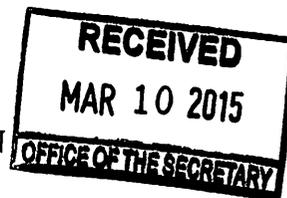


HARD COPY

UNITED STATES OF AMERICA

Before the

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. :

**RESPONDENT, WILLIAM F. LEX'S MOTION
TO CORRECT MANIFEST ERRORS OF FACT**

Respondent, William F. Lex, hereby files this Motion to Correct Manifest Errors of Fact pursuant to Commission Rule of Practice 111, 17 C.F.R. § 201.111(h),¹ and in support thereof avers as follows:

1. Chief Administrative Law Judge Benda Murray issued an Initial Decision dated February 25, 2015 in the above-captioned matter.

¹ Mr. Lex does not agree that *any* amount of disgorgement, fine or other sanction is warranted in this case. His challenge to those conclusions, among others, will be the subject of a forthcoming Petition for Review to the Commission. He expressly reserves all of his rights in that regard.

2. The Initial Decision imposes sanctions against Respondent Lex and seven other Respondents for violations of the federal securities laws arising from their sale of certain securities, including sales of notes in the so-called “Four Funds.”

3. The Initial Decision includes two manifest errors of fact, each of which is discussed below.

Manifest error in calculation of disgorgement amount

4. In her Initial Decision dated February 25, 2015, Judge Murray determined that the selling Respondents, except Gamello, should disgorge the commissions earned on sales made after February 1, 2008, because she found that by at least February 1, 2008, the Respondents had the requisite scienter to violate the antifraud provisions of the federal securities laws. (Initial Decision at 115.)

5. The Initial Decision states as follows:

I find that all Selling Respondents, except Gamello, had requisite scienter to violate the antifraud provisions by at least February 1, 2008. This date is almost a month after Selling Respondents learned about the Four Funds’ junior note default and that Smith had misled them regarding the Four Funds’ diversification, investments in alseT, and conflicts. Selling Respondents, except Gamello, are ordered to disgorge all commissions earned on sales after that date, in the following amounts.

(Initial Decision at 115, emphasis added.)

6. The Judge determined that Mr. Lex earned commissions on sales after February 1, 2008 in the amount of \$335,066, and she ordered him to disgorge commissions in that amount.

(Id. at 115, 117.)

7. The Judge’s calculation of \$335,066 was based on Exhibit 4l to Division Exhibit 2, which lists the commissions paid to Mr. Lex and the dates of each payment. (See Exhibit

“A.”) The calculation is erroneous because the Division’s own evidence reveals that the \$335,066 in commissions paid to Mr. Lex after February 1, 2008 includes \$165,691 for sales that were made **before** February 1, 2008.

8. Exhibit 4l to Division Exhibit 2, which lists the payments of commissions to Mr. Lex, reflects that he received 19 payments in commissions after February 1, 2008 for sales of the so-called Four Funds--FAIN, TAIN, FIIN and FEIN, and that those 19 payments totaled \$167,451. (See Exhibit “A.”) For convenience, the 19 entries that comprise that \$167,451 total are circled on the attached Exhibit “B.”

9. But Exhibit 4k to Division Exhibit 2, which lists Mr. Lex’s sales, reflects that Mr. Lex made only six sales of Four Funds notes after February 1, 2008. (See Exhibit “C.”) For convenience, those six post-February 1, 2008 sales are circled on the attached Exhibit “D.”

10. The Division’s evidence establishes that the amounts of those six post-February 1, 2008 Four Funds sales totaled \$220,000. (See Exhibit “C” and “D.”)

