "junior notes" and together with the senior notes (as defined below) and the senior subordinated notes, the "notes"). Upon the maturity of the original senior notes, we may continue to issue additional senior notes (the "additional senior notes" and together with the original senior notes, the "senior notes") with a one-year maturity date and an interest rate of the then current prime rate +1% up to one year prior to the maturity date of the senior subordinated notes and the junior notes, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed $20 million. The original senior notes will mature on December 15, 2004 and any additional senior notes will mature on December 15, 2005, 2006, 2007 or 2008, respectively. Each of the senior subordinated notes and the junior notes will mature on December 15, 2008. We will pay interest on the notes quarterly on the 15th day of January, April, July and October, commencing on January 15, 2004. The notes are secured by all of our various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our asset portfolio (individually an "Investment" and collectively, the "Investments"), and the cash received through the sale of the notes after deducting commissions, fees and expenses. The senior subordinated notes and the junior notes are subordinated in right of payment to the senior notes. Additionally, the junior note holders' right to payment is subordinated in right of payment to the senior subordinated note holders. At our option, we may redeem a pro rata portion of the notes upon the removal, whether voluntary or involuntary, of an Investment from our portfolio.

The notes will be sold through McGinn, Smith & Co., Inc., which is acting as our placement agent for the notes. No public market exists with respect to the notes.

The notes are not certificates of deposit or similar obligations of, and are not guaranteed or insured by, any depository institution, the Federal Deposit Insurance Corporation or any other governmental or private fund or entity. Investing in the notes involves a high degree of risk. See "Risk Factors", beginning on page 5, for a discussion of risks that you should consider before making a decision to invest in the notes.

The notes have not been registered under the Securities Act of 1933 (the "Securities Act"), as amended, or any applicable state or foreign securities laws, nor has the Securities and Exchange Commission or any state or foreign securities commission or other regulatory authority passed upon the accuracy or adequacy of this document or endorsed the merits of this offering. Any representation to the contrary is unlawful. The notes are offered by virtue of exemptions provided by Section 4(2) of the Securities Act, Regulation D promulgated under the Securities Act, certain state and foreign securities laws and certain rules and regulations promulgated pursuant thereto. The notes may not be resold or otherwise transferred unless we receive an opinion of counsel or other documentation acceptable to us and our counsel that such registration is not required, or there is an effective registration statement under the Securities Act and any applicable state and foreign securities laws.

	Per note	Total
Offering price	100%	100%
Placement agent commissions	2%	2%
Proceeds to First Independent Income Notes, LLC, before expenses	98%	98%

McGinn, Smith & Co., Inc. has agreed, as our placement agent, to offer the notes on a "best efforts, all or none" basis with respect to the minimum offering of $4,000,000.

We will issue the notes in certificated form. We expect that delivery of the notes will be made in Albany, New York on or about October 15, 2003. McGinn, Smith Capital Holdings Corp. will act as trustee for the notes.

McGINN, SMITH & CO., INC.

The date of this Private Placement Memorandum is September 15, 2003.

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NOTICE TO INVESTORS

The information contained in this private placement memorandum (the "memorandum") is not complete and its contents may differ from that of memoranda designed to conform to the requirements applicable to registration statements under United States securities laws. The notes are being offered only to "accredited investors", as that term is defined by Regulation D under the Securities Act, and the rules and regulations thereunder, who directly or through their advisors have the expert knowledge to evaluate information and data and whose potential investment is sufficiently large to justify the utilization by them of the access being granted them to other information. Prospective investors will be granted access to all reasonably available, relevant data concerning First Independent Income Notes, LLC and are urged to request whatever documents or material they believe will be useful in making their investment decision. Potential investors should base their investment decision on their own analysis of all information they deem to be relevant.

The information presented herein was prepared by us and is being furnished by McGinn, Smith & Co., Inc., the placement agent, solely for use by prospective investors in connection with this offering. The placement agent has not independently verified the information contained herein or otherwise made any further investigation of First Independent Income Notes, LLC and makes no representation or warranty, express or implied, as to the accuracy or completeness of such information. Neither we nor the placement agent make any representation or warranty, express or implied, as to our future performance.

Because the notes have not been registered under the Securities Act or any state or foreign securities laws, they may not be resold, transferred or otherwise disposed of unless the resale, transfer or other disposition is registered under the Securities Act or any applicable state and foreign securities laws or an exemption therefrom is available. No public market exists with respect to any of our securities, including the notes. Investors should be aware that they may be required to bear the risks of this investment for an indefinite period.

This memorandum does not constitute an offer to sell or a solicitation of an offer to buy any of our securities to any person in any jurisdiction in which such offer or solicitation is unlawful. This offering is not being made to, nor will subscriptions be accepted from or on behalf of, any person in any jurisdiction in which the making or acceptance thereof would not be in compliance with the laws of such jurisdiction. We may, however, in our sole and absolute discretion, take such action as we deem necessary to make the offering in any such jurisdiction and extend the offering to offerees in such jurisdiction.

This memorandum is submitted to prospective investors on a confidential basis and is for their informational use solely in connection with the offering described herein. The disclosure of any of the information contained herein or its use for any other purpose except with our prior written consent is prohibited. This memorandum may not be reproduced, in whole or in part, and it is accepted with the understanding that it will be returned on request if the recipient does not purchase the securities offered hereby or if the recipient's subscription is not accepted or if the offering is terminated.

This memorandum supercedes any documents previously supplied to prospective investors concerning us and the terms and conditions of the offering being made hereby. This memorandum contains summaries of the contents of certain agreements and other documents. Reference should be made to these agreements and documents for complete information concerning the rights and obligations of the parties thereto and the matters described therein. Subject to any applicable restrictions as to confidentiality, all of these agreements and documents shall be made available upon request.

No person has been authorized to make any representations concerning this offering, and no person other than the placement agent has been authorized to furnish any information, other than as set forth in this memorandum, and, if made or given, these other representations or information must not be relied upon by prospective investors.

Prospective investors are not to construe the contents of this memorandum as legal, tax or investment advice. Each prospective investor should consult its advisors as to legal, tax, financial and related matters concerning an investment in the notes. Without limiting the generality of the foregoing, prospective investors outside the United States should consult their legal, tax or financial advisers in order to ascertain the tax consequences of buying, holding and receiving proceeds from the notes.

Neither the delivery of this memorandum nor any sale made hereunder shall, under any circumstances, create any implication that the information herein is correct as of any time subsequent to the date hereof or that there has not been any change in the information contained herein or in our affairs since the date hereof.

The notes are offered subject to our acceptance of subscriptions and other conditions as set forth in this memorandum. We reserve the right in our discretion to reject any subscription in whole or in part or to allot to any investor less than the aggregate principal amount of the notes subscribed for, and to withdraw, cancel or modify the offering at any time without notice.

This memorandum does not constitute an offer of or an invitation by or on behalf of the issuer to subscribe or purchase any notes and may not be used for the purpose of an offer to, or a solicitation by, anyone in any circumstances in which such offer or solicitation is not authorized or lawful. The distribution of this document and the offering of the notes in certain jurisdictions may be restricted by law. Persons who obtain this document are required by the issuer to inform themselves about and to observe any such restrictions. No action is being taken to permit a public offering of the notes or the distribution of this document in any jurisdiction where action would be required for such purposes.

NOTICE TO NEW HAMPSHIRE RESIDENTS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, 1955, AS AMENDED, WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

NOTICE TO FLORIDA RESIDENTS

THE SECURITIES REFERRED TO HEREIN WILL BE SOLD TO, AND ACQUIRED BY, THE HOLDER IN A TRANSACTION EXEMPT UNDER SECTION 517.061(11) OF THE FLORIDA SECURITIES ACT. THE SECURITIES BEING OFFERED HAVE NOT BEEN REGISTERED UNDER SAID ACT IN THE STATE OF FLORIDA. IN ADDITION, ALL FLORIDA RESIDENTS SHALL HAVE THE PRIVILEGE OF VOIDING THE PURCHASE WITHIN THREE (3) DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE ISSUER, AN AGENT OF THE ISSUER, OR AN ESCROW AGENT OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER, WHICHEVER OCCURS LATER.

NOTICE TO PENNSYLVANIA RESIDENTS

UNDER PROVISIONS OF THE PENNSYLVANIA SECURITIES ACT OF 1972, EACH PENNSYLVANIA RESIDENT SHALL HAVE THE RIGHT TO WITHDRAW HIS ACCEPTANCE WITHOUT INCURRING ANY LIABILITY TO THE SELLER, UNDERWRITER (IF ANY) OR ANY PERSON, WITHIN TWO (2) BUSINESS DAYS FROM THE DATE OF RECEIPT BY THE ISSUER OF HIS WRITTEN BINDING CONTRACT OR PURCHASE OR IN THE CASE OF A TRANSACTION IN WHICH THERE IS NO WRITTEN BINDING CONTRACT OF PURCHASE, WITHIN TWO BUSINESS DAYS AFTER HE MAKES THE INITIAL PAYMENT FOR THE SECURITIES BEING OFFERED.

NOTICE TO NEW YORK INVESTORS

THIS PRIVATE PLACEMENT MEMORANDUM HAS NOT BEEN FILED WITH OR REVIEWED BY THE ATTORNEY GENERAL OF THE STATE OF NEW YORK PROR TO ITS ISSUANCE AND USE. THE ATTORNEY GENERAL OF THE STATE OF NEW YORK HAS NOT PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THIS PRIVATE PLACEMENT MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IT

CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS AND DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN.

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This memorandum includes "forward-looking statements". All statements other than statements of historical facts included in this memorandum may constitute forward-looking statements. In addition, forward-looking statements generally can be identified by the use of forward-looking terminology such as "may", "will", "expect", "intend", "estimate", "anticipate", "believe" or "continue" or the negatives thereof or variations thereon or similar terminology. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we can give no assurance that such expectations will prove to have been correct. Important factors such as those discussed in the "Risk Factors" section could cause actual results to differ materially from our expectations. All subsequent written and oral forward-looking statements attributable to us, the placement agent or any other persons acting on our behalf are expressly qualified in their entirety by this paragraph. These forward-looking statements speak only as of the date of this memorandum. We expressly disclaim any obligation or undertaking to disseminate any updates or revisions to any forward-looking statement contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

ADDITIONAL INFORMATION

We have retained McGinn, Smith & Co., Inc. to act as our placement agent in connection with arranging the private placement of the notes. With respect to the minimum offering of $4,000,000, McGinn, Smith & Co., Inc., as our placement agent, has agreed to offer the notes on a "best efforts, all or none" basis. The placement agent will act as primary contact for, and will be available to consult with, any prospective investor who receives this document.

We undertake to make available to every investor, during the course of the offering and prior to sale, the opportunity to ask questions of and receive answers from us concerning the terms and conditions of the offering and to obtain any appropriate additional information necessary to verify the accuracy of the information contained in this document or for any other purpose relevant to a prospective investment in the notes offered hereby.

All communications or inquiries relating to the notes should be directed to the following individual at McGinn, Smith & Co., Inc.:

David L. Smith
President
99 Pine Street
Albany, New York 12207
Phone: 518-449-5131
Fax: 518-449-4894
E-Mail: smithd@mcginnsmith.com

SUMMARY

This summary highlights selected information from this memorandum and may not contain all the information that may be important to you. The following summary is qualified in its entirety by the more detailed information appearing elsewhere in this memorandum. You should read the entire memorandum before making an investment decision. Unless the context otherwise requires, all references to "FIIN", "we, "us" or "our" refer to First Independent Income Notes, LLC.

FIIN

First Independent Income Notes, LLC ("FIIN") is a newly formed, single purpose limited liability company. We were organized in New York in 2003.

Our sole and managing member is McGinn, Smith Advisors, LLC, a New York limited liability company. McGinn, Smith Advisors, LLC is a wholly-owned subsidiary of McGinn, Smith Holdings, LLC, a New York limited liability company and an affiliate of this offering's placement agent, McGinn, Smith & Co., Inc.

Our principal offices are located at Capital Center, 5th Floor, 99 Pine Street, Albany, New York, 12207 and our telephone number is (518) 449-5131.

Business

FIIN has been formed to identify and acquire various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio (individually an "Investment" and collectively, the "Investments"). We may acquire such Investments directly, or from our managing member or an affiliate of us or our managing member that has purchased the Investment. If the Investment is purchased from our managing member or any affiliate, we will not pay above the price paid by our managing member or such affiliate for the Investment, other than to reimburse our managing member or such affiliate for its costs and any discounts that it received by virtue of a special arrangement or relationship. In other words, if we purchase an Investment from our managing member or any affiliate, we will pay the same price for the Investment that we would have paid if we had directly purchased the Investment. We may also purchase securities from issuers who have retained our placement agent for this offering, McGinn, Smith & Co., Inc., as their underwriter or placement agent. We may retain the Investments beyond the term of the notes, sell such Investments during the term of the notes or offer the notes to preferred investors. If an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes, we may, at our option, redeem a pro rata portion of the notes. See "Description of the Notes – Redemption at the Option of FIIN".

Our profitability is largely determined by the difference, or "spread," between the effective rate we pay on the Investments we acquire and the full rate of return received on such Investments.

The Offering

The following summary is not intended to be complete. For a more detailed description of the notes, see "Description of the Notes."

Issuer	First Independent Income Notes, LLC
Amount of Offering	Up to $20 million in three tranches: a minimum of $2.5 million and up to $5 million to senior note holders; a minimum of $2.5 million and up to $5 million to senior subordinated note holders; and a minimum of $10 million and up to $15 million to junior note holders
Placement Agent	McGinn, Smith & Co., Inc.
Trustee	McGinn, Smith Capital Holdings Corp.
Securities Offered	5.0% Secured Senior Notes due 2004 (the "original senior notes"), 7.5% Secured Senior Subordinated Notes due 2008 (the "senior subordinated

	notes") and 10.25% Secured Junior Notes due 2008 (the "junior notes" and together with the senior notes (as defined below) and senior subordinated notes, the "notes"). Upon the maturity of the original senior notes, we may continue to issue additional senior notes (the "additional senior notes" and together with the original senior notes, the "senior notes") with a one-year maturity date and an interest rate of the then current prime rate +1% up to one year prior to the maturity date of the senior subordinated notes and the junior notes, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed $20 million. The notes are secured promises to pay issued by us. By purchasing a note, you are lending money to us. The notes represent our obligation to repay your loan with interest.
Security	All of our various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio (individually an "Investment" and collectively, the "Investments"), and the received through the sale of these notes after deducting commissions, fees and expenses.
First Closing	Occurs upon the receipt of $4 million aggregate principal amount from the sale of the notes.
Escrow Account	All subscription proceeds will be held in an escrow account and no subscription agreement will be accepted until the minimum proceeds requirement is met for the first closing.
Method of Purchase	Prior to your purchase of notes, you will be required to complete a subscription agreement that will set forth the principal amount of your purchase and certain other information regarding your ownership of the notes.
Minimum Subscription	Minimum aggregate principal amount of $25,000 for each of the senior notes, senior subordinated notes and junior notes
Offering Price	100% of the principal amount per note
Maturity	December 15, 2004 for the original senior notes and December 15, 2005, 2006, 2007 or 2008, respectively, for any additional senior notes. December 15, 2008 for each of the senior subordinated notes and the junior notes.
Interest Rate	The notes will accrue interest from the date of the first closing at the following rates per year: 5.0% for the original senior notes and the then current prime rate + 1% for any additional senior notes; 7.5% for the senior subordinated notes; and 10.25% for the junior notes.
Interest Payment Dates	Quarterly on the 15th day of January, April, July and October, commencing on January 15, 2004
Principal Payment	Unless we choose to redeem a pro rata portion of the notes upon the removal, whether voluntary or involuntary, of an Investment from our asset portfolio, we will not pay principal over the term of the notes. See "Description of the Notes – Redemption at the Option of FIIN". We are obligated to pay the entire principal balance of the outstanding notes upon maturity.
Payment Method	Principal and interest payments will be made by whatever means you indicate in your subscription agreement, including by an electronic funds transfer to a depository account you designate in your subscription documents.

Redemption at Maturity	Unless we choose to redeem a pro rata portion of the notes, the notes may only be redeemed at, and not prior to, Maturity.
Optional Redemption	At the option of FIIN, a pro rata percentage of the notes may be redeemed if an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes. See "Description of the Notes – Redemption at the Option of FIIN".
Ranking	The senior subordinated notes and junior notes are subordinate in right of payment to the senior notes, and the junior notes are additionally subordinate in right of payment to the senior subordinated notes.
Use of Proceeds	If all the notes are sold, we would expect to receive approximately $19.6 million of net proceeds from this offering after deducting the placement agent's commissions and estimated offering expenses payable by us. We intend to use the net proceeds to acquire Investments. Assuming we received the maximum amount of the offering, we will not invest more than 25% of the net proceeds of the offering in any single Investment. See "Use of Proceeds."
Absence of Public Market	There is no existing or public market for the notes. We cannot provide you with any assurance as to: • the liquidity of any market that may develop for the notes; • your ability to sell or pledge your notes; or • the prices at which you will be able to sell your notes.
Transfer Restrictions	The notes are subject to significant restrictions on resale. We have not registered, and do not plan to register, the notes under the Securities Act or any state securities laws and you may not offer or sell the notes except under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.
Plan of Distribution	We are offering the notes without registration under the Securities Act in reliance upon an exemption afforded by Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act. McGinn, Smith & Co., Inc., as our placement agent, will solicit offers to purchase the notes, for which it will receive commissions equal to 2% of the purchase price of the notes. With respect to the minimum offering of $4,000,000, McGinn, Smith & Co., Inc., as our placement agent, has agreed to offer the notes on a "best efforts, all or none" basis. The offering period will extend until the earlier of (i) the sale of all of the notes, or (ii) December 31, 2003, provided that we have retained the right, in our discretion, and our placement agent has agreed in that event, to extend the offering period for up to six additional months.
Suitability Requirements	The risks associated with an investment in the notes and the lack of liquidity makes this investment suitable only for an investor who has substantial net worth, no need for liquidity with respect to this investment and who can bear the economic risk of a complete loss of the investment. In addition, the investment is suitable only for an investor who has sufficient knowledge and experience in financial and business matters and investments in organizations such as FIIN to enable the investor to evaluate the merits and risk associated with a purchase of the notes. Subscriptions will be accepted only from

"accredited investors," as that term is defined in Regulation D promulgated under the Securities Act.

Risk Factors

See "Risk Factors", immediately following this summary, for a discussion of risks relating to an investment in the notes.

Additional Information

We were organized in the State of New York in 2003 and our principal executive offices are located at Capital Center, 5th Floor, 99 Pine Street, Albany, New York, 12207, telephone number (518) 449-5131.

RISK FACTORS

Before you invest in the notes, you should carefully consider these risk factors, as well as the other information contained in this memorandum.

Risk Factors Relating to the Notes

The Notes May Not Be A Suitable Investment for All Investors. *The notes may not be a suitable investment for you, and we advise you to consult your investment, tax and other professional financial advisors prior to purchasing notes.*

The risks described below set forth many of the risks associated with the purchase of notes. In addition to those risks, the characteristics of the notes, including maturity, interest rate and lack of liquidity, may not satisfy your investment objectives or otherwise be a suitable investment for you. This may be based on your ability to withstand a loss of interest or principal or other aspects of your financial situation, including your income, net worth, financial needs, investment risk profile, return objectives, investment experience and other factors. For instance, prior to purchasing any notes, you should consider your investment allocation with respect to the amount of your contemplated investment in the notes in relation to your other investment holdings and the diversity of those holdings.

The Notes Will Not Be Registered Under The Securities Act And You May Not Be Able To Sell The Notes Quickly, Or At All. *Your ability to liquidate your investment is limited because of transfer restrictions and the lack of a trading market.*

The notes are being offered without registration under the Securities Act in reliance upon an exemption afforded by Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act. We have no plans or intention to register the notes. As a result, there are significant restrictions on your ability to sell or otherwise transfer the notes and we cannot assure you that you will be able to sell the notes quickly, or at all. Therefore, the notes are suitable for purchase only by investors who are capable of bearing the economic risks of holding the notes for an indefinite period of time. Due to the non-transferable nature of the notes and the lack of a market for the sale of the notes, you might be unable to sell, pledge or otherwise liquidate your investment. See "Description of the Notes."

You Will Have Only Limited Protection Under The Indenture. *The indenture governing the notes contains only limited restrictions on our activities and only limited events of default, and thus, provides only limited protection to you.*

The indenture governing the notes contains limited restrictions on our activities. Because there are only very limited restrictions and limited events of default under the indenture, we will not be required to maintain any ratios of assets to debt in order to increase the likelihood of timely payments to you under the notes. See "Description of the Notes - Events of Default."