11. It is undisputed that Mr. Lex’s commissions on these Four Funds sales was .8%. (Exhibit “E,” tr. 4866.)²

12. .8% of \$220,000 is \$1760. Therefore, by the Division’s own evidence, Mr. Lex received only \$1760 in commissions for post-February 1, 2008 sales of the Four Funds, rather than \$167,451. The difference between those two figures, which is \$165,691, consists of

² Mr. Lex never sold junior notes, only senior and senior subordinated. (Exhibit “E,” tr. 4865.) His commission on senior notes was .8% (*id.* at 4866), and the Division’s list of his sales reflects that all six of his post-February 1, 2008 Four Funds sales were senior notes. The list shows that all six of those post-February 1, 2008 notes paid 7% interest (see Exhibits “C” and “D”), and the senior subordinated notes always paid more than 7% interest. (See Division Exhibit 5, private placement memorandum for FIIN; Division Exhibit 6, private placement memorandum for FEIN; Division Exhibit 9, private placement memorandum for TAIN; Division Exhibit 12, private placement memorandum for FAIN.) In any event, even if all of the post-February 1, 2008 Four Funds sales had been senior subordinated notes, which they were not, Mr. Lex’s commissions would have been 1.6% of \$220,000 rather than .8% of \$220,000, because his commission on senior subordinated notes was 1.6%. (Exhibit “E” at 4867-4768.) 1.6% of \$220,000 is \$3520 rather than \$1760. Using the higher figure of \$3520, the revised figure for disgorgement would be, at most, \$171,135 rather than \$169,375.

commission payments made to Mr. Lex after February 1, 2008 for sales made before February 1, 2008. It follows that, by the Judge's own findings, \$165,691 should be deducted from the \$335,066 disgorgement award against Mr. Lex.

13. Subtracting \$165,691 from the \$335,066 disgorgement award results in a revised disgorgement figure of \$169,375.

14. The revised figure for disgorgement will have a corresponding effect on the amount of interest.

Manifest error regarding the content of the *Chang* arbitration award

15. The Initial Decision states that the Chang arbitration panel "derided Lex for failing to diversify Chang's holdings." (Initial Decision at 37.)

16. To "deride" means: "Laugh contemptuously or scornfully at; treat with scorn; mock." The New Shorter Oxford English Dictionary, v. 1, p. 641 (1993). "Scorn" in turn means: "show extreme contempt for, mock, deride. Hold in disdain or strong contempt, despise." Id., v. 2, p. 2723. And "mock" means "mimic contemptuously." Id., v. 1, p. 1801.

17. To characterize the Chang arbitration panel as "deriding" Mr. Lex for failing to diversify Chang's holdings, or for anything else, is a manifest error of fact. To the contrary, the panel characterized Mr. Lex as a "conscientious broker and insurance salesman..." (Chang arbitration award, Exhibit "F" [Div. Ex. 514] at 3.)

18. With respect to allegations in Chang that are relevant to this case, the Chang panel found as follows:

Dr. Chang and Kee Mann Chang are found to be responsible for the consequences of their own investment decisions after their stating repeatedly verbally and in writing that they had the opportunity to read investment literature and query resources such

as Mr. Lex about the risks and rewards of the subject private placement notes.

(Id.)

19. Nowhere is the Chang opinion “contemptuous” of Mr. Lex. The arbitrators found against Mr. Lex not because he pushed Chang into insufficiently diversified investments, but merely because Mr. Lex processed the purchase orders that Chang freely made on his own, with full knowledge of all the risks. (Id. at 3-4.)

20. The Chang arbitrators did not “deride” Mr. Lex, and the statement that they did so is a manifest error of fact.

21. Commission Rule of Practice 111 authorizes the filing of a “motion to correct a manifest error of fact in the initial decision.” 17 C.F.R. § 201.111(h).

22. For the foregoing reasons, Respondent, William F. Lex, requests that this Motion to Correct Manifest Errors of Fact be granted and that the Initial Decision be amended to correct the errors set forth above.

WHEREFORE, Respondent, William F. Lex, respectfully requests that this Motion be granted and that Initial Decision be amended to correct the errors set forth above.

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Attorneys for Respondent
William F. Lex

DATE: 3-6-15

EXHIBIT “A”

Date	Description per Payroll Records	690 LEX
10/31/2003	NP/CCC/McGinn Smith	\$ 3,120
11/30/2003	NP/CCC/McGinn Smith	\$ 35,304
12/31/2003	NP/CCC/McGinn Smith	\$ 9,096
2/29/2004	NP/CCC/McGinn Smith	\$ 18,600
3/31/2004	NP/CCC/McGinn Smith	\$ 17,000
4/30/2004	NP/CCC/McGinn Smith	\$ 7,680
5/15/2004	NP/CCC/McGinn Smith	\$ 3,920
6/15/2004	NP/CCC/McGinn Smith	\$ 10,240
8/15/2004	NP/CCC/McGinn Smith	\$ 4,440
9/15/2004	NP/CCC/McGinn Smith	\$ 1,280
10/15/2004	NP/CCC/McGinn Smith	\$ 50,040
12/15/2004	NP/CCC/McGinn Smith	\$ 39,160
1/15/2005	NP/CCC/McGinn Smith	\$ 43,965
2/15/2005	NP/CCC/McGinn Smith	\$ 90,492
3/15/2005	NP/CCC/McGinn Smith	\$ 2,320
4/15/2005	NP/CCC/McGinn Smith	\$ 3,480
5/15/2005	NP/CCC/McGinn Smith	\$ 10,400
6/15/2005	NP/CCC/McGinn Smith	\$ 10,640
7/15/2005	NP/CCC/McGinn Smith	\$ 11,908
8/15/2005	NP/CCC/McGinn Smith	\$ 9,568
9/15/2005	Net Proprietary	\$ 1,760
10/15/2005	Net Proprietary	\$ 1,520
12/15/2005	Net Proprietary	\$ 188,976
1/15/2006	Net Proprietary	\$ 10,384
2/15/2006	Net FEIN 2nd Comm	\$ 77,540
2/15/2006	Net Proprietary	\$ 11,760
3/15/2006	Net Private	\$ 3,874
4/15/2006	Net Private (FAIN)	\$ 8,939
5/15/2006	Net Private (FAIN)	\$ 1,240
6/15/2006	Net Private (FAIN)	\$ 13,600
7/15/2006	FAIN AND FEIN	\$ 6,720
8/15/2006	FAIN	\$ 4,560
9/15/2006	FAIN	\$ 7,640
10/15/2006	FAIN	\$ 4,480
11/15/2006	FAIN	\$ 1,400
11/15/2006	Net Private (FAIN)	\$ 1,050
11/15/2006	Net Annual Commissions	\$ 84,640
12/15/2006	Net Annual Commissions (FIIN AND TAIN)	\$ 189,223
12/15/2006	Net Private	\$ 120
2/15/2007	Net Annual FEIN	\$ 79,910
3/15/2007	Net Private (FAIN)	\$ 4,240
5/15/2007	NET PRIVATE LINE ITEM	\$ 8,880
6/15/2007	NET PRIVATE LINE ITEM	\$ 4,920
7/15/2007	Firstline	\$ 1,900
7/15/2007	Net Private (TDMVER)	\$ 2,100
8/15/2007	Firstline	\$ 6,200
9/15/2007	Firstline	\$ 2,900
11/15/2007	Firstline, TDML, CMSF 80%	\$ 2,500