The Senior Subordinate Note Holders And Junior Note Holders Lack Priority In Payment On The Notes. *The senior subordinated note holders' and junior note holders' right to receive payments on the notes is subordinated in right of payment to the senior note holders.*

The senior subordinated notes and junior notes will be subordinated to the prior payment in full of the senior notes. The junior notes will also be subordinated in right of payment to the senior subordinated notes. The senior note holders will have priority over up to 25% of our secured assets over the senior subordinated and junior note holders, and the senior note holders and senior subordinated note holders will have priority over up to 50% of our secured assets over the junior note holders. Because of the subordination provisions of the notes, in the event of our bankruptcy, liquidation or dissolution, our assets would be available to make payments to the senior subordinated note holders and the junior note holders only after all payments had been made on the senior notes, and to the junior note holders only after all payments had been made on the senior subordinated notes. Sufficient assets may not remain after all such senior note payments have been made to make any payments to the senior subordinated notes and the junior notes, including payments of interest when due or principal upon maturity. Likewise, sufficient assets may not remain after all senior subordinated note payments have been made to make any payments to the junior notes, including payments of interest when due or principal upon maturity.

The Secured Assets May Be Inadequate To Repay The Notes. *If an Investment is redeemed, prepaid, liquidated or sold, there may be insufficient security for you to collect upon in an event of default.*

Your security interest is in the pool of Investments as a whole, not a particular Investment, and in any cash proceeds from the offering that are not used to acquire an Investment, after deducting commissions, fees and expenses. Even though the proceeds from your purchase of a note may be used to acquire a particular Investment, specific notes are not limited to or payable from a particular Investment. All notes in the same tranche will be equably and ratably secured by all of our Investments. We are not restricted in the indenture from selling any of the Investments that we acquire. Although we have the option to redeem a portion of the notes upon the removal, whether voluntary or involuntary, of an Investment from our asset portfolio, we are not required to do so. Therefore, in an event of default, your security interest in the Investments may be insufficient for you to be repaid on the notes.

The Notes Will Have No Insurance Or Guarantee. *There is no insurance or guarantee for our obligation to make payments on the notes, so you will have to rely on our cash flow from operations and the Investments for the repayment of principal and payment of interest.*

The notes are not certificates of deposit or similar obligations of, and are not guaranteed or insured by, any depository institution, the Federal Deposit Insurance Corporation, or any other governmental or private fund or entity. Therefore, if you invest in the notes, you will have to rely on our cash flow from operations and the Investments for repayment of principal at maturity and payment of interest when due. The senior notes will have priority over the Investments. If, after the payment of the senior notes, the Investments and cash flow from operations and other sources of funds are not sufficient to pay the senior subordinated notes and junior notes, then the senior subordinated note holders and junior note holders may lose all or part of their investment. Likewise, if, after the payment of the senior subordinated notes, the Investments and cash flow from operations and other sources of funds are not sufficient to pay the junior notes, then the junior note holders may lose all or part of their investment.

Risk Of Redemption At The Option Of FIIN. *Redemption by us prior to maturity may result in reinvestment risk to you.*

If an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes, we have the option to redeem a pro rata portion of the notes prior to its stated maturity upon 10 days written notice to you. For those notes that are redeemed, 100% of the principal amount plus accrued but unpaid interest up to the redemption date will be paid. Any such redemption may have the effect of reducing the income or return on investment that you may receive in an investment in the notes by reducing the term of the investment. In addition, you may not be able to reinvest the proceeds of any such redemption for the remainder of the original term of the notes at an interest rate comparable to the rate paid on the notes. See "Description of the Notes - Redemption at the Option of FIIN."

The Trustee May Experience A Conflict Of Interest. *The trustee under the indenture governing the notes is an affiliate of our managing member, acts as our servicing agent and represents all three tranches of notes.*

The trustee is McGinn, Smith Capital Holdings Corp., which is an affiliate of our managing member. In addition, we have retained McGinn, Smith Capital Holdings Corp. to act as our servicing agent. You may not feel that you are adequately represented by the trustee in an event of default. In that instance, holders of 25% of the aggregate principal amount of all notes outstanding may vote to remove the trustee and elect a successor trustee.

The trustee under the indenture will represent all three tranches of notes. The note holders of a particular tranche of notes may feel that the trustee has a conflict of interest when it acts in a way that favors one tranche of notes over another tranche of notes. In that event, holders of 25% of the aggregate principal amount of notes in a particular tranche may vote to remove the trustee with respect to that tranche of notes and appoint a successor trustee to represent that tranche of notes.

Risk Factors Relating to FIIN

FIIN Is A Newly-Formed Limited Liability Company. *We have no historical financial information or results of operations on which you can base your investment decision.*

FIIN was organized in New York in 2003. We have no historical financial statements or results of operations. As a result, you have no historical data on which to base your estimation of our likelihood success in achieving our business and financial goals.

We May Be Unable To Finance Our Operations. *If we are unable to generate a sufficient cash flow, our results of operations and financial condition would be materially and adversely affected and we may be unable to make payments on the notes.*

We require a substantial amount of cash liquidity to operate our business. Among other things, we use such cash liquidity to:

- pay incentive commissions to our salesmen at the rate of 2% of the aggregate principal amount of the notes per year over the term of the notes;
- pay our managing member a portfolio management fee of 1% of the aggregate principal amount of the notes per year over the term of the notes;
- pay our servicing agent a fee for administering the notes of 0.25% of the aggregate principal amount of the notes per year over the term of the notes;
- satisfy working capital requirements and pay operating expenses, including accounting and legal expenses that we estimate to equal 0.25% of the aggregate principal amount of the notes per year; and
- pay interest expense.

Our cash flow is wholly dependent on our ability to find and acquire suitable Investments. We cannot assure you that our business strategy will succeed or that we will achieve our anticipated financial results. We may not be able to find such opportunities and our ability to generate cash flow depends on market and other factors beyond our control. These factors include:

- the current economic and competitive conditions; and
- any delays in implementing any strategic projects we may have.

Depending upon the outcome of one or more of these factors, we may not be able to generate sufficient cash flow from operations to satisfy all of our obligations, including the notes. If we are unable to pay our debts, we will be required to pursue one or more alternative strategies, such as selling assets, or refinancing or restructuring our indebtedness. These alternative strategies may not be feasible at the time or prove adequate.

We Are Subject To Rate Fluctuations. *Rate fluctuations between instruments may materially and adversely affect our results of operations, financial condition and cash flows and our ability to make payments on the notes.*

Our profitability is largely determined by the difference, or "spread," between the effective rate we pay on the Investments we acquire and the full rate received on such Investments. We may not be able to receive the same rate of return on all of our Investments. If one of our Investments is redeemed, prepaid, liquidated or sold prior to maturity, we may not be able to find a comparable Investment to replace it that would generate the same yields.

We Will Be Adversely Affected When Investments Are Prepaid Or Defaulted. *If an Investment is prepaid or experiences a default, our results of operations, financial condition and cash flows and our ability to make payments on the notes could be materially and adversely affected.*

Our results of operations, financial condition, cash flows and liquidity, and consequently our ability to make payments on the notes, depend, to a material extent, on the performance of the Investments that we purchase. A portion of the Investments that we acquire may default or prepay. We bear the risk of losses resulting from payment defaults and may not realize the full value of our investment. Our income can also be adversely affected by prepayment of an Investment in our portfolio. Our revenue is based on a percentage of the outstanding principal balance of an Investment in our portfolio. If an Investment is prepaid or charged-off, then our revenue will decline while our servicing costs may not decline proportionately.

We Depend On Our Managing Member And On Key Personnel. *The success of our operations depends on our managing member and on certain key personnel.*

Our future operating results depend in significant part upon the continued service of our managing member, to which we pay 1% of the aggregate principal amount of the notes per year over the term of the notes to act as our portfolio manager and give us investment advice. We rely solely on the expertise of our managing member to make the proper investment decisions to generate cash flow.

Our future operating results also depend in part upon our ability to attract and retain qualified management, technical, and sales and support personnel for our operations. Competition for such personnel is intense. We cannot assure you that we will be successful in attracting or retaining such personnel. The loss of any key employee, the failure of any key employee to perform in his or her current position or our inability to attract and retain skilled employees, as needed, could materially and adversely affect our results of operations, financial condition and cash flows.

Our Industry Is Competitive. *Increased competition could materially and adversely affect our operations and profitability.*

We may have to compete with other investors. These competitors may have greater financial resources than we do or have better relationships or offer other forms of financing or services not provided by us. Our ability to compete successfully depends largely upon establishing and maintaining relationships in the investment community and acquiring suitable Investments.

We May Be Harmed By Adverse Economic Conditions. *Adverse economic conditions could materially and adversely effect our revenues and cash flows.*

A prolonged downturn in the economy could have a material adverse impact upon us, our results of operations and our ability to implement our business strategy. Similarly, adverse economic conditions or other factors might adversely affect the performance of our Investments, including the level of delinquencies, which could materially and adversely affect our results of operation, financial condition and cash flows and our ability to perform our obligations under the notes. These economic conditions could result in severe reductions in our revenues or the cash flows available to us and adversely affect our ability to make payments on the notes.

We Are Subject To Regulations. *Failure to materially comply with all laws and regulations applicable to us could materially and adversely affect our ability to operate our business and our ability to make payments on the notes.*

We believe that we are in compliance in all material respects with all such laws and regulations, and that such laws and regulations have had no material adverse effect on our ability to operate our business. However, we will be materially and adversely affected if we fail to comply with:

- applicable laws and regulations;
- changes in existing laws or regulations;
- changes in the interpretation of existing laws or regulations; or
- any additional laws or regulations that may be enacted in the future.

USE OF PROCEEDS

If all of the notes are sold, we would expect to receive approximately $19.6 million of net proceeds from this offering after deducting the 2% placement agent commission and other offering expenses payable by us.

We intend to use the net proceeds to acquire various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio (individually an "Investment" and collectively, the "Investments"). Assuming we received the maximum amount of the offering, we will not invest more than 25% of the proceeds of this offering in any single Investment. All subscription proceeds will be held in an escrow account and no subscription agreement will be accepted until the minimum proceeds requirement is met for the first closing. Once we achieve the minimum amount required for the first closing, we will begin to acquire Investments.

We may acquire such Investments directly, or from our managing member or an affiliate of us or our managing member that has purchased the Investment. If the Investment is purchased from our managing member or any affiliate, we will not pay above the price paid by our managing member or such affiliate for the Investment, other than to reimburse our managing member or such affiliate for its costs and any discounts that it received by virtue of a special arrangement or relationship. In other words, if we purchase an Investment from our managing member or any affiliate, we will pay the same price for the Investment that we would have paid if we had directly purchased the Investment. We may also purchase securities from issuers who have retained our placement agent for this offering, McGinn, Smith & Co., Inc., as their underwriter or placement agent. We may retain the Investments beyond the term of the notes, sell such Investments during the term of the notes or offer the notes to preferred investors. If an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes, we may, at our option, redeem a pro rata portion of the notes. See "Description of the Notes – Redemption at the Option of FIIN".

CAPITALIZATION

Member	**Membership Interest**
McGinn, Smith Advisors, LLC	100%
TOTAL	100%

BUSINESS

FIIN has been formed to acquire various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio (individually an "Investment" and collectively, the "Investments"). We may acquire such Investments directly, or from our managing member or an affiliate of us or our managing member that has purchased the Investment. If the Investment is purchased from our managing member or any affiliate, we will not pay above the price paid by our managing member or such affiliate for the Investment, other than to reimburse our managing member or such affiliate for its costs and any discounts that it received by virtue of a special arrangement or relationship. In other words, if we purchase an Investment from our managing member or any affiliate, we will pay the same price for the Investment that we would have paid if we had directly purchased the Investment. We may also purchase securities from issuers who have retained our placement agent for this offering, McGinn, Smith & Co., Inc., as their underwriter or placement agent.

Our profitability is largely determined by the difference, or "spread," between the effective rate we pay on the Investments we acquire and the full rate of return received on such Investments.

MANAGEMENT

We are solely managed by our managing member, McGinn, Smith Advisors, LLC, a New York limited liability company. McGinn, Smith Advisors, LLC was formed in 2003. McGinn, Smith Advisors, LLC is a wholly-owned subsidiary of McGinn, Smith Holdings, LLC, a New York limited liability company and an affiliate of this offering's placement agent, McGinn, Smith & Co., Inc.

DESCRIPTION OF THE NOTES

The following statements with respect to the notes are not complete and are qualified in all respects by the provisions of the indenture, copies of which are available from FIIN upon request. See "Additional Information."

General. We will issue the notes under a indenture between First Independent Income Notes, LLC and McGinn, Smith Capital Holdings Corp., as trustee (the "trustee") in a private transaction that is not subject to the registration requirements of the Securities Act. The terms and conditions of the notes include those stated in the indenture. The following is a summary of some, but not all, provisions of the notes and the indenture. For a complete understanding of the notes, you should review the definitive terms and conditions contained in the actual notes and the indenture, which include definitions of certain terms used below. The indenture, and not this description, defines your rights as holders of the notes. Copies of the form of the notes and the indenture are available from us at no charge upon request.

We are offering up to $20 million aggregate principal amount of our 5.0% secured senior notes due 2004 (the "original senior notes"), 7.5% secured senior subordinated notes due 2008 (the "senior subordinated notes") and 10.25% secured junior notes due 2008 (the "junior notes" and together with the senior notes (as defined below) and the senior subordinated notes, the "notes"). Upon the maturity of the original senior notes, we may continue to issue additional senior notes (the "additional senior notes" and together with the original senior notes, the "senior notes") with a one-year maturity date and an interest rate of the then current prime rate +1% up to one year prior to the maturity date of the senior subordinated notes and the junior notes, provided that the aggregate principal amount of the outstanding notes at any one time does not exceed $20 million.

The notes are secured by all of our various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our asset portfolio (individually an "Investment" and collectively, the "Investments"), and the cash received through the sale of the notes after deducting commissions, fees and expenses. Even though the proceeds from your purchase of a note may be used acquire a particular Investment, specific notes are not limited to or payable from a particular Investment. All notes in the same tranche will be equably and ratably secured by all of our Investments. The senior subordinated notes and junior notes will be subordinated in right of payment to the prior payment in full of the senior notes. Additionally, the junior notes will be subordinated in right of payment to the prior payment in full of the senior subordinated notes. The notes are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation or any other agency or company.

If not earlier redeemed, the original senior notes will mature on December 15, 2004 and any additional senior notes will mature on December 15, 2005, 2006, 2007 or 2008, respectively. If not earlier redeemed, each of the senior subordinated notes and the junior notes will mature on December 15, 2008. We will pay interest on the notes quarterly on the 15th day of January, April, July and October, commencing on January 15, 2004.

You may determine the amount (minimum $25,000 plus integral multiples of $5,000) of the notes you would like to purchase when you subscribe. See "- Denomination" below. If your subscription is rejected by us, all funds deposited will be promptly returned to you without any interest. Investors whose subscriptions for notes have been accepted and anyone who subsequently acquires notes in a qualified transfer are referred to as "holders" or "registered holders" in this memorandum and in the indenture.

We may modify or supplement the terms of the notes described in this memorandum from time to time in a supplement to the indenture and this memorandum. Except as set forth under "- Amendment, Supplement And Waiver" below, any modification or amendment will not affect notes outstanding at the time of such modification or amendment.

Denomination. You may purchase notes in the minimum principal amount of $25,000 plus integral multiples of $5,000. You will determine the original principal amount of each note you purchase when you subscribe.

First Closing. The first closing will occur once a minimum of $4 million aggregate principal amount of the notes is purchased.

Term. The original senior notes will mature on December 15, 2004 and any additional senior notes will mature on December 15, 2005, 2006, 2007 or 2008, respectively. Each of the senior subordinated notes and the junior notes will mature on December 15, 2008.

Interest Rate. The original senior notes will accrue interest at an annual rate of 5% and any additional senior notes will accrue interest at an annual rate of the then current prime rate +1%. The senior subordinated notes will accrue interest at the annual rate of 7.5%. The junior notes will accrue interest at an annual rate of 10.25%.

Computation of Interest. We will compute interest on notes on the basis of an actual calendar year. Interest will compound daily and accrue from the date of the first closing.

Interest Payment Dates. Interest will be paid quarterly on the 15th day of January, April, July and October, commencing on January 15, 2004, to the person in whose name the note is registered at the close of business on the 15th day of the month preceding the month in which the interest payment date occurs. Your last interest payment will be made on the maturity date. Any interest not paid on an interest payment date will be paid at maturity.

Place and Method of Payment. We will pay principal and interest on the notes through our paying agent, by whatever means is chosen by you in your subscription agreement, including the use of an electronic funds transfer to a depository account you specify in your subscription documents.

Servicing Agent. We have engaged McGinn, Smith Capital Holdings Corp., an affiliate of our managing member, McGinn, Smith Advisors, LLC, to act as our servicing agent for the notes. The responsibilities as servicing agent will involve the performance of certain administrative and customer service functions for the notes that we are responsible for performing as the issuer of the notes. For example, the servicing agent will serve as our registrar and transfer agent and paying agent and will manage all aspects of the customer service function for the notes, including handling all phone inquiries, meeting with investors, processing subscription agreements, distributing our annual statement of operations upon request by a note holder, and dealing with any administrative tax matters with regards to the notes. In addition the servicing agent will provide us with monthly reports and analysis regarding the status of the notes and the amount of notes that remain available for purchase, if any.

As compensation for the services as servicing agent, we will pay the servicing agent an annual fee equal to 0.25% of the aggregate principal amount of the notes so long as the servicing agent is engaged. Such ongoing fee will be paid quarterly.

You may contact our servicing agent as follows with any questions about the notes:

99 Pine Street
Albany, New York 12207
Attn: David L. Smith
Tel: 518-449-5131
Fax: 518-449-4894
E-Mail: smithd@mcginnsmith.com

On each interest payment date, the servicing agent will credit interest due on each account and make such payments to the holders.

Our servicing agent, McGinn, Smith Capital Holdings Corp., is also the trustee under the indenture governing the notes. As a result, McGinn, Smith Capital Holdings Corp. may experience a conflict of interest between its role as our servicing agent and as the trustee for the note holders. See "Risk Factors – Risk Factors Relating to the Notes – The Trustee May Experience a Conflict of Interest."

Subscriptions. Each subscriber will be required to complete an investor questionnaire in the form attached to this memorandum and submit an executed subscription agreement in the form attached to this memorandum. Each prospective investor must deliver with his or her subscription agreement a check in the full amount of the purchase price for the notes for which he or she has subscribed. The checks shall be made payable to CharterOne Bank, FSB, Escrow Agent for First Independent Income Notes, LLC", and upon receipt shall be deposited into an escrow account maintained by the placement agent with CharterOne Bank, FSB for the benefit of the investors (the "escrow account"). The proceeds of sale of the notes will remain in the escrow account until a subscription has been accepted by us and the placement agent, or until a subscription is rejected, at which time the amount of such subscription will be returned to the investor without interest. Subscriptions will be accepted only after satisfaction of the minimum offering amount and completion of the first closing.

All such funds shall continue to be the property of the subscribers and shall be held in trust for their benefit until the subscribers receive their notes. We may reject any subscription for notes in our sole discretion.

Redemption at the Option of FIIN. If an Investment is removed, whether voluntarily or involuntarily, from our asset portfolio during the term of the notes, we have the right, at our option, to redeem a pro rata portion of the notes prior to their stated maturity upon 10 days written notice to you. For example, if an Investment that comprises 20% of our secured assets is no longer owned by us, we may redeem 20% of the notes pro rata across all tranches and all note holders within each tranche. The notes that are redeemed will be redeemed at 100% of the principal amount plus accrued but unpaid interest up to but not including the redemption date without any penalty or premium. The holder has no right to require us to prepay or repurchase any note prior to its maturity date.

Payment upon Maturity. On the maturity date, we will pay the holder the principal amount and any accrued and unpaid interest.

Transfers. The notes are subject to significant restrictions on resale. We have not registered, and do not plan to register, the notes under the Securities Act or any state securities laws. You may not offer or sell the notes except (i) with an opinion of counsel or other documentation acceptable to us that the transfer is exempt from, or not subject to, the registration requirements of the Securities Act, or (ii) under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Security. The notes are secured by all of our various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our asset portfolio (individually an "Investment" and collectively, the "Investments"), and the cash received through the sale of the notes after deducting commissions, fees and expenses. Even though the proceeds from your purchase of a note may be used to acquire a particular Investment, specific notes are not limited to or payable from a particular Investment. All notes in the same tranche will be equably and ratably secured by all of our Investments.

Subordination. The indebtedness evidenced by the senior subordinated notes and the junior notes, and any interest thereon, are subordinated in right of payment to the senior notes. The indenture does not prevent holders of the senior notes from disposing of, or exercising any other rights with respect to, any or all of the collateral securing the senior notes. See "Risk Factors - Risk Factors Relating to the Notes – The Senior Subordinate Note Holders and Junior Note Holders Lack Priority in Payment on the Notes." Likewise, the indebtedness evidenced by the junior notes, and any interest thereon, are subordinated in right of payment to the senior subordinated notes. The indenture does not prevent holders of the senior subordinated notes from disposing of, or exercising any other rights with respect to, any or all of the collateral securing the senior subordinated notes. The notes are not guaranteed by any of our subsidiaries, affiliates or control persons.