Date	Description per Payroll Records	690 LEX
11/15/2007	Firstline 90%	\$ 8,100
12/15/2007	Firstline 90%	\$ 25,110
12/15/2007	2007 Annual FAIN	\$ 96,104
1/15/2008	TDM Verifier 75%	\$ 4,781
1/15/2008	Firstline 90%	\$ 7,290
1/15/2008	2008 Annual TAIN & FIIN	\$ 183,463
2/15/2008	TDM Verifier 75%	\$ 12,788
2/15/2008	Firstline 90%	\$ 8,100
2/15/2008	2008 Annual FEIN,tain & fin	\$ 89,055
3/15/2008	TDM Verifier 75%	\$ 9,281
3/15/2008	Firstline, TDML, CMSF 80%	\$ 4,900
3/15/2008	Firstline 90%	\$ 1,215
4/15/2008	TDM 75%	\$ 4,013
4/15/2008	Firstline, TDM, CMSF 80%	\$ 5,900
5/15/2008	TDM 75%	\$ 844
5/15/2008	Firstline, TDM, CMSF 80%	\$ 2,150
6/15/2008	Firstline 90%	\$ 540
7/15/2008	Firstline 90% (INEX)	\$ 20,655
8/15/2008	Firstline 90% (INEX)	\$ 8,303
10/15/2008	Fort13%	\$ 16,200
11/15/2008	Fort13%	\$ 1,800
12/15/2008	Net Private (TDMVER)	\$ 1,520
1/15/2009	2008 FAIN	\$ 2,898
1/15/2009	2008 TAIN	\$ 4,112
2/15/2009	2008 FAIN	\$ 2,898
2/15/2009	2008 TAIN	\$ 4,112
2/15/2009	Net Private (TDMM Cable 09)	\$ 5,761
2/15/2009	FIRSTLINE, TDM, CMSF (ALL VERIFIER)	\$ 9,840
3/15/2009	Firstline, TDM, CMSF 80% (TDMV07R9% AND TDMMCAB09-9%)	\$ 8,904
3/15/2009	2008 FAIN	\$ 2,898
3/15/2009	2008 TAIN	\$ 4,112
4/15/2009	2008 FAIN	\$ 2,898
4/15/2009	2008 TAIN	\$ 4,112
4/15/2009	Net Private (TDM Cable and TDMV)	\$ 1,470
5/15/2009	2008 FAIN	\$ 2,898
5/15/2009	2008 TAIN	\$ 4,112
5/15/2009	Net Private (TDMV07R07%)	\$ 280
6/15/2009	2008 FAIN	\$ 2,898
6/15/2009	2008 TAIN	\$ 4,112
6/15/2009	Net Private (TDMM Cable 09)	\$ 6,800
7/15/2009	2008 FAIN	\$ 5,152
7/15/2009	2008 TAIN	\$ 7,310
7/15/2009	Net Private (TDMM Cable 09)	\$ 6,800
8/15/2009	2008 FAIN	\$ 4,826
8/15/2009	2008 TAIN	\$ 7,111
8/15/2009	Net Private (TDMV08R)	\$ 21,081
9/15/2009	Net Private (TDMVER11-9.00)	\$ 8,470
9/15/2009	2008 FAIN	\$ 4,826

Lex Commissions Paid

Palen Exhibit 4I

Date	Description per Payroll Records	690 LEX
9/15/2009	2008 TAIN	<u>\$ 7,111</u>
TOTAL		<u>\$ 1,775,544</u>

EXHIBIT “B”

Date	Description per Payroll Records	690 LEX
10/31/2003	NP/CCC/McGinn Smith	\$ 3,120
11/30/2003	NP/CCC/McGinn Smith	\$ 35,304
12/31/2003	NP/CCC/McGinn Smith	\$ 9,096
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1/15/2009	2008 FAIN	\$ 2,898
1/15/2009	2008 TAIN	\$ 4,112
2/15/2009	2008 FAIN	\$ 2,898
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4/15/2009	2008 FAIN	\$ 2,898
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4/15/2009	Net Private (TDM Cable and TDMV)	\$ 1,470
5/15/2009	2008 FAIN	\$ 2,898
5/15/2009	2008 TAIN	\$ 4,112
5/15/2009	Net Private (TDMV07R07%)	\$ 280
6/15/2009	2008 FAIN	\$ 2,898
6/15/2009	2008 TAIN	\$ 4,112
6/15/2009	Net Private (TDMM Cable 09)	\$ 6,800
7/15/2009	2008 FAIN	\$ 5,152
7/15/2009	2008 TAIN	\$ 7,310
7/15/2009	Net Private (TDMM Cable 09)	\$ 6,800
8/15/2009	2008 FAIN	\$ 4,826
8/15/2009	2008 TAIN	\$ 7,111
8/15/2009	Net Private (TDMV08R)	\$ 21,081
9/15/2009	Net Private (TDMVER11-9.00)	\$ 8,470
9/15/2009	2008 FAIN	\$ 4,826

Date **Description per Payroll Records**
9/15/2009 2008 TAIN

690 LEX
\$ 7,111

TOTAL

\$ 1,775,544

Circled entries = \$167,451.⁰⁰

EXHIBIT “C”

WILLIAM F. LEX
SUMMARY OF SALES

Palen Exhibit 4k

Broker ID	Investment Registration Name	Product Code	Date	Ticketed Amount
690		TDMVER18	1/15/2008	\$ 50,000
690		TDMVER18	1/15/2008	\$ 100,000
690		FAIN 7%08	1/16/2008	\$ 12,000
690		TAIN7.75%09	1/16/2008	\$ 10,000
690		FIRSTLN9.5B	1/18/2008	\$ 55,000
690		FIRSTLN9.5B	1/22/2008	\$ 10,000
690		FIRSTLN9.5B	1/31/2008	\$ 10,000
690		FIRSTLN9.5B	1/31/2008	\$ 30,000
690		FIRSTLN9.5B	2/4/2008	\$ 30,000
690		TDMVER18	2/4/2008	\$ 50,000
690		TAIN 7%08	2/6/2008	\$ 20,000
690		TAIN 7%08	2/7/2008	\$ 10,000
690		FEIN 7%09	2/11/2008	\$ 15,000
690		TDMVER36	2/19/2008	\$ 150,000
690		TDMVER07R	2/20/2008	\$ 10,000
690		TDMVER07R	2/20/2008	\$ 10,000
690		TDMVER07R	2/20/2008	\$ 10,000
690		TDMVER07R	2/20/2008	\$ 70,000
690		FEIN 7%09	2/27/2008	\$ 15,000
690		TDMVER07R	2/27/2008	\$ 15,000
690		TDMVER18	2/29/2008	\$ 100,000
690		TDMVER18	3/6/2008	\$ 25,000
690		TDMVER07R	3/17/2008	\$ 90,000
690		TDMVER07R	3/17/2008	\$ 90,000
690		FEIN 7%09	3/18/2008	\$ 80,000
690		FIIN 7%08	3/18/2008	\$ 80,000
690		TDMVER07R	3/18/2008	\$ 20,000
690		TDMVER36	3/18/2008	\$ 80,000
690		TDMVER36	3/20/2008	\$ 25,000
690		TDMVER07R	3/24/2008	\$ 27,500
690		TDMVER36	4/2/2008	\$ 25,000
690		TDMVER07R	4/8/2008	\$ 25,000
7		TDMVER07R	4/21/2008	\$ 25,000
690		TDMVER18	4/24/2008	\$ 10,000
690		FIRSTLN11B	5/29/2008	\$ 10,000
690		INEX9%	6/9/2008	\$ 107,500
690		INEX9%	6/9/2008	\$ 107,500
7		INEX9%	6/13/2008	\$ 42,500
690		INEX9%	6/17/2008	\$ 10,000
690		INEX9%	6/17/2008	\$ 25,000
7		INEX9%	6/17/2008	\$ 22,500
690		INEX9%	6/26/2008	\$ 50,000
690		INEX9%	6/26/2008	\$ 10,000
690		INEX9%	6/26/2008	\$ 10,000

WILLIAM F. LEX
SUMMARY OF SALES

Palen Exhibit 4k

Broker ID	Investment Registration Name	Product Code	Date	Ticketed Amount
690	[REDACTED]	INEX9%	6/26/2008	\$ 10,000
690	[REDACTED]	INEX9%	6/26/2008	\$ 20,000
690	[REDACTED]	INEX9%	6/26/2008	\$ 10,000
690	[REDACTED]	INEX9%	6/26/2008	\$ 75,000
690	[REDACTED]	INEX9%	6/30/2008	\$ 10,000
690	[REDACTED]	INEX9%	7/2/2008	\$ 10,000
690	[REDACTED]	INEX9%	7/2/2008	\$ 10,000
690	[REDACTED]	INEX9%	7/7/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/8/2008	\$ 30,000
690	[REDACTED]	INEX9%	7/11/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/16/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/16/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/16/2008	\$ 70,000
690	[REDACTED]	INEX9%	7/16/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/24/2008	\$ 10,000
690	[REDACTED]	FORT13%	9/29/2008	\$ 40,000
690	[REDACTED]	FORT13%	9/30/2008	\$ 10,000
690	[REDACTED]	FORT13%	9/30/2008	\$ 10,000
690	[REDACTED]	FORT13%	9/30/2008	\$ 200,000
690	[REDACTED]	FORT13%	9/30/2008	\$ 10,000
690	[REDACTED]	FORT13%	10/1/2008	\$ 10,000
690	[REDACTED]	FORT13%	10/1/2008	\$ 10,000
690	[REDACTED]	FORT13%	10/1/2008	\$ 10,000
690	[REDACTED]	FORT13%	10/1/2008	\$ 10,000
690	[REDACTED]	TDMVER24	11/21/2008	\$ 30,000
690	[REDACTED]	TDMVER18	11/21/2008	\$ 50,000
690	[REDACTED]	FORT13%	12/19/2008	\$ 25,000
690	[REDACTED]	FORT13%	12/19/2008	\$ 50,000
690	[REDACTED]	FORT13%	12/19/2008	\$ 30,000
690	[REDACTED]	FORT13%	12/19/2008	\$ 45,000
690	[REDACTED]	TDMVER0910%	1/5/2009	\$ 10,000
690	[REDACTED]	TDMVER0910%	1/5/2009	\$ 15,000
690	[REDACTED]	TDMVER0910%	1/5/2009	\$ 20,000
690	[REDACTED]	TDMVER0910%	1/5/2009	\$ 35,000
690	[REDACTED]	FORT13%	1/6/2009	\$ 50,000
690	[REDACTED]	TDMVER0910%	1/7/2009	\$ 10,000
690	[REDACTED]	TDMVER0910%	1/7/2009	\$ 35,000
690	[REDACTED]	TDMVER0910%	1/8/2009	\$ 5,000
690	[REDACTED]	TDMVER0910%	1/8/2009	\$ 15,000
690	[REDACTED]	TDMVER0910%	1/12/2009	\$ 50,000
690	[REDACTED]	TDMMCAB09-9%	1/26/2009	\$ 10,000
690	[REDACTED]	TDMVER0910%	1/27/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	1/28/2009	\$ 100,000
690	[REDACTED]	TDMMCAB09-9%	1/29/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	1/29/2009	\$ 10,000