In the event of any liquidation, dissolution or any other winding up of us, or of any receivership, insolvency, bankruptcy, readjustment, reorganization or similar proceeding under the U.S. Bankruptcy Code or any other applicable federal or state law relating to bankruptcy or insolvency, no payment may be made on the senior subordinated notes and junior notes until all the senior notes have been paid in full, and no payment may be made on the junior notes until all the senior notes and senior subordinated notes have been paid in full. If any of the above events occurs, holders of the senior notes may also submit claims on behalf of holders of the senior subordinated and junior notes and retain the proceeds for their own benefit until they have been fully paid, and any excess will be turned over to the holders of the senior subordinated notes and junior notes. If any distribution is nonetheless made to holders of the senior subordinated notes or junior notes, the money or property distributed to them must be paid over to the holders of the senior notes to the extent necessary to pay the senior notes in full.

In the event and during the continuation of any default in the payment of principal of or interest on the senior notes, we will not make any payment, direct or indirect, on the senior subordinated and junior notes unless and until (i) the default has been cured or waived or has ceased to exist or (ii) the end of the payment blockage period. Any payment blockage period will commence on the date the trustee receives written notice of default from a holder of the senior notes and will end on the earlier of (a) 179 days after the trustee's receipt of the notice of default; (b) the trustee's receipt of a valid waiver of default from the holders of the senior notes; or (c) the trustee's receipt of a written notice from the holders of the senior notes terminating the payment blockage period.

Consolidation, Merger or Sale. The indenture generally permits a consolidation or merger between us and another entity. It also permits the sale or transfer by us of all or substantially all of our property and assets. These transactions are permitted if:

- we survive such merger or consolidation;
- such consolidation, merger or transfer is with one of our affiliates;
- the resulting or acquiring entity, if other than us, is organized and existing under the laws of a domestic jurisdiction and expressly assumes all of our responsibilities and liabilities under the indenture, including the payment of all amounts due on the notes and performance of the covenants in the applicable indenture; and
- immediately after the transaction, and giving effect to the transaction, no event of default under the indenture exists.

If we consolidate or merge with or into any other entity or sell or lease all or substantially all of our assets, according to the terms and conditions of the indenture, the resulting or acquiring entity will be substituted for us in the indenture with the same effect as if it had been an original party to the indenture. As a result, such successor entity may exercise our rights and powers under the indenture, in our name and we will be released from all our liabilities and obligations under the indenture and under the notes.

Events Of Default. The indenture provides that each of the following constitutes an event of default:

- a failure to pay interest on a note within 30 days after the due date for such payment (whether or not prohibited by the subordination provisions of the indenture);
- failure to pay principal on a note within 30 days after the due date for such payment (whether or not prohibited by the subordination provisions of the indenture);
- our failure to observe or perform any material covenant or our breach of any material representation or warranty, but only after we have been given notice of such failure or breach and such failure or breach is not cured within 60 days after our receipt of notice;
- certain events of bankruptcy, insolvency, liquidation or reorganization with respect to us, whether voluntary or involuntary; and
- any security interest granted to the Trustee on behalf of the Note Holders on any material portion of the Investments shall cease to be valid and effective.

If any event of default occurs and is continuing (other than an event of default involving certain events of bankruptcy or insolvency with respect to us) for a particular tranche of notes, the trustee or the holders of at least a majority in aggregate principal amount of the then outstanding notes for such tranche may declare the unpaid principal and any accrued interest on the notes to be due and payable immediately. In the case of an event of default arising from certain events of bankruptcy or insolvency, with respect to us, all outstanding notes will become due and payable without further action or notice.

Holders of the notes may not enforce the indenture or the notes except as provided in the indenture. Subject to certain limitations, holders of a majority in principal amount of the then outstanding notes for a particular tranche of notes may direct the trustee in its exercise of any trust or power. The trustee may withhold from holders of the notes notice of any continuing default or event of default (except a default or event of default relating to the payment of principal or interest) if the trustee in good faith determines that withholding notice would have no material adverse effect on the holders.

The holders of a majority in aggregate principal amount of the notes then outstanding for a particular tranche of notes by notice to the trustee may, on behalf of all holders of such tranche, waive any existing default or event of default and its consequences under the indenture, except a continuing default or event of default in the payment of interest on, or the principal of, a note.

Amendment, Supplement And Waiver. Except as provided in this memorandum or the indenture, the terms of the notes then outstanding may be amended or supplemented with the consent of the holders of at least a majority in aggregate principal amount of the notes affected by such amendment or supplement, and any existing default or compliance with any provision of the indenture or the notes may be waived with the consent of the holders of a majority in aggregate principal amount of the notes affected.

Notwithstanding the foregoing, an amendment or waiver will not be effective with respect to the notes held by a holder who has not consented if it has any of the following consequences:

- reduces the principal of or changes the fixed maturity of any note or alters the redemption provisions or the price at which we shall offer to redeem the note;
- reduces the rate of or changes the time for payment of interest on any note;
- makes any note payable in money other than that stated in the notes;
- makes any change in the provisions of the indenture relating to waivers of past defaults or the rights of holders of notes to receive payments of principal of or interest on the notes;
- makes any change to the subordination provisions of the indenture that has a material adverse effect on holders of notes; or
- makes any change in the foregoing amendment and waiver provisions.

Notwithstanding the foregoing, without the consent of any holder of the notes, we and the trustee may amend or supplement the indenture or the notes:

- to cure ambiguity, defect or inconsistency;
- to provide for assumption of our obligations to holders of the notes in the case of a merger, consolidation or sale of all or substantially all of our assets;
- to provide for additional certificates; or
- to make any change that would provide any additional rights or benefits to the holders of the notes or that does not materially adversely affect the legal rights under the indenture of any such holder.

The Trustee. McGinn, Smith Capital Holdings Corp. has agreed to be the trustee for all of the notes under the indenture. McGinn, Smith Capital Holdings Corp. is an affiliate of our managing member, McGinn, Smith Advisors, LLC, and has been engaged to act as our servicing agent. Because of the trustee's affiliation with our managing member and its role as our servicing agent, you may not feel that you are adequately represented by the trustee in an event of default. In that instance, holders of 25% of the aggregate principal amount of all notes outstanding may vote to remove the trustee and replace it with a successor trustee.

As earlier stated, the trustee represents all three tranches of note holders. As a result, a conflict of interest may arise in situations where one tranche of note holders wishes the trustee to act in a way that is not beneficial to another tranche of note holders. If such conflict arises, holders of 25% of the aggregate principal amount of notes for a particular tranche may remove the trustee with respect to that tranche and appoint a successor trustee with respect to that tranche pursuant to the procedures set forth in the indenture.

Subject to certain exceptions, the holders of a majority in aggregate principal amount of notes for a particular tranche of notes will have the right to direct the time, method and place of conducting any proceeding or exercising any remedy available to the trustee. The indenture provides that in case an event of default specified in the indenture shall occur and not be cured, the trustee will be required, in the exercise of its power, to use the degree of care of a reasonable person in the conduct of his own affairs.

Subject to such provisions, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any holder of notes, unless the holder shall have offered to the trustee security and indemnity satisfactory to it against any loss, liability or expense.

Resignation or Removal of The Trustee. The trustee may resign at any time, may be removed by the holders of 25% of the aggregate principal amount of all outstanding notes, or may be removed by the holders of 25% of the aggregate principal amount of notes of a particular tranche with respect to that tranche. In addition, upon the occurrence of contingencies relating generally to the insolvency of the trustee or the trustee's ineligibility to serve as trustee, we may remove the trustee or a court of competent jurisdiction may remove the trustee upon petition of a holder of notes. However, no resignation or removal of the trustee may become effective until a successor trustee has accepted the appointment as provided in the indenture.

Reports To Trustee. We will provide to the trustee reports containing any information reasonably requested by the trustee. These reports may include information on each note outstanding during the preceding quarter, including outstanding principal balance, interest credited and paid, transfers made, any redemption and interest rate paid.

No Personal Liability of Our or Our Servicing Agent's Directors, Officers, Employees, Members and Stockholders. None of our or our servicing agent's directors, officers, employees, incorporators, members or stockholders will have any liability for any of our obligations under the notes, the indenture or for any claim based on, in respect to, or by reason of, these obligations or their creation. Each holder of the notes waives and releases these persons from any liability. The waiver and release are part of the consideration for issuance of the notes. We have been advised that the waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Securities and Exchange Commission that such a waiver is against public policy.

Service Charges. Our servicing agent may assess service charges for changing the registration of any note to reflect a change in name of the holder or transfers (whether by operation of law or otherwise) of a note by the holder to another person.

Reports. At the request of the holder, our servicing agent will provide to the holders of the notes our annual statement of the operations consisting of a balance sheet and income statement.

Variations By State. We may offer different securities and vary the terms and conditions of the offer (including, but not limited to, different interest rates and service charges for all notes) depending upon the state where the purchaser resides.

Liquidity. There is not currently a public market for the notes, and we do not expect that a public market for the notes will develop.

Satisfaction and Discharge of Indenture. The indenture shall cease to be of further effect upon the payment in full of all of the outstanding notes and upon deposit with the trustee of funds sufficient for the payment in full of all of the outstanding notes.

PLAN OF DISTRIBUTION

McGinn, Smith & Co., Inc., as our placement agent, will solicit offers to purchase the notes, for which it will receive commissions equal to 2% of the purchase price of the notes. With respect to the minimum offering of $4,000,000, McGinn, Smith & Co., Inc., as our placement agent, has agreed to offer the notes on a "best efforts, all or none" basis. The offering period will extend until the earlier of (i) the sale of all of the notes, or (ii) December 31, 2003, provided that we have retained the right, in our discretion, and our placement agent has agreed in that event, to extend the offering period for up to six additional months. The placement agent is not obligated to purchase any of the notes. We have agreed to indemnify the placement agent and certain affiliated persons with respect to certain liabilities, including certain liabilities under the Securities Act. We also have agreed to reimburse the placement agent for reasonable expenses, including legal fees of its counsel. Affiliates of the placement agent may purchase a portion of the notes offered hereby.

The following table summarizes the compensation we will pay the placement agent for its services in selling the notes:

Form of Compensation

Total commissions	$ 400,000(1)
Reimbursement of expenses	$_____

(1) Assumes the sale of 100% of aggregate principal amount of notes offered.

The placement agent agreement provides for reciprocal indemnification between us and the placement agent, including the placement agent's and our officers, directors and controlling persons, against civil liabilities in connection with this offering, including certain liabilities under the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted pursuant to such indemnification provisions, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

We are offering the notes without registration under the Securities Act in reliance upon an exemption afforded by Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act.

The foregoing is a summary of the material provisions relating to selling and distribution of the notes in the placement agent agreement.

OWNERSHIP STRUCTURE AND PRINCIPAL EQUITY HOLDERS

History

First Independent Income Notes, LLC, a New York limited liability company, was formed in 2003 for the purpose of identifying and acquiring various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferreds, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our asset portfolio (individually an "Investment" and collectively, the "Investments").

Principal Equity Holders of FIIN

First Independent Income Notes, LLC is solely owned by our managing member, McGinn, Smith Advisors, LLC, a New York limited liability company. McGinn, Smith Advisors, LLC is a wholly-owned subsidiary of McGinn, Smith Holdings, LLC, a New York limited liability company and an affiliate of this offering's placement agent, McGinn, Smith & Co., Inc.

Key Governance Provisions

Management of FIIN is vested in our managing member. Our managing member has authority to take all actions necessary or appropriate in connection with the operation and financing of FIIN. The managing member is solely responsible for finding suitable Investments and is paid an annual fee of 1% of the aggregate principal amount of the notes to make such decisions and manage our portfolio.

Indemnification of Managing Member

Our articles of operation provide that FIIN will indemnify and hold harmless our managing member from any loss or damage, including attorney's fees incurred by such managing member, relating to any action taken, or failed to be taken, on behalf of FIIN so long as the managing member acted in good faith. The managing member is not entitled to be indemnified from any liability for fraud, bad faith, willful misconduct or gross negligence.

AFFILIATED TRANSACTIONS

Our managing member is McGinn, Smith Advisors, LLC, a New York limited liability company. McGinn, Smith Advisors, LLC is a wholly-owned subsidiary of McGinn, Smith Holdings, LLC, a New York limited liability company and an affiliate of this offering's placement agent, McGinn, Smith & Co., Inc. We may acquire Investments from our managing member or an affiliate of our managing member that has purchased the Investments. If the Investment is purchased from

our managing member or any affiliate, we will not pay above the price paid by our managing member or such affiliate for the Investment, other than to reimburse our managing member or such affiliate for its costs and any discounts that they received by virtue of a special arrangement or relationship. In other words, if we purchase an Investment from our managing member or any of its affiliates, we will pay the same price for the Investment that we would have paid if we had purchased the Investment directly. We may also purchase securities from issuers who have been retained by our placement agent for this offering, McGinn, Smith & Co., Inc., as their underwriter or placement agent.

Our servicing agent, McGinn, Smith Capital Holdings Corp., is an affiliate of our placement agent, McGinn, Smith & Co., Inc., and our managing member, McGinn Smith Advisors, LLC. McGinn, Smith Capital Holdings Corp. is 50% owned by David L. Smith, President and Chief Executive Officer of our placement agent, McGinn, Smith & Co., Inc.

INVESTOR SUITABILITY REQUIREMENTS

General

An investment in the notes involves significant risks and is suitable only for persons of adequate financial means who have no need for liquidity with respect to their investment and who can bear the economic risk of a complete loss of their investment. This offering is made in reliance on exemptions from the registration requirements of the Securities Act and applicable state and foreign securities laws and regulations.

The suitability standards discussed below represent minimum suitability standards for prospective investors. The satisfaction of such standards by a prospective investor does not necessarily mean that the notes are a suitable investment for such prospective investor. Prospective investors are encouraged to consult their personal financial advisors to determine whether an investment in the notes is appropriate. We may reject subscriptions, in whole or in part, in our sole discretion.

We will require each investor to represent in writing that, among other things, (i) by reason of the investor's business or financial experience, or that of the investor's professional advisor, the investor is capable of evaluating the merits and risks of an investment in the notes and of protecting its own interests in connection with the transaction; (ii) the investor is acquiring the notes for its own account, for investment only and not with a view toward the resale or distribution thereof; (iii) the investor is aware that the notes have not been registered under the Securities Act or any state or foreign securities laws and that transfer thereof is restricted by the Securities Act, applicable state or foreign securities laws and the absence of a market for the notes; and (iv) such investor meets the suitability requirements set forth below.

Suitability Requirements

Each investor must represent in writing that it qualifies as an "accredited investor" as such term is defined in Rule 501(a) of Regulation D under the Securities Act, and must demonstrate the basis for such qualification. To be an accredited investor, an investor must fall within any of the following categories at the time of the sale of the notes to that investor:

- a bank as defined in Section 3(a)(2) of the Securities Act, or a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in its individual or fiduciary capacity, a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; an insurance company as defined in Section 2(13) of the Securities Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(48) of that Act; a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of the Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

- a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940,

- an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; a corporation; a Massachusetts or similar business trust; or a partnership; in each case, not formed for the specific purpose of acquiring the notes and with total assets in excess of $5,000,000;

- a manager, member or executive officer of FIIN;

- a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of such person's purchase of the notes, exceeds $1,000,000;

- a natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

- a trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the notes, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of Regulation D; or

- any entity in which all of the equity owners are accredited investors.

As used in this section, the term "net worth" means the excess of total assets over total liabilities. In computing net worth for natural persons, the principal residence of the investor must be valued at cost, including cost of improvements, or at recently appraised value by an institutional lender making a secured loan, net of encumbrances. In determining income, an investor should add to the investor's adjusted gross income any amounts attributable to tax-exempt income received, losses claimed as a limited partner in any limited partnership, deductions claimed for depletion, contributions to an IRA or KEOGH retirement plan, alimony payments, and any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income.

In order to meet the conditions for exemptions from the registration requirements under the securities laws of certain jurisdictions, investors who are residents of such jurisdictions may be required to meet additional suitability requirements.

LEGAL MATTERS

Certain legal matters in connection with the notes will be passed upon for us by Gersten, Savage, Kaplowitz, Wolf & Marcus, LLP, New York, New York.

WHERE YOU CAN FIND MORE INFORMATION

Upon request of a prospective investor, we will make available to such investor the opportunity to ask questions of and receive answers from us concerning the terms and conditions of the offering. Further, we will, subject to confidentiality agreements and other considerations, obtain and make available additional information reasonably requested by such investor to the extent we possess such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of any of the information concerning the terms and conditions of the offering or any of the transactions referred to herein.

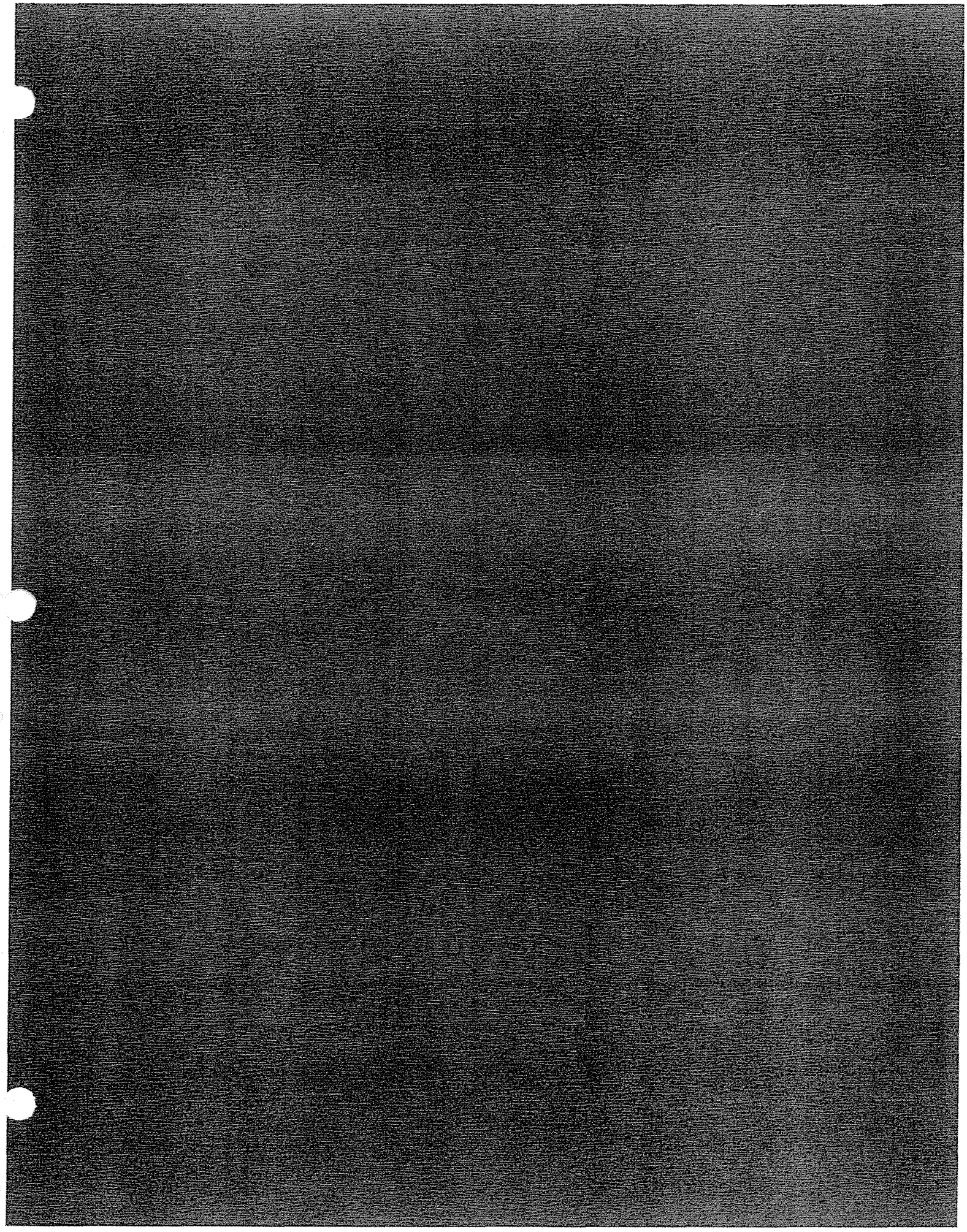
Copies of our certificate of formation, operating agreement and certain other documents referred to in this memorandum are available from the placement agent upon request.

EXHIBIT A

FORM OF INVESTOR QUESTIONNAIRE

EXHIBIT B

FORM OF SUBSCRIPTION AGREEMENT



READ CAREFULLY BEFORE SIGNING

SUBSCRIPTION AGREEMENT FOR THE PURCHASE OF
NOTES OF FIRST INDEPENDENT INCOME NOTES, LLC

The undersigned hereby subscribes for $_____ principal amount of ____ (A) 5% Secured Senior Notes Due 2004 ("Original Senior Notes"); ____ (B) 7.5% Secured Senior Subordinated Notes Due 2008 ("Senior Subordinated Notes"); ____ (C) 10.25% Secured Junior Notes Due 2008 ("Junior Notes"); or ____ (D) One-year Secured Senior Notes Due 2005/2006/2007/2008 at an interest rate of the then current prime rate + 1% ("Additional Senior Notes" and together with the Original Senior Notes, Senior Subordinated Notes and Junior Notes, the "Notes") of **First Independent Income Notes, LLC** (the "Company") at a purchase price equal to the principal amount of Notes being subscribed for (the "Offering").

The Company is offering up to $20,000,000 principal amount of Notes to purchasers who qualify as "accredited investors" as the term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"), through McGinn, Smith & Co., Inc. ("MS"). The entire purchase price is due and payable upon the execution of this Subscription Agreement, and shall be paid by check, subject to collection, or by wire transfer, made payable to the order of "CharterOne Bank, FSB, Escrow Agent for First Independent Income Notes, LLC." CharterOne Bank, FSB, the escrow agent (the "Escrow Agent") shall disburse the proceeds in accordance with the terms of the Escrow Agreement between the Company and the Escrow Agent, which are consistent with the terms of this Agreement. The Company shall have the right to reject this subscription in whole or in part.

Prospective Investors should retain their own professional advisors to review and evaluate the economic, tax and other consequences of an investment in the Company.

THE SECURITIES OFFERED PURSUANT TO A CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM DATED SEPTEMBER 15, 2003, AND EXHIBITS ATTACHED THERETO (COLLECTIVELY, THE "OFFERING MATERIALS"), HAVE NOT BEEN FILED OR REGISTERED WITH OR APPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "COMMISSION"), NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE OFFERING MATERIALS. NO STATE SECURITIES LAW ADMINISTRATOR HAS PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR THE ADEQUACY OF THE OFFERING MATERIALS. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

IT IS INTENDED THAT THE SECURITIES OFFERED HEREBY WILL BE MADE AVAILABLE ONLY TO ACCREDITED INVESTORS, AS DEFINED IN RULE 501 OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE SECURITIES OFFERED HEREBY ARE BEING OFFERED PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS FOR NON-PUBLIC OFFERING. SUCH EXEMPTIONS LIMIT THE NUMBER AND TYPES OF INVESTORS TO WHICH THE OFFERING WILL BE MADE AND RESTRICT SUBSEQUENT TRANSFER OF THE INTERESTS.

CONFIDENTIAL INFORMATION

THE INFORMATION CONTAINED IN THE MEMORANDUM IS CONFIDENTIAL AND PROPRIETARY TO THE COMPANY AND BEING SUBMITTED TO PROSPECTIVE INVESTORS SOLELY FOR SUCH INVESTORS' CONFIDENTIAL USE WITH THE EXPRESS UNDERSTANDING THAT, WITHOUT THE PRIOR WRITTEN PERMISSION OF THE COMPANY, SUCH PERSONS WILL NOT RELEASE THIS DOCUMENT OR DISCUSS THE INFORMATION CONTAINED HEREIN OR MAKE REPRODUCTIONS OF OR USE THIS MEMORANDUM FOR ANY PURPOSE OTHER THAN EVALUATING A POTENTIAL INVESTMENT IN THE SECURITIES.

THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT UNDER APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

WE DRAW YOUR ATTENTION TO THE ANTI-FRAUD PROVISIONS OF THE FEDERAL AND STATE SECURITIES LAWS, PARTICULARLY RULE 10b-5 UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, WHICH PROHIBITS THE PURCHASE OR SALE OF SECURITIES ON THE BASIS OF MATERIAL NON-PUBLIC INFORMATION. IN LIGHT OF THESE PROVISIONS, INCLUDING RULE 10b-5, WE ADVISE YOU THAT, IF YOU ARE IN POSSESSION OF MATERIAL INFORMATION RELATING TO THE COMPANY WHICH YOU KNOW OR HAVE REASON TO KNOW IS NON-PUBLIC, YOU SHOULD NOT PURCHASE OR SELL OR CAUSE TO BE PURCHASED OR SOLD ANY OF THE COMPANY'S SECURITIES. IN ADDITION, YOU SHOULD NOT DISCLOSE ANY OF SUCH INFORMATION UNLESS AND UNTIL SUCH INFORMATION HAS BEEN PUBLICLY DISCLOSED.

THE MEMORANDUM CONSTITUTES AN OFFER ONLY TO THE OFFEREE TO WHOM THE MEMORANDUM IS INITIALLY DISTRIBUTED AND DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY BY ANYONE IN ANY COUNTRY OR STATE IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED, OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SOLICITATION. THE COMPANY AND THE PLACEMENT AGENT RESERVE THE RIGHT TO ACCEPT OR REJECT ANY SUBSCRIPTION FOR SECURITIES, IN WHOLE OR IN PART, OR TO ALLOT TO ANY PROSPECTIVE INVESTOR FEWER THAN THE NUMBER OF SECURITIES SUCH INVESTOR DESIRES TO PURCHASE.

IN DECIDING WHETHER TO PURCHASE SECURITIES, EACH INVESTOR MUST CONDUCT AND RELY ON ITS OWN EVALUATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED IN MAKING AN INVESTMENT DECISION WITH RESPECT TO THE SECURITIES. PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY, OR ANY PROFESSIONAL ASSOCIATED WITH THE OFFERING, AS LEGAL OR TAX ADVICE. THE OFFEREE AUTHORIZED TO RECEIVE THE MEMORANDUM SHOULD CONSULT ITS OWN TAX COUNSEL, ACCOUNTANT OR BUSINESS ADVISOR, RESPECTIVELY, AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING ITS PURCHASE OF THE SECURITIES.

THE INFORMATION PRESENTED HEREIN WAS PREPARED BY THE COMPANY AND IS BEING FURNISHED SOLELY FOR USE BY PROSPECTIVE INVESTORS IN CONNECTION WITH THE OFFERING. THE INFORMATION CONTAINED IN THIS MEMORANDUM HAS BEEN SUPPLIED BY THE COMPANY AND HAS BEEN INCLUDED HEREIN IN RELIANCE ON THE COMPANY. THIS MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS, BELIEVED BY THE COMPANY TO BE ACCURATE, BUT REFERENCE IS HEREBY MADE TO SUCH DOCUMENTS FOR COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES THERETO. COPIES OF SUCH DOCUMENTS ARE AVAILABLE AT THE OFFICES OF THE COMPANY. ALL OF SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THIS REFERENCE.

EXCEPT AS OTHERWISE INDICATED, THE MEMORANDUM SPEAKS AS OF THE DATE HEREOF. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY SALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT

THERE HAS BEEN NO CHANGES IN THE AFFAIRS OF THE COMPANY AFTER THE DATE HEREOF.

NO GENERAL SOLICITATION WILL BE CONDUCTED AND NO OFFERING LITERATURE OR ADVERTISING IN ANY FORM WILL OR MAY BE EMPLOYED IN THE OFFERING OF THE NOTES, EXCEPT FOR THIS MEMORANDUM (INCLUDING AMENDMENTS OR SUPPLEMENTS HERETO) AND THE DOCUMENTS SUMMARIZED HEREIN. NO PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION NOT CONTAINED IN THIS MEMORANDUM OR THE DOCUMENTS SUMMARIZED HEREIN AND, IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON.

BY ACCEPTING DELIVERY OF ANY OFFERING MATERIAL, THE OFFEREE AGREES (I) TO KEEP CONFIDENTIAL THE CONTENTS THEREOF, AND NOT TO DISCLOSE THE SAME TO ANY THIRD PARTY OR OTHERWISE USE THE SAME FOR ANY PURPOSE OTHER THAN EVALUATION BY SUCH OFFEREE OF A POTENTIAL PRIVATE INVESTMENT IN THE COMPANY, AND (II) TO RETURN THE SAME TO THE PLACEMENT AGENT IF (A) THE OFFEREE DOES NOT SUBSCRIBE TO PURCHASE ANY SECURITIES, (B) THE OFFEREE'S SUBSCRIPTION IS NOT ACCEPTED, OR (C) THE OFFERING IS TERMINATED OR WITHDRAWN. THE COMPANY WILL MAKE AVAILABLE TO ANY PROSPECTIVE INVESTOR, PRIOR TO THE CLOSING, THE OPPORTUNITY TO ASK QUESTIONS OF AND TO RECEIVE ANSWERS FROM REPRESENTATIVES OF THE COMPANY CONCERNING THE COMPANY OR THE TERMS AND CONDITIONS OF THE OFFERING AND TO OBTAIN ANY ADDITIONAL RELEVANT INFORMATION TO THE EXTENT THE COMPANY POSSESSES SUCH INFORMATION OR CAN OBTAIN IT WITHOUT UNREASONABLE EFFORT OR EXPENSE. INVESTORS AGREE TO ADVISE THE COMPANY IN WRITING IF THEY ARE RELYING UPON ANY SUCH INFORMATION.

FOR RESIDENTS OF ALL STATES

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATIONS TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF SECURITIES, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

THE UNDERSIGNED ACKNOWLEDGES THAT THE NOTES HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE, THAT THE NOTES ARE BEING PURCHASED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, NOR WITH THE INTENTION OF SELLING, TRANSFERRING OR OTHERWISE DISPOSING OF ALL OR ANY PART OF SUCH NOTES FOR ANY PARTICULAR PRICE, OR AT ANY PARTICULAR TIME, OR UPON THE HAPPENING OF ANY PARTICULAR EVENT OR CIRCUMSTANCES, EXCEPT SELLING, TRANSFERRING, OR DISPOSING OF SAID NOTES MADE IN FULL COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE SECURITIES ACT, THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSION THEREUNDER, AND

APPLICABLE STATE SECURITIES LAWS; AND THAT SUCH NOTES MUST BE HELD INDEFINITELY UNLESS THE NOTES ARE SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT, OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE, AND WILL REQUIRE AN OPINION OF COUNSEL THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OR SUCH STATE SECURITIES LAWS.

1. The undersigned represents, warrants, and agrees as follows:

(a) The undersigned agrees that this Agreement is and shall be irrevocable.

(b) The undersigned has carefully read the Offering Materials, all of which the undersigned acknowledges have been provided to the undersigned. The undersigned has been given the opportunity to ask questions of, and receive answers from, the Company concerning the terms and conditions of this Offering and the Offering Materials and to obtain such additional written information, to the extent the Company possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of same as the undersigned desires in order to evaluate the investment. The undersigned further acknowledges that he, she or it fully understands the Offering Materials, and the undersigned has had the opportunity to discuss any questions regarding any of the Offering Materials with his, her or its counsel or other advisor(s). Notwithstanding the foregoing, the only information upon which the undersigned has relied is that set forth in the Offering Materials and his, her or its own independent investigation. The undersigned acknowledges that the undersigned has received no representations or warranties from the Company, or its employees or agents in making this investment decision other than as set forth in the Offering Materials.

(c) The undersigned is aware that the purchase of Notes is a speculative investment involving a high degree of risk and that there is no guarantee that the undersigned will realize any gain from this investment, and that the undersigned could lose the total amount of the undersigned's investment.

(d) The undersigned understands that no federal or state agency has made any finding or determination regarding the fairness of this offering for investment, or any recommendation or endorsement of the Offering.

(e) The undersigned is acquiring the Notes for the undersigned's own account, with the intention of holding the Notes, with no present intention of dividing or allowing others to participate in this investment or of reselling or otherwise participating, directly or indirectly, in a distribution of the Notes, and shall not make any sale, transfer, or pledge thereof without registration under the Securities Act and any applicable securities laws of any state or unless an exemption from registration is available under those laws.

(f) The undersigned represents that the undersigned, if an individual, has adequate means of providing for his or her current needs and personal and family contingencies and has no need for liquidity in this investment in the Notes. The undersigned represents that the undersigned is an "Accredited Investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. The undersigned has no reason to anticipate any material change in his or her personal financial condition for the foreseeable future.

(g) The undersigned is financially able to bear the economic risk of this investment, including the ability to hold the Notes indefinitely or to afford a complete loss of his, her or its investment in the Notes.

(h) The undersigned represents that the undersigned's overall commitment to investments, which are not readily marketable, is not disproportionate to the undersigned's net worth, and the undersigned's investment in the Notes will not cause such overall commitment to become excessive. The undersigned realizes that in the view of the Commission, a purchase now with a present intent to resell by reason of a foreseeable specific contingency or any anticipated change in the market value, or in the condition of the Company, or that of the industry in which the business of the Company is engaged or in connection with a contemplated liquidation, or settlement of any loan obtained by the undersigned for the acquisition of the Notes, and for which such Notes may be pledged as security or as donations to religious or charitable institutions for the purpose of securing a deduction on an income tax

return, would, in fact, represent a purchase with an intent inconsistent with the undersigned's representations to the Company and the Commission would then regard such sale as a sale for which the exemption from registration is not available. The undersigned will not pledge, transfer or assign this Agreement.

(i) FOR PARTNERSHIPS, CORPORATIONS, TRUSTS, OR OTHER ENTITIES ONLY: If the undersigned is a partnership, corporation, trust or other entity, (i) the undersigned has enclosed with this Agreement appropriate evidence of the authority of the individual executing this Agreement to act on its behalf (e.g., if a trust, a certified copy of the trust agreement; if a corporation, a certified corporate resolution authorizing the signature and a certified copy of the articles of incorporation; or if a partnership, a certified copy of the partnership agreement), (ii) the undersigned represents and warrants that it was not organized or reorganized for the specific purpose of acquiring Notes, (iii) the undersigned has the full power and authority to execute this Agreement on behalf of such entity and to make the representations and warranties made herein on its behalf, and (iv) this investment in the Company has been affirmatively authorized, if required, by the governing board of such entity and is not prohibited by the governing documents of the entity.

(j) The undersigned has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Notes.

(k) The undersigned acknowledges that the certificates for the Notes ("Certificates") which the undersigned will receive will contain a legend substantially as follows:

THE SECURITIES WHICH ARE REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNTIL A REGISTRATION STATEMENT WITH RESPECT THERETO IS DECLARED EFFECTIVE UNDER SUCH ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE COMPANY THAT AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT IS AVAILABLE.

2. The undersigned expressly acknowledges and agrees that the Company is relying upon the undersigned's representations contained in the Offering Materials.

3. The undersigned subscriber acknowledges that the undersigned understands the meaning and legal consequences of the representations and warranties which are contained herein and hereby agrees to indemnify, save and hold harmless the Company, and its officers, directors and counsel, from and against any and all claims or actions arising out of a breach of any representation, warranty or acknowledgment of the undersigned contained in any of the Offering Materials. Such indemnification shall be deemed to include not only the specific liabilities or obligations with respect to which such indemnity is provided, but also all reasonable costs, expenses, counsel fees and expenses of settlement relating thereto, whether or not any such liability or obligation shall have been reduced to judgment.

4. The undersigned acknowledges that MS will receive a commission equal to 2% of the principal amount of the Certificate being purchased for acting as a placement agent in the Offering.

5. The Company has been duly and validly organized and is validly existing and in good standing as a limited liability company under the laws of the State of New York. The Company has all requisite power and authority, and all necessary authorizations, approvals and orders required as of the date hereof to conduct its business and to enter into this Subscription Agreement and the other Offering Materials and to be bound by the provisions and conditions hereof or therein.

6. Except as otherwise specifically provided for hereunder, no party shall be deemed to have waived any of his or her or its rights hereunder or under any other agreement, instrument or papers signed by any of

them with respect to the subject matter hereof unless such waiver is in writing and signed by the party waiving said right. Except as otherwise specifically provided for hereunder, no delay or omission by any party in exercising any right with respect to the subject matter hereof shall operate as a waiver of such right or of any such other right. A waiver on any one occasion with respect to the subject matter hereof shall not be construed as a bar to, or waiver of, any right or remedy on any future occasion. All rights and remedies with respect to the subject matter hereof, whether evidenced hereby or by any other agreement, instrument, or paper, will be cumulative, and may be exercised separately or concurrently.

7. The parties have not made any representations or warranties with respect to the subject matter hereof not set forth herein, and this Agreement, together with any instruments executed simultaneously herewith, constitutes the entire agreement between them with respect to the subject matter hereof. All understandings and agreements heretofore had between the parties with respect to the subject matter hereof are merged in this Agreement, which alone fully and completely expresses their agreement.

8. This Agreement may not be changed, modified, extended, terminated or discharged orally, but only by an agreement in writing, which is signed by all of the parties to this Agreement.

9. The parties agree to execute any and all such other and further instruments and documents, and to take any and all such further actions reasonably required to effectuate this Agreement and the intent and purposes hereof.

10. If any provision or any portion of any provision of this Agreement or the application of any such provision or any portion thereof to any person or circumstance, shall be held invalid or unenforceable, the remaining portion of such provision and the remaining portion of such provision as is held invalid or unenforceable to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the undersigned hereby consents to the jurisdiction of the courts of the State of New York and/or the United States District Court for the Southern District of New York

ALL SUBSCRIBERS MUST COMPLETE THIS PAGE

Print Exact Name in Which Title is to be Held

IN WITNESS WHEREOF, the undersigned has executed this Subscription Agreement on this ____ day of _____ 2003.

1. |___| Individual

2. |___| Joint Tenants with Right of Survivorship

3. |___| Community Property

4. |___| Tenants in Common

5. |___| Corporation/Partnership

6. |___| IRA of_____

7. |___| Trust Date Opened _____

8. |___| As A Custodian For _____ Under the Uniform Gift to Minors Act of the State of _____

EXECUTION BY SUBSCRIBER WHO IS A NATURAL PERSON

_____

Exact Name in Which Title is to be Held

_____

(Signature)

_____

Name (Please Print)

_____

Residence: Number and Street

_____

City State Zip Code

_____

Social Security Number

Accepted this _____ day of _____, 2003, on behalf of First Independent Income Notes, LLC.

By:_____
David L. Smith

EXECUTION BY SUBSCRIBER WHICH IS A CORPORATION, PARTNERSHIP, TRUST, ETC.

_____
Exact Name in Which Title is to be Held

_____
(Signature)

_____
Name (Please Print)

_____
Residence: Number and Street

_____
City State Zip Code

_____
Social Security Number or Tax ID Number

Accepted this _____ day of _____, 2003, on behalf of First Independent Income Notes, LLC.

By:_____
David L. Smith

B

McGinn, Smith & Co., Inc.

Supervisory Compliance Manual

David L. Smith
Chief Compliance Officer

RMR EXHIBIT
112

PRIVATE PLACEMENTS/LIMITED PARTNERSHIPS

There are certain rules which must be followed in making offers or sales of these products to be sure that the offering qualifies for exemption from SEC registration requirements.

1. The RR must qualify his customer in advance to be sure that the customer is either an accredited investor or otherwise a suitable person.
2. Customers may only be sent material cleared for public distribution. Guidelines:
   a. Mail or provide such material only to existing customers or lawyers, accountants or investment advisors, but not to their clients.
   b. Hold generic informational meetings on the general subject of limited partnerships and tax advantage investments.
3. RRs may not engage in general solicitations. This means that limited partnerships are not a prospecting tool. Advise RRs of the following:
   a. No cold calling.
   b. No advertisement, article, notice or other communication can be published in any newspaper, magazine, newsletter or similar media or broadcast on TV, radio or cable.
   c. No seminars or meetings may be held with regard to any current offering unless each invitee is known and qualified in advance.
   d. No mention of any specific offering or past performance may be made at generic seminars (i.e. seminars to discuss the general concept of such investments).
4. No split fees with non-registered people such as lawyers, accountants or investment advisors.

Due Diligence Procedures

When McGinn, Smith acts as underwriter in connection with limited partnership and/or private placement offerings, it will make a reasonable investigation of the project to include inspection of completed projects, conversations with in-house counsel where applicable, a complete examination of financial documents and any other documents deemed necessary to deal fairly with the investing public. Paperwork recording the due diligence will be kept in the legal files.

Subscription Procedures

Subscription documents and checks are collected for each investor. All documents must be signed before they can be received by the firm. Each subscriber must be reviewed and accepted by a principal of the firm, with acceptance indicated by a principal signature on each Subscription Agreement. Subscription Agreements are to be printed with the acceptance language in place for such signature. Information for each offering investor is to be recorded and kept on computer and/or hard-copy files.

All checks are to be made payable to a Bank or Federal Depository as Escrow Agent and deposited into the escrow account, completing the transaction. If a check is received payable to McGinn, Smith & Co., it must be promptly returned to the client with a letter stating that checks must be made payable to the Escrow Agent.

To be in compliance with SEC Rule 15c 2-4, any offering that fails to close and there are funds to be returned from the bank escrow agent to customers, those funds will be paid directly by the escrow agent and not first returned to McGinn, Smith.

Patty Sicluna will supervise the collection of subscription documents and will ensure that they are complete and that all requested information is recorded. She will also oversee that any customer funds will be returned promptly to the customer, if necessary. Ms. Sicluna will also confirm that all orders for private placements, all subscription agreements and all monies collected for private placements be executed and/or received no later than the last date of the specified offering period for the private placement.

Bank Accounts

Monthly reconciliation must be made on all accounts from the bank statements, and a running list of disbursement activity must be kept for year-end accounting purposes. It is the duty of the Assistant Controller to oversee these and report discrepancies to David Rees, the CFO. Escrow statements are mailed from the bank quarterly to the Controller for reconciliation.

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

$3,550,000

TDM CABLE TRUST 06

MAXIMUM OFFERING $3,550,000 CONTRACT CERTIFICATES
MINIMUM OFFERING $500,000 CONTRACT CERTIFICATES
TWENTY FOUR MONTHS: 7.75%
FORTY EIGHT MONTHS: 9.25%

TDM CABLE TRUST 06 (the "Trust Fund") is hereby offering $3,550,000 of Contract Certificates, entitled to interest at the per annum rate of 7.75% or 9.25% per annum (the "Certificates"). Interest on the Certificates is payable in monthly installments commencing December 1, 2006 See "Description of the Certificates and the Trust Agreement".

The Certificates will be issued and registered in the names of the purchasing Certificateholders. Interests in the Certificates will be shown on, and transfers thereof will be effected through, records maintained by the Trustee under the Trust Agreement. See "Description of the Certificates and the Trust Agreement."

Price of Certificates 100%

See "Risk Factors" for a discussion of certain risks that should be considered by prospective purchasers of the Certificates offered hereby.

THESE CERTIFICATES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to the Public	Underwriting Discount	Proceeds to the Trust Fund
	100%	3.0%	97%
Minimum Offering	$500,000	$15,000	$485,000
Maximum Offering	$3,550,000	$106,500	$3,443,500

The date of this Memorandum is November 13, 2006

MCGINN, SMITH & CO., INC.
Capital Center • 99 Pine Street
Albany, New York 12207

SUMMARY OF THE OFFERING

The following summary is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum and the exhibits attached to the Memorandum.

The Trust Fund

TDM CABLE TRUST 06 (the "Trust Fund") is a common law trust formed under the laws of the State of New York on October 23, 2006. The Trustee of the Trust Fund is McGinn, Smith Capital Holdings Corp., a New York Corporation. The Trustee of the Trust Fund will have no liability in connection with the Certificates or the affairs of the Trust Fund in the absence of willful misconduct or gross negligence. Although Certificateholders will have recourse to all assets of the Trust Fund, which include the allocated Preferred Return arising out of the sale of cable TV, broad-band internet, and fiber optic telephone services to the homeowners associations of Cutler Cay and Keys Cove as well as certain preferred payments received in connection with the ADT Note.

The Trust Fund will advance funds to TDM Cable Funding LLC, a New York State Limited Liability Corporation. TDM has advanced certain funds to PrimeVision Funding of Cutler Cay; PrimeVision Funding of Keys Cove, LLC; and ADT. Subsequent to such funding, PrimeVision Funding of Cutler Cay LLC; and PrimeVision of Keys Cove, LLC have in turn purchased from PrimeVision Management of Keys Cove, LLC a Preferred Return. Additionally, as more homes are sold in each project, incremental purchased of preferred return will be made by and among the same parties.

The mechanics of such purchases are more fully described in the Amended and Restated Operating Agreement of PrimeVision Management of Keys Cove LL and the Amended and Restated Operating Agreement of PrimeVision Management of Cutler Cay LLC.

Each Homeowners Association will be required to pay for services for a period of approximately 122 months. A Preferred Return equal to 29.15% of the gross revenue from the Bulk Services Agreement will be afforded to PrimeVision Management of Keys Cove and PrimeVision Management of Cutler Cay.

The Trust Fund will enter into an agreement with TDM, PrimeVision Funding of Keys Cove and PrimeVision Funding of Cutler Cay to provide on going monitoring and supervision of the financial and operating metrics required by the underlying agreements with each of the Homeowners Assoications. Additionally, TDM, PrimeVision Funding of Keys Cove, and PrimeVision Funding of Cutler Cay will promptly remit the proceeds of the Preferred Return to the Trust Fund for distribution to Certificateholders.

Additionally, TDM has acquired a Preferred position in a note owned by ADT Security Services, Inc. "ADT". The note obligated PrimeVision Communications, LLC to pay to ADT or its assigns $3,165,410 on August 6, 2010. Upon payment thereof, TDM will receive the first $1,366,831 plus 20% the monies realized in excess of $1,366,831. TDM expects PrimeVision Communication LLC to discharge the note in full, thereby resulting in a cash payment to TDM in the amount of $1,726,547.

The Investment

Certificateholders will purchase either a two year maturing (November 15, 2008) or a four year maturity (November 15, 2010). The rate of interest payable on the two year maturity certificate will be 7.75% per annum, payable monthly; and the rate of interest payable on the four year maturity certificates will be 9.25%, payable monthly.

Certificates may be purchased in denominations of $5,000 with a minimum purchase of $10,000.

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

$2,100,000

TDM VERIFIER TRUST 07R

MAXIMUM OFFERING $2,100,000
MINIMUM OFFERING $250,000
EIGHTEEN MONTHS: 9.00%

DUE AUGUST 15, 2010

TDM VERIFIER TRUST 07R (the "Trust") is hereby offering $2,100,000 of Contract Certificates, entitled to interest at the rate of 9.00% per annum (the "Certificates"). Interest on the Certificates is payable in quarterly installments commencing May 15, 2009. See "Description of the Certificates and the Trust Agreement".

The Certificates will be issued and registered in the names of the purchasing Certificateholders. Interests in the Certificates will be shown on, and transfers thereof will be effected through, records maintained by the Trustee under the Trust Agreement. See "Description of the Certificates and the Trust Agreement."

Price of Certificates 100%

See "Risk Factors" for a discussion of certain risks that should be considered by prospective purchasers of the Certificates offered hereby.

THESE CERTIFICATES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to the Public	Underwriting Discount	Proceeds to the Trust
	100%	3.5%	96.5%
Minimum Offering	$250,000	$8,750	$241,250
Maximum Offering	$2,100,000	$73,500	$2,026,500

The date of this Memorandum is February 2, 2009

MCGINN, SMITH & CO. INC.
Capital Center • 99 Pine Street
Albany, New York 12207

SUMMARY OF THE OFFERING

The following summary is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum and the exhibits attached to the Memorandum.

The Trust

TDM VERIFIER TRUST 07R (the "Trust") is a common law trust formed under the laws of the State of New York on January 29, 2009. The Trustee of the Trust is McGinn, Smith Capital Holdings Corp., a New York corporation (the "Trustee"). The Trustee will have no liability in connection with the Certificates or the affairs of the Trust in the absence of willful misconduct or gross negligence. Although Certificateholders will have recourse to all assets of the Trust, which include an assignment of 1,450,000 face value of Guaranteed Payment Units("GPUs") issued by the Company, which when discounted to a present value at the blended interest rates contemplated by this offering, will have a value of $2,100,000.

The Trust will advance funds to TDM Cable Funding LLC, a New York limited liability company ("TDM"). TDM has purchased $1,450,000 of face value Guaranteed Payment Units from the Company.

The Company provides capital to security alarm dealers by purchasing some or all of their security alarm monitoring accounts at a multiple of recurring monthly revenue ("RMR") and subcontracting back to such dealers service and monitoring obligations in respect of the purchased accounts for a fixed percentage of RMR received from the underlying customers (the "Subcontract Fee"). As of September 30, 2008, the Company owned 8,000 security alarm accounts purchased from independent security alarm dealers, generating total RMR of $625,000. The average purchase price paid for accounts was twenty-six (26) times RMR and the average Subcontract Fee was 35%.

The Trust will employ the gross proceeds of this offering to retire certificates issued by TDM Verifier Trust 07 in the amount of $1,982,500 together with underwriting expenses of approximately $70,000 and legal and miscellaneous costs of approximately $44,000.

The Investment

Certificateholders will be issued a Certificate with a 18 month maturity (August 15, 2010). The rate of interest payable will be 9.00% per annum, payable quarterly.

Certificates may be purchased in denominations of $5,000 with a minimum purchase of $10,000.

Risk Factors

In evaluating this Offering, prospective investors should consider carefully, among others, the following risk factors:

- No assurance that the Certificates will be paid;
- No market for resale of Certificates;
- Illiquid collateral;
- Potential for Guaranteed Payment Unit defaults;
- Potential conflicts of interest in connection with the acquisition of the assets to be consigned to the Trust;
- No amortization of principal.

Description of the Certificates and the Trust Agreement

The Certificates will be issued under a Declaration of Trust by McGinn, Smith Capital Holdings Corp., the Trustee. The Certificates will be available for purchase in denominations of $5,000.00 with a minimum investment of $10,000.00. The Certificates will be registered in the name of the individual Certificateholders. See "Description of the Trust Agreement and the Certificates."

FAIN Balance Sheets

Account	9/25/2005 Balance	12/31/2005 Balance	12/31/2006 Balance	12/31/2007 Balance	12/31/2008 Balance	9/30/2009 Balance	Balance of Security	Balance in Affiliated Entities	Type of Investment
ASSETS									
Cash and Bank Accounts									
Escrow	0	1,234,207.59	460,074.77	0	0	0	-		
Euro Sweep	0	0	0	263,203.02	0	0	-		
Operating	0	11,726.62	696,587.84	-30,595.00	91,965.85	54,015.95	-		
TOTAL Cash and Bank Accounts	0	1,245,934.21	1,156,662.61	232,608.02	91,965.85	54,015.95	-		
Other Assets									
107th Association	0	0	0	300,000.00	150,000.00	150,000.00	150,000.00	150,000.00	Note
AlseT IP Mgt LP	0	0	3,600,287.18	4,000,287.18	4,000,287.18	4,000,287.18	4,000,287.18	4,000,287.18	Note/Indebtedness
Atlantis Strategic	0	0	12,500.00	12,500.00	0	0	-	-	
BVI Precision Materials	0	0	1,500,000.00	1,500,000.00	1,500,000.00	1,500,000.00	1,500,000.00	-	Note
CCIG	0	0	25,000.00	25,000.00	0	0	-	-	
Coventry Resources Corp	0	1,250,000.00	2,905,000.00	3,149,518.11	3,149,518.11	3,149,518.11	3,149,518.11	3,149,518.11	Notes/Stock
DF FIIN	0	0	0	110,000.00	0	0	-	-	
DF McGinn Smith & Co	0	0	0	0	0	50,000.00	50,000.00	50,000.00	Indebtedness
Dividend Receivable	0	0	2,050.00	0	0	0	-	-	
Eurodollar Sweep	0	0	0	0	0	0	-	-	
Exch Blvd Prepaid Royalties	0	0	0	50,000.00	50,000.00	50,000.00	50,000.00	-	Stock
ExchangeBlvd.Com Loan	0	0	0	150,000.00	150,000.00	150,000.00	150,000.00	-	Note/Stock
ExchBlvd Stock Purch	0	0	0	660,000.00	660,000.00	660,000.00	660,000.00	-	Stock
F4W	0	0	0	200,000.00	200,000.00	200,000.00	200,000.00	-	Note
Interest Receivable	0	8,622.23	619,089.13	1,180,500.86	1,910,263.32	1,910,263.32	-	-	
JGC Loan	0	0	5,750.00	5,750.00	5,750.00	5,750.00	5,750.00	5,750.00	Note
M & S Partners loan	0	0	3,000.00	3,000.00	3,000.00	4,050.00	4,050.00	4,050.00	Note
McGinn Smith Holdings LLC	0	200,000.00	200,000.00	148,000.00	116,400.00	116,400.00	116,400.00	116,400.00	Note
McGinn Smith Pref Div	0	0	100,000.00	0	0	0	-	-	
McGinnSmith Licensing Co	0	0	0	75,000.00	75,000.00	75,000.00	-	75,000.00	
MSCH Loan	0	0	19,100.00	0	0	50,000.00	50,000.00	50,000.00	Note
New Valu	0	0	888,889.00	888,889.00	888,889.00	888,889.00	888,889.00	-	Note
Pallsades - New Financing	0	0	500,000.00	500,000.00	500,000.00	500,000.00	500,000.00	-	Note
Pine Street Capital Partners	0	1,914,477.00	1,888,976.00	1,580,166.45	1,484,750.51	1,309,821.51	1,309,821.51	1,309,821.51	Note
Prepaid Legal	0	0	0	0	2,551.50	2,551.50	-	-	
RTC Loan	0	0	198,800.00	459,200.00	390,200.00	344,700.00	344,700.00	344,700.00	Note
SAI 00 Trust	0	0	970,984.93	886,728.12	0	0	-	-	
Seton Hall	0	0	18,772.59	14,189.85	8,613.18	8,613.18	8,613.18	8,613.18	Note
Smashing Holdings LLC	0	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	-	Note
TDM Cable Funding, LLC	0	0	0	0	0	0	-	-	
Verifier LLC	0	0	450,000.00	0	0	0	-	-	
VidSoft Loan	0	0	450,000.00	450,000.00	450,000.00	450,000.00	450,000.00	-	Note
TOTAL Other Assets	0	3,623,099.23	14,608,198.83	16,598,729.57	15,945,222.80	15,825,843.80	13,838,028.98	9,264,139.98	
								67%	Total Affiliated Investments
Investments									
ExchangeBlvd.com	0	0	500,000.00	500,000.00	500,000.00	500,000.00	500,000.00	-	Stock
TOTAL Investments	0	0	500,000.00	500,000.00	500,000.00	500,000.00	500,000.00		
TOTAL ASSETS	0	4,869,033.44	16,264,861.44	17,331,337.59	16,537,188.65	16,379,859.75	14,338,028.98		
							98%	Total Securities	

RMR EXHIBIT 207

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FAIN Balance Sheets

Account	9/25/2005 Balance	12/31/2005 Balance	12/31/2006 Balance	12/31/2007 Balance	12/31/2008 Balance	9/30/2009 Balance	Balance of Security	Balance in Affiliated Entities	Type of Investment
LIABILITIES & EQUITY									
LIABILITIES									
Other Liabilities									
Accrued Interest Payable	0	50,219.23	161,040.70	176,033.40	31,000.40	31,000.40			
DT MSA & MSCH	0	7,143.55	113,659.04	0	245,117.00	245,117.00			
Due to TAIN	0	0	0	0	0	0			
FAIN 10.25% Notes	0	1,733,000.00	6,622,000.00	6,626,000.00	6,626,000.00	6,626,000.00			
FAIN 6% Notes	0	972,307.00	49,999.40	0	0	0			
FAIN 7% 08 1 Year Note	0	0	0	810,000.00	822,000.00	822,000.00			
FAIN 7% 1 Yr Notes	0	0	4,035,000.00	4,248,000.00	4,193,000.00	4,193,000.00			
FAIN 7.75% Notes	0	1,120,000.00	4,985,000.00	5,020,000.00	5,020,000.00	5,020,000.00			
Note Discount	0	0	59,400.00	46,200.00	0	0			
Pine Street Capital Call on 2M	0	1,200,000.00	772,984.91	502,064.91	502,064.91	502,064.91			
TOTAL Other Liabilities	0	5,082,669.78	16,799,084.05	17,428,298.31	17,439,182.31	17,439,182.31			
TOTAL LIABILITIES	0	5,082,669.78	16,799,084.05	17,428,298.31	17,439,182.31	17,439,182.31			
EQUITY	0	-213,636.34	-534,222.61	-96,960.72	-901,993.66	-1,059,322.56			
TOTAL LIABILITIES & EQUITY	0	4,869,033.44	16,264,861.44	17,331,337.59	16,537,188.65	16,379,859.75			

FEIN Balance Sheets

Account	12/31/2003 Balance	12/31/2004 Balance	12/31/2005 Balance	12/31/2006 Balance	12/31/2007 Balance	12/31/2008 Balance	9/30/2009 Balance	Balance of FV Security	Balance in Affiliated Entities	Type of Investment
ASSETS										
Cash and Bank Accounts										
FEIN Accum	0	118,660.52	106,537.90	8,411.35	9,763.54	63,330.88	0	0		
FEIN Escrow	0	2,219,409.00	0	0	0	0	0	0		
FEIN Operating	0	2,106,139.94	748,990.88	711,296.52	633,193.68	321,535.57	113,687.49	0.00		
FEIN SPTIII Accum	0	0	3,561.52	430.53	0	0	0	0		
TOTAL Fein Operating	0	4,444,209.46	859,090.30	720,138.40	642,957.22	384,866.55	133,687.49	0.00		
Other Assets										
107th Assoc	0	0	0	0	500,000.00	500,000.00	500,000.00	500,000.00	500,000.00	Note
CCCC Loan	0	475,000.00	475,000.00	475,000.00	475,000.00	475,000.00	475,000.00	475,000.00	475,000.00	Note
CCIG Senior Note	0	499,546.67	499,546.67	549,807.17	549,807.17	549,807.17	549,807.17	549,807.17	549,807.17	Note
Cherokee ATM	0	1,384,623.00	1,384,623.00	1,384,623.00	1,384,623.00	660,096.00	716,096.00	0.00	-	
Christopher's	0	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	-	Note
DF Capital Trust	0	0	0	0	0	0	25,384.65	25,384.65	-	Indebtedness
Coventry Note	0	125,000.00	1,420,000.00	1,420,000.00	1,523,817.78	1,523,817.78	1,523,817.78	1,523,817.78	1,523,817.78	Note/stock
DF FAIN	0	0	0	0	0	0	2,750.97	2,750.97	2,750.97	Indebtedness
DF FIIN	0	0	0	0	675,000.00	675,000.00	675,798.82	675,798.82	675,798.82	Note
DF FIIN Monitoring	0	0	0	0	0	0	5,186.97	5,186.97	5,186.97	Indebtedness
DF MCG 3, LLC	0	0	0	0	0	0	25,000.00	25,000.00	25,000.00	Indebtedness
DF McGinn Smith & Co.	0	0	0	0	0	0	50,000.00	50,000.00	50,000.00	Indebtedness
DF MSTF	0	0	0	0	0	50,000.00	150,000.00	150,000.00	150,000.00	Note
DF TDMM Funding	0	0	0	0	0	0	0.00	0.00	-	
DF White Glove Cruises	0	0	0	0	0	0	30,000.00	30,000.00	30,000.00	Indebtedness
Due From CCCC	0	56,252.98	178,403.90	178,403.90	178,403.90	178,403.90	178,403.90	178,403.90	178,403.90	Indebtedness
Due From SPTII	0	11,544.87	0	0	0	0	0	0	-	
IAS 5 yr.	0	0	0	0	0	0	0	0	-	
Interest Receivable	0	129,765.22	247,248.01	394,410.82	572,150.22	559,150.22	559,150.22	0.00	-	
Investment- MSCH	0	0	0	0	0	0	100,000.00	100,000.00	100,000.00	Note
JV Associate Loan 12%	0	95,000.00	95,000.00	95,000.00	95,000.00	95,000.00	95,000.00	95,000.00	95,000.00	Note
Loan CSDS	0	55,000.00	80,000.00	80,000.00	80,000.00	80,000.00	72,903.75	72,903.75	72,903.75	Note
Loan M&S Partners	0	500,000.00	500,000.00	400,000.00	304,367.00	304,367.00	300,000.00	300,000.00	300,000.00	Note
MGS Acceptance Corp	0	0	0	0	0	0	0	0	-	
Pacific Trust Loan	0	281,000.00	189,312.99	85,997.78	39,525.76	77,525.76	77,525.76	77,525.76	77,525.76	Note
Palisades Loan	0	1,607,500.00	1,861,350.00	1,163,662.31	1,163,662.31	1,163,662.31	1,163,662.31	1,163,662.31	-	Note
PSCP	0	2,000,000.00	1,914,474.00	1,889,272.00	0	0	0	0	-	
Raging River Apparel	0	750,000.00	777,620.00	748,844.51	0	0	0	0	-	
Revenue Receivable	0	43,983.37	74,512.87	51,753.57	46,160.45	46,257.71	46,287.66	0.00	-	
RTC Loan	0	20,000.00	228,874.57	293,774.57	293,774.57	293,774.57	293,774.57	293,774.57	293,774.57	Note
SAI00 & sai03jr loan	0	0	0	0	0	0	0	0	-	
SPT2 Contracts	0	4,170,282.07	3,585,657.07	3,001,032.07	2,416,407.07	2,075,375.82	2,075,375.82	0.00	2,075,375.82	
SPT3	0	1,908,999.38	1,661,499.38	1,434,624.38	1,207,749.38	1,063,374.38	1,063,374.38	0.00	1,063,374.38	
SPT4	0	0	0	0	0	0	0	0.00	-	
TDM Cable	0	0	0	0	0	0	0	0.00	-	
TOTAL Other Assets	0	14,413,497.56	15,473,122.46	13,946,206.08	11,805,448.61	10,870,612.82	11,054,300.73	6,594,016.65	8,243,719.89	
								67%	Total Affiliated Investments	

FEIN Balance Sheets

Account	12/31/2003 Balance	12/31/2004 Balance	12/31/2005 Balance	12/31/2006 Balance	12/31/2007 Balance	12/31/2008 Balance	9/30/2009 Balance	Balance of Securities	Balance in Affiliated Entities	Type of Investment
Investments										
Bear Steams	0	2,178,392.56	0	0	0	0	0	0		
ExchangeBlvd - In Safe	0	0	0	200,000.00	200,000.00	200,000.00	200,000.00	200,000.00		Stock
GSC Cap Corp - In Safe	0	0	499,998.00	499,998.00	499,998.00	499,998.00	499,998.00	499,998.00		Stock
National Financial	0	0	2,307,532.32	1,948,407.47	888,237.91	360,935.00	423,857.50	423,857.50		Stock
TOTAL Investments	0	2,178,392.56	2,807,530.32	2,648,405.47	1,588,235.91	1,060,933.00	1,123,855.50	1,123,855.50		
TOTAL ASSETS	0	21,036,099.58	19,139,743.08	17,314,749.95	14,036,641.74	12,316,412.17	12,311,843.72	7,717,872.18		
								63% Total Securities		
LIABILITIES & EQUITY										
LIABILITIES										
Checks Payable	0	0	-25,000.00	-25,000.00	-25,000.00	-25,000.00	0			
Other Liabilities										
10.25% Notes	0	9,797,000.00	9,993,000.00	10,050,000.00	9,890,000.00	9,890,000.00	9,890,000.00			
5% Notes	0	5,000,000.00	0	0	0	0	0			
6.25% Notes	0	0	5,000,000.00	0	0	0	0			
7% 09 Notes	0	0	0	0	0	110,000.00	110,000.00			
7% Notes	0	0	0	0	4,845,000.00	4,735,000.00	4,735,000.00			
7.5% Notes	0	5,000,000.00	5,000,000.00	5,000,000.00	435,000.00	0	0			
7.5%1 Notes	0	0	0	5,000,000.00	0	0	0			
7.75% Notes	0	0	0	0	4,490,000.00	4,925,000.00	4,925,000.00			
Accrued Interest Payable	0	265,748.30	285,297.08	295,833.34	295,839.00	295,839.00	295,839.00			
DT FIIN	0	0	0	0	43,187.67	43,187.67	43,187.67			
DT MSA & MSCH	0	83,229.00	-107,451.94	331,858.67	0	560,700.00	560,700.00			
Due IASG	0	0	0	37,500.00	0	0	0			
Due to PSCP	0	0	0	0	0	0	0			
Due to TAIN	0	0	0	0	355,733.33	355,733.33	352,977.67			
Pine Street Capital Calls	0	1,800,000.00	1,200,000.00	772,984.91	0	0	0			
TOTAL Other Liabilities	0	21,945,977.30	21,370,845.14	21,488,176.92	20,354,760.00	20,915,460.00	20,912,704.34			
TOTAL LIABILITIES	0	21,945,977.30	21,370,845.14	21,488,176.92	20,354,760.00	20,915,460.00	20,912,704.34			
EQUITY	0	-909,877.72	-2,231,102.06	-4,173,426.97	-6,318,118.26	-8,599,047.83	-8,600,860.62			
TOTAL LIABILITIES & EQUITY	0	21,036,099.58	19,139,743.08	17,314,749.95	14,036,641.74	12,316,412.17	12,311,843.72			

FIIN Balance Sheets

Account	8/31/2003 Balance	12/31/2003 Balance	12/31/2004 Balance	12/31/2005 Balance	12/31/2006 Balance	12/31/2007 Balance	12/31/2008 Balance	9/30/2009 Balance	Balance of Security	Balance in Affiliated Entities	Type of Investment
ASSETS											
Cash and Bank Accounts											
FIIN Contract Accum	0	0	5,412.25	101,240.18	6,807.77	1,693.34	22,995.30	0			
FIIN Escrow	0	114,813.48	0	0	0	0	0	0			
FIIN- Operating	0	68,065.27	562,529.02	193,999.15	277,231.77	138,454.84	343,623.11	185,989.78			
TOTAL Cash and Bank Accounts	0	182,878.75	567,941.27	295,239.33	284,039.54	140,148.18	366,618.41	185,989.78			
Other Assets											
107th Assoc	0	0	0	0	0	0	150,000.00	150,000.00	150,000.00	150,000.00	Note
74 State	0	0	0	0	0	0	0	79,080.42	79,080.42	79,080.42	Note
Accrued Interest	0	401,550.00	492,816.97	529,692.37	362,136.87	820,755.00	1,285,860.83	1,176,527.43	0.00	0.00	
Accrued Monitor Inc.	0	0	0	26,633.08	22,433.28	19,494.38	18,633.08	18,633.08	0.00	0.00	
Alarm Contract Accrual	0	0	10,101.45	44,908.63	44,908.63	44,908.63	44,908.63	44,908.63	0.00	0.00	
Alarm Contracts	0	2,057,343.75	1,796,093.79	1,534,843.83	1,273,593.87	1,012,343.91	734,964.41	734,964.41	0.00	734,964.41	
alseT IP Management LP	0	0	0	0	1,195,259.47	2,268,607.44	2,268,607.44	2,268,607.44	2,268,607.44	2,268,607.44	Note
CCIG	0	0	554,843.00	554,843.00	643,617.88	643,617.88	643,617.88	643,617.88	643,617.88	643,617.88	Note
CMET	0	1,800,000.00	1,800,000.00	1,800,000.00	1,800,000.00	1,800,000.00	1,800,000.00	1,800,000.00	1,800,000.00	0.00	Stock
Cochise ATM Fund	0	1,700,000.00	1,500,365.43	1,500,365.43	1,500,365.43	1,500,365.43	930,903.43	774,903.43	0.00	0.00	
Coventry Resources Loan	0	0	0	85,000.00	1,024,750.00	1,165,802.00	1,165,802.00	1,165,802.00	1,165,802.00	1,165,802.00	Note/Stock
Cruise Charter Ventures	0	0	0	0	0	0	0	8,000.00	8,000.00	8,000.00	Note
Dekania Jr. Income Notes	0	2,000,000.00	2,000,000.00	2,000,000.00	2,000,000.00	2,000,000.00	2,000,000.00	2,000,000.00	2,000,000.00	0.00	Stock
DF MCG 3, LLC	0	0	0	0	0	0	0	25,000.00	25,000.00	25,000.00	Indebtedness
DF McGinn Smith & Company	0	0	0	0	0	0	0	0	0.00	0.00	
DF MSTF	0	0	0	0	0	0	100,000.00	175,000.00	175,000.00	175,000.00	Note
DF TDM Luxury Trust	0	0	0	0	0	0	0	79,000.00	79,000.00	79,000.00	Indebtedness
DF TDMM Sr Trust	0	0	0	0	0	0	0	74,000.00	74,000.00	74,000.00	Indebtedness
Dividends Receivable	0	0	0	0	6,227.90	6,227.90	6,227.90	0	0.00	0.00	
Due Form TDMV 08	0	0	0	0	0	0	0	0	0	0.00	
Due from FEIN	0	0	0	0	73,187.67	43,187.67	28,187.67	36,025.17	36,025.17	36,025.17	Indebtedness
Exchangeblvd.com, Inc.	0	0	0	0	500,000.00	500,000.00	500,000.00	500,000.00	500,000.00	0.00	Note/Stock
ExchBlvd- PPD Royalties	0	0	0	0	0	0	0	0	0	0.00	
ExchBlvd- stock purch	0	0	0	0	0	60,000.00	60,000.00	60,000.00	60,000.00	0.00	Stock
F4W, Inc.	0	0	0	0	931,000.00	1,081,000.00	1,081,000.00	1,081,000.00	1,081,000.00	0.00	Indebtedness
Maracay Homes	0	5,000,000.00	5,000,000.00	5,000,000.00	0	0	0	0	0	0.00	
MS Pref. Stock	0	0	0	0	303,800.00	203,800.00	240,800.00	240,800.00	240,800.00	240,800.00	Stock
Org costs	0	47,500.00	37,500.00	27,500.00	17,500.00	7,500.00	0	0	0	0.00	
Other Investments	0	1,800,000.00	1,890,000.00	1,577,983.78	40,000.00	350,000.00	375,000.00	525,000.00	525,000.00	525,000.00	Note
Palisades - New Financing	0	0	0	0	400,000.00	400,000.00	400,000.00	400,000.00	400,000.00	0.00	Note
Palisades Picture	0	290,847.96	1,126,701.28	1,532,834.28	1,289,447.16	1,368,197.16	1,368,197.16	1,368,197.16	1,368,197.16	0.00	Indebtedness
Sandler Jr. Income Notes-Incap	0	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00	0.00	Indebtedness
Smashing Holdings, LLC	0	0	0	250,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	0.00	Note
Tartan Video	0	0	0	0	1,087,180.00	0	0	0	0	0.00	
TDM Cable Financing, LLC	0	0	0	0	835,911.10	0	0	40,000.00	40,000.00	40,000.00	Note
TOTAL Other Assets	0	18,097,241.71	19,208,421.92	19,464,804.40	18,661,319.27	18,595,807.40	18,502,710.43	18,769,067.05	18,019,130.07	6,244,897	
										33%	Total Affiliated Investments
Investments											
BSteams	0	0	41.98	0	0	0	0	0	0		
NFS	0	0	0	42.08	0	0	0	0	0		
TOTAL Investments	0	0	41.98	42.08	0	0	0	0	0		
TOTAL ASSETS	0	18,280,120.46	19,776,405.17	19,760,085.81	18,945,358.81	18,735,955.58	18,869,328.84	18,955,056.83	18,019,130.07		
									95%	85%	Total Securities

RMR EXHIBIT 209

FIIN Balance Sheets

Account	8/31/2003 Balance	12/31/2003 Balance	12/31/2004 Balance	12/31/2005 Balance	12/31/2006 Balance	12/31/2007 Balance	12/31/2008 Balance	9/30/2009 Balance	Balance of Security	Balance in Affiliated Entities	Type of Investment
LIABILITIES & EQUITY											
LIABILITIES											
Other Liabilities											
Acc'd Int. Pay	0	279,601.37	334,754.37	329,549.04	314,664.08	181,500.00	0	0			
DT MSA & MSCH	0	116,320.00	39,581.25	15,261.40	98,594.68	36,094.68	373,269.00	373,269.00			
DT Other Trust	0	0	0	0	0	785,000.00	600,000.00	600,000.00			
DT Others	0	0	0	0	0	0	0	-66,765.51			
Note Payable - 7.00%	0	0	0	0	4,100,000.00	4,805,000.00	4,805,000.00	4,805,000.00			
Note Payable 7% 08	0	0	0	0	0	65,000.00	170,000.00	170,000.00			
Note Payable- 10.25%	0	10,408,000.00	11,275,000.00	11,275,000.00	11,250,000.00	9,475,000.00	9,475,000.00	9,475,000.00			
Note Payable- 5%	0	5,000,000.00	1,175,000.00	0	0	0	0	0			
Note Payable- 6%	0	0	3,245,580.00	2,032,000.00	0	0	0	0			
Note Payable- 7.5%	0	2,822,000.00	3,725,000.00	3,725,000.00	3,575,000.00	3,725,000.00	3,725,000.00	3,725,000.00			
Note Payable- 7.75%	0	0	0	2,813,000.00	35,000.00	0	0	0			
TOTAL Other Liabilities	0	18,825,921.37	19,794,915.62	20,189,810.44	19,373,258.76	19,072,594.68	19,148,269.00	19,081,483.49			
TOTAL LIABILITIES	0	18,625,921.37	19,794,915.62	20,189,810.44	19,373,258.76	19,072,594.68	19,148,269.00	19,081,483.49			
EQUITY	0	-345,800.91	-18,510.45	-429,724.83	-427,899.95	-336,639.10	-278,940.16	-126,426.66			
TOTAL LIABILITIES & EQUITY	0	18,280,120.46	19,776,405.17	19,760,085.61	18,945,358.81	18,735,955.58	18,869,328.84	18,955,056.83			

TAIN Balance Sheets

Account	11/23/2004 Balance	12/31/2004 Balance	12/31/2005 Balance	12/31/2006 Balance	12/31/2007 Balance	12/31/2008 Balance	9/30/2009 Balance	Balance of Security	Balance in Affiliated Entities	Type of Investment
ASSETS										
Cash and Bank Accounts										
Eurodollar Investment	0	0	0	0	484,133.52	0	0	0.00		
TAIN Accum	0	0	60,591.48	15,751.00	381.93	7,200.27	105.68	0.00		
TAIN Escrow	0	5996998.02	3,006,206.06	87.35	0	0.00	0			
TAIN Operating	0	1,871,129.98	1,032,003.82	647,848.33	-7,023.20	261,059.84	102,175.67	0.00		
TOTAL Cash and Bank Accounts	0	7,868,128.00	4,098,801.36	663,686.68	477,492.25	268,260.11	102,281.35	0.00		
Other Assets										
107TH ASSOC	0	0	0	0	1,200,000.00	1,200,000.00	1,200,000.00	1,200,000.00	1,200,000.00	Note
Accrued Int. Rec	0	0	101,167.34	423,654.97	1,068,489.24	1,759,978.28	1,602,732.58	0.00	-	
alseT Management	0	0	2,585,050.00	2,585,050.00	2,585,050.00	2,585,050.00	2,585,050.00	1,735,050.00	2,585,050.00	Note/Indebtedness
Aquatic Dev Group #2	0	0	0	1,000,000.00	1,316,597.36	897,965.98	897,965.98	897,965.98	-	Note
Aquatic Development Loan	0	0	0	650,000.00	0	0	-	0.00	-	
Contract Income Receivable	0	0	8,081.04	15,483.93	5,171.47	5,171.47	5,171.47	0.00	-	
Coventry Note	0	0	1,580,000.00	1,680,000.00	1,802,043.33	1,802,043.33	1,802,043.33	1,802,043.33	1,802,043.33	Note/Stock
Cruise Charter Ventures	0	0	0	0	0	0	-	0.00	-	
CVN	0	0	0	0	0	0	-	0.00	-	
DF McGinn Smith & Co.	0	0	0	0	0	0	100,000.00	100,000.00	100,000.00	Indebtedness
DF MSCH	0	0	0	0	0	0	100,000.00	100,000.00	100,000.00	Note
DF MSTF	0	0	0	0	0	125,000.00	225,000.00	225,000.00	225,000.00	Note
dF WorldWide Auction Solutions	0	0	0	0	0	25,000.00	25,000.00	25,000.00	-	Note
DF-TDM VerTr.07	0	0	0	0	0	0	150,000.00	150,000.00	150,000.00	Note
Dividend Receivable	0	0	16,800.00	0	0	0	-	0.00	-	
Due from CCCC for SPT4	0	0	21,918.34	21,918.34	21,918.34	21,918.34	21,918.34	21,918.34	21,918.34	Indebtedness
Due From FIIN	0	0	0	0	0	0	-	0.00	-	
Due from spt4	0	0	0	0	0	0	-	0.00	-	
Exch Blvd Stock	0	0	0	0	80,000.00	80,000.00	80,000.00	80,000.00	-	Stock
ExchangeBlvd.com Loan	0	0	0	500,000.00	500,000.00	500,000.00	500,000.00	500,000.00	-	Note/Stock
ExchBlvd- PPD Royalties	0	0	0	0	200,000.00	200,000.00	200,000.00	115,000.00	-	Stock
FEIN LOAN	0	0	0	0	355,733.33	355,733.33	355,733.33	355,733.33	355,733.33	Note
HSK Funding	0	0	600,000.00	2,000,000.00	2,000,000.00	2,000,000.00	2,000,000.00	0.00	-	
MGS Acceptance Corp	0	0	0	0	0	0	-	0.00	-	
MGS Preferred Stock	0	0	55,000.00	55,000.00	255,000.00	255,000.00	255,000.00	255,000.00	255,000.00	Stock
MS Holdings LLC	0	0	150,000.00	150,000.00	202,000.00	64,841.00	64,841.00	64,841.00	64,841.00	Note
Pacific	0	0	0	0	10,000.00	40,000.00	40,000.00	40,000.00	40,000.00	Note
Palisades	0	830,000.00	3,031,496.93	2,493,757.93	2,493,757.93	2,493,757.93	2,493,757.93	2,493,757.93	-	Note
Palisades - New Financing	0	0	0	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	-	Note
PSCP	0	5,000,000.00	4,786,188.00	4,722,433.00	3,103,983.18	2,689,714.83	2,386,564.83	2,386,564.83	2,386,564.83	Note
SAI Jr	0	0	0	0	5,200.00	5,200.00	6,136.00	6,136.00	6,136.00	Note
Smashing Holdings	0	0	250,000.00	250,000.00	250,000.00	0	-	0.00	-	
SPT4	0	1,953,541.00	1,730,036.89	1,487,174.53	1,236,276.46	1,003,091.96	1,003,091.96	0.00	1,003,091.98	
State Street Hospitality	0	0	1,400,000.00	1,400,000.00	1,400,000.00	1,400,000.00	1,400,000.00	1,400,000.00	-	Note
Vigilant	0	0	210,000.00	235,000.00	235,000.00	235,000.00	235,000.00	235,000.00	-	Note
TOTAL Other Assets	0	7,783,541.00	18,525,738.54	19,869,472.70	20,626,200.64	20,044,466.45	20,035,006.75	14,489,010.74	10,295,378.79	
									47%	Total Affiliated Investments

RMR EXHIBIT 210

TAIN Balance Sheets

Account	11/23/2004 Balance	12/31/2004 Balance	12/31/2005 Balance	12/31/2006 Balance	12/31/2007 Balance	12/31/2008 Balance	9/30/2009 Balance	Balance of Security	Balance In Affiliated Entities	Type of Investment
Investments										
Bear Steams	0	5,387,000.00	0	0	0	0	0	0.00		
ExchangeBlvd.com -In Safe	0	0	0	200,000.00	200,000.00	200,000.00	200,000.00	200,000.00		Stock
GSC Cap Corp - In Safe	0	0	1,499,998.00	1,499,998.00	1,499,998.00	1,499,998.00	1,499,998.00	1,499,998.00		Stock
National Financial Services	0	0	7,414,861.33	5,885,562.05	2,018,455.31	287,941.23	301,266.23	301,266.23		Stock
TOTAL Investments	0	5,387,000.00	8,914,859.33	7,585,560.05	3,718,453.31	1,987,939.23	2,001,264.23	2,001,264.23		
								0.00		
TOTAL ASSETS	0	21,038,669.00	29,539,399.23	28,218,719.43	24,822,146.20	22,300,685.79	22,138,552.33	16,490,274.97		
								74.5%	Total Securities	
LIABILITIES & EQUITY										
LIABILITIES										
Other Liabilities										
Accrued Int. Payable	0	81,533.00	435,287.77	438,223.03	350,657.08	46,781.25	46,781.25			
DT MSA & MSCH	0	83,810.00	33,649.20	173,383.33	0	431,522.00	431,522.00			
PSCP Cap Call	0	4,500,000.00	3,000,000.00	1,932,460.40	1,118,965.57	870,072.00	870,072.00			
Tain 10.25%	0	9,392,500.00	14,996,000.00	14,954,000.00	14,227,000.00	14,227,000.00	14,227,000.00			
Tain 5.75%	0	1,615,000.00	3,895,000.00	0	0	0	0			
Tain 7.00%	0	0	0	5,980,000.00	200,000.00	0	0			
Tain 7.00% 08	0	0	0	0	7,380,000.00	7,485,000.00	7,485,000.00			
Tain 7.75%	0	5,782,980.00	7,500,000.00	7,500,000.00	84,000.00	0	0			
TAIN 7.75% 09	0	0	0	0	7,481,000.00	7,596,000.00	7,596,000.00			
Tain 7.75%6	0	0.00	2,900,000.00	455,000.00			0.00			
TOTAL Other Liabilities	0	21,455,823.00	32,759,936.97	31,433,066.76	30,841,622.65	30,656,375.25	30,656,375.25			
TOTAL LIABILITIES	0	21,455,823.00	32,759,936.97	31,433,066.76	30,841,622.65	30,656,375.25	30,656,375.25			
EQUITY	0	-417,154.00	-3,220,537.74	-3,214,347.33	-6,019,476.45	-8,355,709.46	-8,517,822.92			
TOTAL LIABILITIES & EQUITY	0	21,038,669.00	29,539,399.23	28,218,719.43	24,822,146.20	22,300,665.79	22,138,552.33			

M&S Partners has over the last eight years securitized in excess of $400 million of monitoring contracts, and has become a leading provider of capital to the industry. Through this involvement M&S Partners has built a vertically integrated corporate structure that is capable of handling all aspects of the transaction including due diligence, billing, collection, monitoring, accounting, and sales.

M&S Partners is a financial intermediary, advancing capital to alarm industry participants who consist mainly of dealers and monitoring companies. The security alarm dealer generates revenue from the sale, installation, and servicing of security hardware devices, and the electronic 24-hour surveillance (monitoring) of the installed equipment. The monitoring agreement or contract that evolves between the consumer and monitoring company is acquired by M&S Partners. While M&S Partners is advancing capital by purchasing or lending against the contracts, it is simultaneously structuring a note or bond investment reflective of the cash flow characteristics of the underlying contracts, subsequently, M&S Partners prepares to sell the notes to effectively match the capital requirement with the note offering. The spread or difference between the cost of capital, (interest paid to note buyer), and the purchase or financing cost of the contracts results in the gross profit to M&S Partners. When translating the purchase price of a contract into an effective rate of interest or cost of capital to the dealer, rates in the 21.5% range are commonplace. Our cost of capital or the rate of interest that must be paid to the noteholder approaches 10.5%, providing a gross spread of 8.5% and a transaction fee to M&S Partners & Co., Inc. of 2.5%.

The fragmented nature of the industry combined with high growth rates and subsequent capital requirements provide an environment requiring a financial intermediary's' involvement. With a vertically integrated and dedicated service team M&S Partners is responsive to the financial needs, making capital available in a matter of days or weeks.

SECURITIZATION OF CONTRACTS

The securitization process has three steps and begins at the time a dealer is introduced to M&S Partners for the potential financing services provided by the company.

STEP I

M&S Partners will initiate "due diligence" on the dealer, reviewing among other things, (i) personal (if privately owned) and corporate tax returns,

(ii) that the corporation is in good standing in the jurisdiction where domiciled, (iii) using up-to-date and UL (United Laboratories) approved security devices, (iv) free of liens and other encumbrances.

STEP II

The process continues as "due diligence" focuses on the individual contracts where beacon scores are obtained for each contract, a review of contract language is conducted, and a call is made to each contract whereby it is determined that the consumer:

1. Understands they have entered into a binding agreement,
2. That the system they purchased is functional and that they know how to use it.
3. That a live signal can be verified to the system.

STEP III

At this point a decision is made whether to purchase the contract, and if so, a UCC-1 is promptly filed to perfect the ownership rights, and payment is subsequently made to the dealer. The singular contract is aggregated with others and sold to a trust portfolio where the investor notes are structured, and sold.

M&S Partners has built a vertically integrated platform, able to handle each phase of the process including:

1. Dealer due diligence
2. Credit profiling of the customer
3. Service verification
4. Account billing
5. Account collections

In addition, M&S Partners is a significant shareholder in King Central, and has secured the monitoring services for any account acquired by the company, regardless of whether that account has originated from the King Central network.

As a result of the extensive "due diligence" exercised by the company, and additional safety features built into the transaction, M&S Partners has never defaulted on a payment of scheduled principal or interest to it's investors. In addition to the aforementioned "due diligence", the company requires that:

1. A dealer that is financed must replace non-performing contracts.
2. some portion of the purchase price is withheld from the dealer.

3. A reserve account is established for each portfolio.
4. Billing may be done by the dealer or the company, however all receipts are directed to a segregated lock box for the benefit of the specific trust.
5. Excess collections are paid to dealers only after all investors receive principal and interest.
6. Reversion rights of the contracts back to the dealers after investors have been fully paid are contingent and in essence make a back-end load to the dealer. There is considerable value to the remaining cash flow stream, after investor notes have been retired and is typically returned to the dealer after full satisfaction of the notes.

ABOUT THE MARKETS

The markets have been separated into four distinct groups as defined by a needs analysis, however, they maintain commonality in required monitoring and servicing. The segments are as follows:

RESIDENTIAL

In the eighties the industry changed from a hardware business to a multi-year monitoring payment stream based on surveillance creating monthly monitoring fees. Contracts have been standardized and take the form of a service contract outlining basic tenets of responsibilities.

The resulting monitoring contract has been viewed as an attractive and financable asset because:

- Geographic diversification is easily achieved.
- Monthly fees are small in relation to the overall household budget, averaging about $30 per month.
- Insurance reimbursement can reduce net costs by up to 40%.
- Typical cost/benefit analysis provides favorable results implying a low cost versus the value of protected assets.
- Customer is driven by service and convenience not prices.
- Typical beacon scores are in the low to mid 600's.
- Average life of contract 8-10 years
- Low credit concentration risk per contract do to overall small dollar size of contracts averaging less than $1,500.

The typical contract takes the form of an executory contract, with monitoring fees averaging $30 per month, and the typical term of 24-36 months. Contracts contain an automatic renewal clause, which functionally causes contracts to average 8-10 years.

COMMERCIAL

The services provided a commercial user has historically been very different from that provided to residential users. Advances in technology, bundling of services, and lower costs have resulted in systems where functionality and performance are more closely aligned. Systems monitor security, fire sprinkler systems, HVAC requirements, as well as employee performance. The technological advancements which have been identified are expected to have a significant impact adding hundreds of billions of dollars as:

1. GPS is applied to the transportation and fleet industries and asset tracking.
2. Biometrics is utilized by retail organizations, banks and other financial intermediaries.
3. Wireless and web based applications are expanding dramatically allowing retrieval of greater amounts of data and higher levels of interactivity to exist.

MULTI-FAMILY

Apartment, retirement and health related communities present huge opportunities as less than 5% of the overall market is penetrated. Legal exposure and desire by occupants for a higher level of amenities has driven this industry to the market. Demographics highlighted by an older population, living alone with essential health needs have also driven this sector to the point that it is usual for new construction in this segment to include systems. To the extent that well capitalized REIT's dominate this segment and view this as an important tenant amenity and they are willing to spend money on new construction systems and to retrofit existing properties. Unique to this industry is ease of billing and payment, as payments are collected by the property manager, guaranteed by the property manager, and forwarded in bulk to the monitoring company or other agent.

HEALTHCARE

Home healthcare has been a major focus of the security industry and one of the fastest growing segments. A tremendous demand has been created by the early release of patients from healthcare facilities, the aging population and complicated pharmacological programs many people must adhere to. Communication systems combined with diagnostic system advances allow for monitoring of multiple tests off-premise. Blood pressure, glucose, even whether prescriptions are being adhered to can be monitored. Sales in this market can take place directly, or through the hospital or health care provider who in turn offer it to their patients.

Significant web based and wireless applications are being introduced that will expand diagnostic capability as well as the amount and locations of data that can be collected. Certain applications are insurance or Medicare reimbursable.

RECURRING MONTHLY REVENUE VALUATIONS

The assumed weighted average life of the typical RMR by capital market participants is 7-10 years, similar to the historical expected average life. Lehman Brothers in a security industry report witness acquisitions exceeding 60 times RMR on transactions between 1997-1999. Multiples have declined from the peak however are solidly averaging in the mid 40's. Large aggregators are willing to pay increasing multiples as the size of the acquisition increases, with larger portfolios approaching the low to mid 50's.

An important event unfolded in 1999 as installation prices stopped declining and RMR continued to increase. Attrition rates also increased as "zero down" installers forced industry average rates lower. Customers with little investment increased industry attrition rates having little regard for a contractual obligation that required no initial investment. As the long-term viability, and financial where-with-all of "zero down" installers has come into question, a majority of the industry has moved away from this policy. McGinn Smith has avoided financing zero down installers, believing from the onset that reliability and predictability of payment streams would be compromised without an initial financial commitment. Subsequently, system options, warranties, and other value-added services have caused monthly fees to increase with many now moving into the low to mid thirties. Historical attrition rates have returned, as customers are required to invest "upfront" in systems. This has made the overall economics the best in a decade and provided a solid floor under current valuations.

The company has consistently aggregated portfolios at acquisition costs in the mid 20's, or a significant discount to multiples in the secondary market. Our historical business and future expectations rely on the securitization of the RMR cash flow streams and amortizing the acquisition costs over a period of time, with a guaranteed rate paid to investors. We have established or aggregated these portfolios in a "single purpose" trust format. A trust is formed to acquire the contracts, and a single or multi-tranche note is issued by the trust promising to return principal at some future time and paying a high relative rate of interest to the noteholder.

We have built several safeguards or guarantees into the offering to enhance investor protection, which include:

1. Default replacement guarantees by the dealers from who contracts are purchased.
2. Cash reserve funds established.
3. Secured and recorded interest in the contracts and revenue stream until the amortized balance has been repaid in full plus interest.

McGinn Smith Securities Sold To Rabinovich's Family Members

Transaction	Date	Investment Total	Investor
Pacific Trust 02 (IRA)	7/11/2003	$24,000	Father (IRA)
Coventry Carelink	8/26/2003	$50,000	Father
Coventry Carelink	9/1/2003	$27,500	Father-in-law
Coventry Carelink (IRA)	1/6/2004	$20,000	Father (IRA)
First Excelsior Income Notes Sr.	2/12/2004	$2,000,000	Parents (joint acct)
First Excelsior Income Notes Jr.	5/5/2004	$50,000	Father-in-law
First Excelsior Income Notes Jr.	2/16/2005	$75,000	Father
First Excelsior Income Notes Jr.	2/18/2005	$50,000	Father-in-law
Third Albany Income Notes Sr.	7/7/2005	$500,000	Parents (joint acct)
TDM Cable Trust 06 (Stan IRA)	11/30/2006	$20,000	Father (IRA)
TDM Cable Trust 06 (Eva IRA)	12/1/2006	$15,000	Mother (IRA)
Coventry Bridge Loan	2/26/2007	$200,000	Father
First Independent Income Notes Jr.	3/10/2007	$200,000	Father
Firstline Trust 07	5/29/2007	$200,000	Father
TDM Luxury Cruise Trust	7/26/2007	$200,000	Father
CMS Financial	10/9/2007	$200,000	Father
TDM Verifier Trust 08	3/3/2008	$100,000	Father-in-law (IRA)
Fortress Trust 08	9/29/2008	$100,000	Father-in-law (IRA)
TDM Verifier Trust 09	12/31/2008	$25,000	Father-in-law (IRA)
Charter Cruise Ventures 09	8/24/2009	$100,000	Father
TDM Verifier Trust 11	9/10/2009	$25,000	Self
McGinn Smith Firstline Funding LLC	4/5/2010	$300,000	Father
Total:		**$4,481,500**	

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McGinn Smith Securities Sold To Mayer's Family Members

Transaction	Date	Investment Total	Investor
Coventry Carelink	5/8/2006	$25,000	R. Macfarlan IRA (Father-in-law)
First Advisory Income Notes (7.00%)	5/8/2006 7/31/2006	$50,000	R. Macfarlan IRA (Father-in-law)
Pine Street Capital Partners	6/27/2006	$50,000	R. Macfarlan IRA (Father-in-law)
TDM Cable Trust 06	12/26/2006	$25,000	R. Macfarlan IRA (Father-in-law)
First Excelsior Income Notes (10.25%)	--	$50,000	R. Macfarlan Joint Acct. (Father-in-law)
CMS Financial Bridge CMS Financial	2/26/2007 10/8/2007	$25,000	R. Macfarlan IRA (Father-in-law)
Total:		**$225,000**	

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McGinn Smith Securities Sold To
Rogers' Family Members

Transaction	Date	Investment Total	Investor
Third Albany Income Notes (5.75% due 2006)	1/21/2005	$75,000	R. Rogers IRA (Father)
Third Albany Income Notes (5.75% due 2006)	1/21/2005	$25,000	M. Rogers IRA (Mother)
Third Albany Income Notes (10.25% due 2009)	9/27/2005	$15,000	S & H Rogers (Brother/Sister-in-law)
Third Albany Income Notes (7.75% due 2007)	9/27/2005	$50,000	M & R Rogers (Mother and Father)
Pine Street Capital Partners	3/4/2006	$50,000	S & H Rogers (Brother/Sister-in-law)
Total:		**$215,000**	

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SECURITY MONITORING CONTRACT FINANCING

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Security Alarm Receivables Overview

Beginning in the late 1980's, the security alarm industry shifted from a "hardware" business to a "recurring revenue stream" business. Residential alarm systems hardware was formerly sold at a profit until competition within the industry created the standard of low customer installation charges. Systems that had cost $2,500 to $4,000 could now be purchased and installed for residential customers for as little as $199, with a multi-year monitoring contract for the 24 hour surveillance of the installed system.

Although this business model is very successful in generating new clientele, it creates a cash flow problem for the alarm dealer. With an estimated $800 installation cost and less than $200 typically received from the consumer upon installation, the independent dealers realize losses upon initial installation. They must sell their receivables to generate working capital and realize a modest profit.

The $16 billion security alarm industry is highly fragmented. It takes almost 10,000 dealers to account for 75% of the total new residential revenue. These small independent dealers require financing, and traditional lending sources are typically not inclined to help small businesses finance a portion of their receivables. The industry needed specialized financing and it evolved into what are known today as contract aggregators.

The alarm industry to the contract aggregators is simply a cash flow analysis. The dependable monthly recurring revenue and low marginal monthly recurring costs, per customer, makes financing the alarm business similar to buying a financial asset, such as a bond or preferred stock.

The monitoring contracts are attractive financing assets because:

- **The contracts cover a wide geographic base**
- **The monthly monitoring fee is a minor portion of the household or business budget**
- **The value of the assets being protected far exceed the monthly cost of monitoring**
- **The total amount financed per contract is only approximately $1,018 and thus the per unit risk is minimal**
- **Lower prices are usually not sufficient incentive for customers to change their monitoring service**
- **Customers are home owners which provides for a stable asset base**
- **Originated contracts are approved and financed with credit scores utilizing the Fair Isaac Credit Scoring System provided by all of the major credit bureaus with approvals financed with average scores in the mid 600's and a minimum of 575**
- **Monitoring contracts have an average life of 8 to 10 years (2 - 3 year term with automatic renewal provisions)**
- **Only 40% of the estimated asset value is being leveraged, which is dependant on the multiple paid for the contract.**

Consumer's Contract

Monitoring contracts are service contracts, not equipment financing or leases. The contracts are essentially standardized, except for the equipment and installation fees and the schedule of monthly payments. The standardization of the contract language has been developed by lawyers specializing in the security industry and has been legally tested for more than a decade. Consumers tend to pay their alarm-monitoring bill the same way they pay their household utility bills.

The legal relationship with the consumer is in the form of two written contracts; (I) a Security Alarm Equipment Purchase and Installation Agreement, and (II) a Security Alarm Monitoring Agreement. The Purchase Agreement establishes the purchase price for the installed system. Due to the fact that the customer is receiving the system for less than the actual cost of the equipment and installation (average dealer cost of $800 (residential) including hardware, labor installation, marketing, overhead, and other costs), the installing dealer requires that the customer sign a monitoring contract for a specific period of time with monthly payments averaging $30. The industry typically offers 24 to 36 month term agreements with automatic one-year or like-term renewal provisions. Due to these automatic renewal provisions, the average life of these contracts is between 8 to 10 years. With monthly payments of $29.95, the average total revenue from one contract is expected to be approximately $2, 516.

Recurring Monthly Revenue

RMR Overview: Recurring Monthly Revenue (RMR) refers to the dollar amount that a consumer pays on a monthly basis to the monitoring station as stated in their contract. The retail industry generates revenue from (I) the sale, installation and servicing of security hardware devices and (II) the electronic 24 hour surveillance (monitoring) of the installed equipment. The monthly monitoring service fee varies from $19.00 to $35.00, depending on the financial terms of the initial hardware and installation. The more a consumer pays initially for the hardware and installation, the lower the monthly monitoring fee.

The originating dealer has the option of (I) holding the monitoring agreement and paying a third party monitoring company to perform the monitoring service for him and thus realizing the difference between the monthly monitoring cost and the monthly monitoring revenue, or (II) selling the agreement to a third party who pays the dealer, usually a lump sum, which represents a multiple of the future revenue.

Independent alarm dealers typically sell their recurring monthly revenue generated from monitoring contracts to financial entities or larger security company competitors (aggregators) for multiples ranging from 24 to 35 times the value of the monthly monitoring rate, and the aggregators in turn resell the contracts for 40 to 50 times RMR. It is not uncommon to see a single monitoring contract's value elevate from 25 times recurring revenue, on a stand-alone basis, to over 45 times RMR because of the pooling and servicing attributes provided by contract aggregators. Aggregators enjoy economies of scale while independent alarm dealers, acting alone, cannot generate enough volume to increase the value of their monitoring contracts. There have been a large number of account buyers in the marketplace for many years, and the number is growing.

McGinn, Smith & Co., Inc.

McGinn, Smith & Co., Inc. has provided financing to the security alarm industry for eight years and has placed over four hundred million dollars in notes with various institutional and retail investors. McGinn Smith & Co. performs four functions in the security alarm industry:

(I) **Analysis:** The preparation of extensive "Due Diligence" of the security alarm contracts. We can provide a booklet that describes our operation in detail; it entails dealership qualification, customer satisfaction reporting, credit scoring, maintenance of books and records, UCC1 filings to secure collateral, lockbox installments, collections procedures, billing and servicing, and sample legal documents. Please contact us for receipt of this material.

(II) **Aggregation:** The purchasing of individual contracts to form a pool of contracts. This enables arbitrage trading as an individual security alarm contract on a stand-alone basis trades at a lower multiple of RMR. That same contract trades at a premium when it becomes part of a larger pool as operating efficiencies and other pooling characteristics add value to the contract.

(III) **Securitization:** The formation of trusts that issue certificates, which yield monthly interest. The trusts use the security alarm contracts for collateral. Our eight years of experience in constructing these trusts has displayed the dependability of the cash flow stream generated by the security alarm contract, as well as other safety features we utilize to ensure our projections are met. Our trust agreement is constructed by our in-house financing and legal team, and is sold by our registered brokers who are readily available to provide further detail. Please contact us for receipt of our trust agreement.

(IV) **Placement:** The sourcing of fixed-income institutional and retail investors. We transact our Trust business through private placements offered to accredited investors under Regulation D of the Securities Act of 1933.

Trust Configuration

The majority of McGinn, Smith Trust offerings are comprised of Senior and Junior notes. These notes contain many similar characteristics:

- Funded Debt Service Reserve
- Minimum of 1,000 Obligors per Portfolio
- Maximum credit concentration of $40.00 per month
- Substantial Geographic Distribution
- Lock Box Agent Payment Processing
- Short Duration / Average Maturity

These notes also differ in substantial ways that make them uniquely suitable investments for institutional and retail investors.

Senior Notes

Our institutional clients generally prefer the Senior Notes for three reasons:

- First rights to cash flow and assets
- Monthly amortization of principal and interest
- Fixed term.

The Senior Notes also possess the following characteristics:

- Cash flow coverage ratio of 1.35 to 1.0 or better
- Attractive pricing: 450 basis points over comparable U.S. Treasuries
- Minimum Purchase of $100,000, Increments of $50,000

Junior Notes

The Junior Notes have a subordinate position, with a higher return and two primary different characteristics:

- Second in line for cash flow
- Pays Interest only while the Senior position is open.

The Junior Notes possess these unique characteristics:

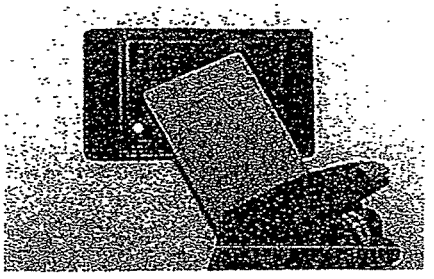
- Cash flow coverage ratio of 1.33 to 1.0 or better
- Attractive pricing: 11-12%
- Minimum purchase of $10,000, increments of $1,000
- After the Senior position is retired, the Junior position receives principal and interest payments until fully amortized.

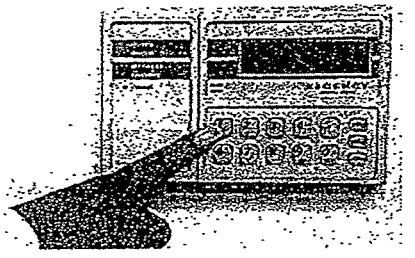
Security Participation Trust Format

The Security Participation Trust will pay the highest level of interest to the investor. It will pay interest only for the term of the Note, and at maturity, a return of principal and a participation payment. The end result is the customer would average a projected 13-14% per year.

This Trust uses the excess monthly cash flow to purchase additional Security Alarm Contracts, effectively resembling a dividend reinvestment program. The Trust will start with 1000 security alarm contracts providing the monthly recurring revenue and after 36 months, when the trust sells its contracts on the open market, it will have accumulated an additional 200-300 contracts. The additional assets the Trust accumulates provide the potential for increased earnings at maturity when the portfolio is liquidated.

SECURITY PARTICIPATION TRUST





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SECURITY PARTICIPATION TRUST

The Security Participation Trust ("The Trust") is intended to assemble and manage portfolios of assets which will provide substantial cash flow and equity buildup. The portfolios will consist of both new and seasoned home security monitoring contracts that provide monthly payment rights in exchange for electronic security monitoring services for security alarm systems in residential homes.

The Trust intends to collect the monthly monitoring fee, typically $30.00, pay the costs of billing and monitoring provided by a central station, and pay monthly interest to investors at the annual rate of 11%.

The Trust intends to use the excess monthly cash flow to purchase additional monitoring contracts that will be added to the portfolio.

The Trust plans to sell all of its assets after 36 months and return their original investment to Certificateholders at that time. Excess net proceeds above the original investment will also be distributed at the end of 36 months, with 75% of the net proceeds going to Certificateholders.

The Trustee of the Fund believes that the number of contracts added to the portfolio as a result of monthly purchases, minus normal attrition, will result in the assets of The Trust realizing substantial growth. The Trustee also believes that the bulk sale of seasoned contracts has the potential to sell at a higher price than they were acquired for.

The Trustee believes that the management of the fund will have the potential of providing the Certificateholder a gain, that when combined with the annual interest payments of 11% will result in an overall annual return of 14%-15%.

SECURITY MONITORING CONTRACT FINANCING

The electronic alarm industry has grown into a multi-billion dollar annual business. In the United States today, a burglary occurs every 13.5 seconds and a residential fire every 74 seconds. Due to concern for their personal safety and a desire to protect their assets, homeowners are installing security systems at an annual growth rate of approximately 15%. Over 75% of the industry's revenues are attributed to monitoring services. Alarm systems sold to homeowners and businesses require 24 hour monitoring in order to afford complete protection.

Prior to 1996, most property owners would be expected to invest from $1000 to $4000 for security system purchase and installation. As the industry pursued a broader market for their services and with the advances in technology, pricing for the systems declined dramatically, with the average cost today approximating $500. Industry leaders often offer promotions at prices less than $100. The industry turned to requiring the homeowner to execute a non-cancelable, enforceable monitoring contract. The Monitoring Contract obligates the property owner to 36-60 monthly payments of approximately $25-$30. Thus, cost recovery and profits are earned over the life of the contract instead of at the time of sale. For the local and regional dealer this placed a difficult financial burden on his business. Without substantial working capital in his business, the dealer did not have the means to pay his equipment vendors, pay for the installation or pay his salesmen. Thus, the dealers sought long term financing to provide for their capital needs. By assigning the cash flow stream generated by the monitoring contract, a lender has both collateral and a source of repayment for his loan.

THE ALARM COMPANIES

Each Alarm Company who provides security monitoring contracts undergoes a thorough due diligence review. The Alarm Company's contract is examined verifying that it meets the required term, recurring monthly payment and automatic renewal provisions. The Alarm Company must provide copies of its incorporation, good standing, alarm licenses, and insurance coverage. This coverage must meet the minimum $1,000,000 general liability requirement. In addition, each Alarm Company is searched for any outstanding judgments, liens or other public filings. Previous years' tax returns and financial statements are required. Guarantees may be required of officers of a corporation where ownership is more than 10%.

THE OBLIGORS

Over 95% of all obligors in the Security Monitoring Contract Financing Program are homeowners. Typically, these consumers are desirous of protecting both their personal safety and property. Their creditworthiness is determined by traditional consumer credit reviews, including Beacon scoring or other similar credit bureau ratings.

Once the property owner has made the investment for the system purchase and installation, the monthly (or quarterly) monitoring cost is nominal. Additionally, most property and casualty insurance policies offer premium discounts of 5%-20% to those homeowners with installed security systems.

THE PORTFOLIO

Each portfolio of Security Monitoring Contracts has approximately 1000 obligors. Geographic diversification is striven for in each portfolio.

A sample of at least 50% of each portfolio is contacted via telephone to verify the existence of an installed system and existing monitoring contract. Effort is made to contact each obligor via telephone to determine their satisfaction with the systems and their awareness of their contractual obligation to pay for monitoring.

BILLING MECHANICS

Billing is provided in a variety of ways. In some instances the alarm company continues to bill the accounts; in other situations the central station bills the account or a billing company is used. In each case, return envelopes are provided which direct payments to a secured lock box agent, thereby avoiding any commingling of funds.

Prior to the purchase of Contracts by the Trust Fund, the Trust Fund will open a lock box at a U. S. Postal Service General Mail Facility, which will serve as a receptacle for the receipt of payments from contract subscribers. During each business day the contents of the lock box will be picked up, all payments will be sorted and subsequently deposited, on a daily basis, into an account established by and in the name of the Trust Fund (the "Portfolio Depository Account") at Charter One Bank, FSB. The Security Alarm Dealers will have no right, title or interest in, or any right to withdraw any amounts held in the Portfolio Depository Account.

COLLATERAL

All monitoring contracts are physically held by the portfolio financial manager for the benefit of the buyers of the cash flow stream. In addition, UCC-1s are filed in the appropriate jurisdictions to perfect a security interest in the monitoring contracts and to create a lien on the cash flow stream of the monitoring contracts. All central monitoring stations are UL approved and must furnish proof of licensing and insurance coverage annually.

DESCRIPTION OF THE TRUST AGREEMENT

The Security Participation Trust ("Trust") is intended to be a common law trust under the laws of the State of New York. The sole business activity of the Trust Fund will be to acquire both new and existing portfolios of contracts, consisting of payment rights in exchange for the provision of electronic security monitoring services in residential homes. As the owner of the Portfolios, the Trust Fund will receive the monthly payments from subscribers for monitoring service contracts. Out of the funds held in the Portfolio Depository Account, the Trust Fund will pay for the cost of billing and monitoring each contract and will also pay the investors the monthly interest to which they are entitled.

INVESTMENT CONSIDERATIONS

- Investors in the "Trust" will be issued Certificates. The Certificates will be available for purchase in denominations of $10,000 and increments of $1,000.
- The Certificates will bear interest at a per annum rate of 11.0% and will be paid monthly.
- The Trust Fund will be entitled to the cash flow received from the Portfolio of Contracts. After paying for the cost of billing and monitoring and the monthly interest to Certificate-holders, the Trust will use all remaining cash flow to acquire new contracts to add to the Portfolio.
- Certificateholders will be entitled to participate in the proceeds of both the original contracts purchased by the Trust and all additional contracts purchased until the portfolio is sold.
- The Trust Fund will sell the Portfolio of Contracts at the end of 36 months, at which time the Certificateholders shall receive a return of their principal investment.
- 75% of the net proceeds from the sale of the portfolio in excess of the Trust Fund's original investment will be distributed to the Certificateholders.
- Total investment return is projected to be 14%-15% per annum.

Illustration of Portfolio Management

EQUITY DEAL

Portfolio Size	1,000	accounts
RMR per account	$29.95	
% Billing & Monitoring of RMR	12.50%	
Assumed attrition, first year =	4.00%	subsequent years = 12.00%

Mon	Begin Number Accounts	Attrition	Accounts Purchased	End of Month Accounts	Gross Revenue	Bill & Mon Costs	Net Revenue
1	1,000	0	0	1,000	$29,950	$3,744	$26,206
2	1,000	3	13	1,009	$30,223	$3,778	$26,450
3	1,009	3	13	1,019	$30,512	$3,814	$26,698
4	1,019	3	13	1,028	$30,801	$3,850	$26,951
5	1,028	3	13	1,038	$31,095	$3,887	$27,208
6	1,038	4	13	1,048	$31,385	$3,924	$27,461
7	1,048	3	14	1,058	$31,702	$3,963	$27,739
8	1,058	4	14	1,068	$31,992	$4,002	$27,990
9	1,069	4	14	1,080	$32,332	$4,042	$28,291
10	1,080	4	14	1,090	$32,657	$4,082	$28,575
11	1,090	4	15	1,101	$32,988	$4,123	$28,864
12	1,101	4	15	1,113	$33,325	$4,166	$29,159
13	1,113	11	15	1,117	$33,446	$4,181	$29,266
14	1,117	11	15	1,121	$33,570	$4,196	$29,374
15	1,121	11	15	1,125	$33,694	$4,212	$29,482
16	1,125	11	15	1,129	$33,818	$4,227	$29,590
17	1,129	11	16	1,134	$33,948	$4,244	$29,705
18	1,134	11	16	1,138	$34,078	$4,260	$29,818
19	1,138	11	16	1,142	$34,209	$4,276	$29,933
20	1,142	11	16	1,147	$34,343	$4,293	$30,049
21	1,147	11	16	1,151	$34,477	$4,310	$30,167
22	1,151	11	16	1,156	$34,612	$4,327	$30,286
23	1,156	12	16	1,160	$34,751	$4,344	$30,407
24	1,160	12	16	1,165	$34,891	$4,361	$30,529
25	1,165	12	16	1,170	$35,032	$4,379	$30,653
26	1,170	12	16	1,174	$35,176	$4,397	$30,779
27	1,174	12	17	1,179	$35,321	$4,415	$30,906
28	1,179	12	17	1,184	$35,469	$4,434	$31,035
29	1,184	12	17	1,189	$35,617	$4,452	$31,165
30	1,189	12	17	1,194	$35,768	$4,471	$31,297
31	1,194	12	17	1,199	$35,921	$4,490	$31,431
32	1,199	12	17	1,205	$36,076	$4,509	$31,566
33	1,205	12	17	1,210	$36,232	$4,529	$31,703
34	1,210	12	17	1,215	$36,391	$4,549	$31,842
35	1,215	12	18	1,220	$36,552	$4,569	$31,983
36	1,220	12	18	1,226	$36,714	$4,589	$32,125

ILLUSTRATION OF PORTFOLIO MANAGEMENT

$1,275,000 11.00% Dividend	Excess Cash	Total Exit Value	Increased Value	75.00% Increased Value INVESTORS	25.00% Increased Value Manager	Total Net Annual Return Investors	Mon
$11,688	$14,519						1
$11,688	$14,762						2
$11,688	$15,010						3
$11,688	$15,263						4
$11,688	$15,521						5
$11,688	$15,783						6
$11,688	$16,052						7
$11,688	$16,325						8
$11,688	$16,603						9
$11,688	$16,887						10
$11,688	$17,177						11
$11,688	$17,472	$1,309,642	$34,642	$25,982	$8,661	13.17%	12
$11,688	$17,578	$1,313,849	$38,849	$29,136	$9,712	13.24%	13
$11,688	$17,686	$1,318,110	$43,110	$32,333	$10,778	13.31%	14
$11,688	$17,795	$1,322,431	$47,431	$35,573	$11,858	13.37%	15
$11,688	$17,906	$1,326,808	$51,808	$38,856	$12,952	13.43%	16
$11,688	$18,017	$1,331,244	$56,244	$42,183	$14,061	13.48%	17
$11,688	$18,130	$1,335,739	$60,739	$45,554	$15,185	13.53%	18
$11,688	$18,246	$1,340,294	$65,294	$48,970	$16,323	13.58%	19
$11,688	$18,362	$1,344,910	$69,910	$52,432	$17,477	13.62%	20
$11,688	$18,480	$1,349,588	$74,588	$55,941	$18,647	13.67%	21
$11,688	$18,599	$1,354,328	$79,328	$59,496	$19,832	13.71%	22
$11,688	$18,720	$1,359,131	$84,131	$63,098	$21,033	13.75%	23
$11,688	$18,842	$1,363,999	$88,999	$66,749	$22,250	13.78%	24
$11,688	$18,966	$1,368,931	$93,931	$70,449	$23,483	13.82%	25
$11,688	$19,091	$1,373,930	$98,930	$74,197	$24,732	13.86%	26
$11,688	$19,218	$1,378,995	$103,995	$77,996	$25,999	13.89%	27
$11,688	$19,347	$1,384,126	$109,126	$81,845	$27,282	13.93%	28
$11,688	$19,477	$1,389,329	$114,329	$85,747	$28,582	13.96%	29
$11,688	$19,609	$1,394,599	$119,599	$89,700	$29,900	13.99%	30
$11,688	$19,743	$1,399,940	$124,940	$93,705	$31,235	14.03%	31
$11,688	$19,878	$1,405,351	$130,351	$97,764	$32,588	14.06%	32
$11,688	$20,016	$1,410,837	$135,837	$101,878	$33,959	14.09%	33
$11,688	$20,155	$1,416,394	$141,394	$106,046	$35,349	14.12%	34
$11,688	$20,295	$1,422,026	$147,026	$110,269	$36,756	14.15%	35
$11,688	$20,436	$1,427,733	$152,733	$114,549	$38,183	14.19%	36

FREQUENTLY ASKED QUESTIONS

1. How do I know there will be a willing buyer at the end of 36 months?

There presently exists a very active market for the purchase of monitoring contracts. The buyers include those providing central station services, those interested in the investment/ cash flow attributes, and those that wish to pursue the integration of monitoring services with services that the buyer provides, such as Cable TV and utility services.

2. How can I be assured that the price I receive from the sale will be sufficient to provide the anticipated returns?

The price of monitoring contracts is presently determined by the multiple at which a buyer is willing to pay times the Recurring Monthly Revenue (RMR). Thus, if the RMR for a contract is $30 and the buyer is willing to pay 40 times, the selling price is $1200/contract. The multiple has several variants, including credit quality of the homeowner, general level of interest rates, size of the transaction, payment history, and added-value to the buyer's business. The portfolio manager believes that its return assumptions are based on a multiple that is presently at the low end of the range where business is being conducted today.

In addition, it is important to remember that it is in the portfolio manager's interest to receive the maximum price for the sale of the portfolio because the manager receives 25% of the net excess funds over the original investment.

3. What plan does the portfolio manager have if the market conditions at the time of sale are unsatisfactory?

The portfolio manager has two options if, in its judgment, market conditions are unsatisfactory at the time of sale.

Collect the cash flow from the contracts in the portfolio and distribute it to the Certificateholders on the basis of interest at the rate of 11% per annum, with excess cash flow applied to the reduction of principal until such time as the Certificateholders' original investment is fully amortized or market conditions improve to permit a sale; or

Continue to use the excess cash flow to purchase new contracts to be added to the portfolio until such time as market conditions warrant a sale of the portfolio, at which time the proceeds from the sale of the portfolio would be distributed to the Certificateholders as set forth above.

4. What will the manager do with the excess cash flow each month if it is unable to purchase new contracts?

The excess cash flow will be held in the Trust Depository Account and accumulated until such time as contracts meeting the portfolio manager's criteria are available for purchase.

5. How liquid is my investment?

Investment in the Security Participation Trust is being offered under Regulation D of the Securities Act of 1933 and therefore the Certificates are non-public securities. Each investor must represent that his or her purchase is for investment purposes only and not intended for resale. Under certain circumstances, if in the opinion of the Trustee a disposition is not in violation of federal or state securities laws, the Trust Fund will approve a resale. However, the investment should be considered illiquid.

6. What is the experience of the portfolio manager?

The portfolio manager, M&S Partners, is a partnership wholly owned by Timothy M. McGinn and David L. Smith. Mr. McGinn and Mr. Smith have a combined 55 years in the investment business and have been the principals of McGinn, Smith & Co., Inc. since its founding in 1980. M&S Partners has been engaged in the acquisition and management of security monitoring contract receivables since 1993 and has been directly involved in over $300 million of financing of such contracts. In addition, M&S Partners is a 20% owner of King Central, one of the nation's largest and most respected central monitoring stations. Through King Central, M&S Partners has access to their 2300 member dealer network.

7. Can I purchase this investment in my IRA or Pension/Profit Sharing account?

Hundreds of investors have placed these investments in their retirement accounts. Usually the custodian or trustee of the account will need to give approval before accepting the investment. In some instances, the trustees have a policy against accepting private placements because they find them difficult to price at year end, which, as a fiduciary, they are responsible for doing.

McGinn, Smith & Co., Inc.
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Albany, New York 12207
File # 25374
CRD # 8453
EXAM # BD2004NERO035

February 26, 2004

COMMENTS

[redacted] In addition to a review of pertinent books and records, the staff interviewed the following individuals:

David L. Smith ("Smith")	President
David P. Rees ("Rees")	Chief Financial Officer
Mark C. Casolo ("Casolo")	Senior Vice-President of Corporate Finance
Curt Maughs ("Maughs")	Information Technology Consultant

I. SUMMARY OF MAJOR FINDINGS AND DISPOSITION

The staff's examination disclosed the following violations of federal statutes and rules promulgated under the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act") and by the NASD:

- Capital Center Credit Corporation ("C4"), an entity controlled by Smith, violated **Section 15(a) of the Exchange Act**, in that the staff's review of C4's business activities disclosed that C4 is operating in the capacity of an unregistered broker-dealer. Therefore, C4 must be registered as a broker-dealer or its books and records must be encompassed in MS & Co.'s financial statements.

[redacted]

- MS & Co. violated **Rule 17a-4(b)(4)** and **NASD Conduct Rule 3110** by failing to preserve for a period of three years, and/or preserve in an accessible place for two years,

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Furthermore, since 87 percent of ASTRF's total committed capital has been allocated between two companies in which either Casolo or MS & Co. has a vested interest, it appears that ASTRF exists to infuse additional capital into CCIG and IAS when needed. It is unknown whether current ASTRF investors who also invested directly in CCIG or IAS notes are aware of the ASTRF asset allocations. If not, this would be a material fact that was omitted from investors, which may constitute a violation of the antifraud provisions of the federal securities laws.

D. First Independent Income Notes, LLC

The review of MS & Co.'s investment banking activity also disclosed that the firm played an active role in the private placement offering of First Independent Income Notes, LLC ("FIIN"), a newly formed New York company that became established in September 2003. According to the FIIN PPM dated September 15, 2003, FIIN planned to raise up to $20,000,000 through the issuance of 5% secured senior notes due 2004, 7.5% secured senior subordinated notes due 2008, and 10.25% secured junior notes due 2008.[18] Furthermore, the PPM disclosed Smith as FIIN's executive officer and indicated that MS & Co. provided both promoter and placement agent services for the offering. FIIN claimed an exemption from registration pursuant to the Securities Act of 1933 and Rule 506 of Regulation D promulgated thereunder.

As of October 31, 2003, FIIN raised a total of $12,714,000 through the following: $7,466,000 (59%) from sixty-nine 10.25% tranche investors,[19] $4,441,000 (35%) from fifty-one 5% tranche investors, and $807,000 (6%) raised from seventeen 7.5% tranche investors. Interviews with Smith disclosed that FIIN was formed to identify and acquire various public and/or private investments. Moreover, Smith stated that the FIIN notes are secured by the investments that FIIN may acquire and that the profitability of FIIN is largely determined by the spread between the effective rate FIIN pays on acquired investments and the full rate of return received on such investments.[20] The staff's analysis disclosed that FIIN subsequently purchased four investments during October 2003:

Date(s) Purchased	Investment	Amount
October 2, 2003	Dekania CDO I, Ltd. Floating Rate Note. Matures 2034.	$2 Million
October 8, 2003	Aquatic Development Group, Inc. 12% Promissory Note. Matured November 8, 2003.	$250,000
October 14, 2003 through October 20, 2003	Maracay Homes Arizona I, LLC. ("Maracay") 14% Senior Subordinated Debenture. Matures 2010.	$5 Million

[18] Upon the maturity of the 5% secured senior notes due 2004, FIIN may continue to issue additional senior notes with a one-year maturity date up until 2007.

[19] Note that several subscribers appear to have related accounts and invest in more than one tranche.

[20] The staff verified that all incoming wires to FIIN were from subscribers and that all outgoing wires were legitimate, including legal expenses, underwriting fees, and investments.

	InCapS Funding I, Ltd. ("InCapS")	
October 20, 2003 through	16% Subordinated Income Note.	
October 30, 2003	Matures 2033.	$3 Million

The staff's research revealed that reputable financial institutions, which included Sandler O'Neill & Partners, L.P., Friedman, Billings, Ramsey & Co. Inc., and Merrill Lynch International, underwrote the aforementioned investments purchased by FIIN. According to the FIIN PPM, FIIN investors are scheduled to receive their first quarterly interest payments commencing January 15, 2004.

E. Capital Center Credit Corporation ("C4")

The staff's review of FIIN wire transactions disclosed that FIIN purchased both the Maracay and InCapS investments from an entity identified as C4. According to Smith, C4 is an entity owned by himself and McGinn that is utilized as a "swamp account," or otherwise as an unregistered proprietary account. Smith explained that C4 was created to receive customer funds, purchase investments, warehouse investments, issue short-term commercial paper, and engage in loan transactions. According to Smith, during a meeting with officials from the NASD District 11, Boston Office, several years ago, he was advised that he would either have to create a separate entity in order to provide liquidity for MS & Co. clients who invested in the firm's private placement deals, or he would have to increase the firm's minimum net capital requirement to $250,000. Smith chose to create a separate entity in order to continue to engage in this type of activity and circumvent the $250,000 minimum net capital requirement for the firm.[21] Subsequent examinations performed by the NASD staff failed to identify the business operations of this entity as being that of an unregistered broker-dealer.

Smith explained that it has become increasingly difficult to find viable investments for his clients. Often times, when the opportunity to purchase such an investment presents itself, the required investor capital needed to participate in a deal may be deficient. To alleviate this deficiency, C4 purchases investments and warehouses them until the pertinent investor fund has raised sufficient investor capital. Once the investor capital threshold has been raised for a fund, the fund purchases these otherwise foregone investments from C4.

Smith explained that C4 obtains its purchasing capital from a private group of investors, one of whom is Lynne Smith, Smith's wife. In return for the borrowed capital, C4 issues the lenders short-term commercial paper for an agreed upon duration at a specified interest rate. In the case of FIIN, C4 utilized the borrowed capital to purchase and warehouse Maracay and InCapS notes, with the sole-intention of later selling these investments to FIIN.[22] Once FIIN raised sufficient investor capital, the FIIN purchased these investments directly from C4. C4 subsequently used the monies received from the sale of these investments to pay the outstanding principal and

[21] MS & Co.'s current net capital requirement is $100,000. If MS & Co. financials encompassed C4's business activity, most notably the receipt and holding of customer securities and monies, MS & Co.'s net capital requirement would need to increase to $250,000.

[22] C4 purchased the Maracay and InCapS investments on August 18, 2003 and September 1, 2003, respectively.