Broker ID	Investment Registration Name	Product Code	Date	Ticketed Amount
690	[REDACTED]	TDMM CAB09-9%	1/30/2009	\$ 40,000
690	[REDACTED]	TDMM CAB09-9%	2/4/2009	\$ 10,000
690	[REDACTED]	TDMM CAB09-9%	2/5/2009	\$ 10,000
690	[REDACTED]	TDMM CAB09-9%	2/17/2009	\$ 30,000
690	[REDACTED]	TDMM CAB09-9%	2/19/2009	\$ 10,000
690	[REDACTED]	TDMM CAB09-9%	2/19/2009	\$ 10,000
690	[REDACTED]	TDMM CAB09-9%	2/19/2009	\$ 15,000
690	[REDACTED]	TDMM CAB09-9%	2/19/2009	\$ 20,000
690	[REDACTED]	TDMV07R9%	3/4/2009	\$ 10,000
690	[REDACTED]	TDMM CAB09-9%	3/31/2009	\$ 25,000
690	[REDACTED]	TDMV07R9%	4/1/2009	\$ 10,000
690	[REDACTED]	TDMM CAB09-9%	5/14/2009	\$ 70,000
690	[REDACTED]	TDMM CAB09-9%	5/19/2009	\$ 100,000
690	[REDACTED]	TDMM CAB09-9%	6/9/2009	\$ 10,000
690	[REDACTED]	TDMM CAB09-9%	6/12/2009	\$ 10,000
690	A [REDACTED]	TDMM CAB09-9%	6/15/2009	\$ 150,000
690	[REDACTED]	TDMM CAB09-9%	7/1/2009	\$ 100,000
690	[REDACTED]	TDMV08R-9%	7/14/2009	\$ 10,000
690	[REDACTED]	TDMV08R-9%	7/14/2009	\$ 25,000
690	[REDACTED]	TDMV08R-9%	7/17/2009	\$ 25,000
				\$ 45,536,000

EXHIBIT “D”

WILLIAM F. LEX
SUMMARY OF SALES

Palen Exhibit 4k

Broker ID	Investment Registration Name	Product Code	Date	Ticketed Amount
690	[REDACTED]	TDMVER18	1/15/2008	\$ 50,000
690	[REDACTED]	TDMVER18	1/15/2008	\$ 100,000
690	[REDACTED]	FAIN 7%08	1/16/2008	\$ 12,000
690	[REDACTED]	TAIN7.75%09	1/16/2008	\$ 10,000
690	[REDACTED]	FIRSTLN9.5B	1/18/2008	\$ 55,000
690	[REDACTED]	FIRSTLN9.5B	1/22/2008	\$ 10,000
690	[REDACTED]	FIRSTLN9.5B	1/31/2008	\$ 10,000
690	[REDACTED]	FIRSTLN9.5B	1/31/2008	\$ 30,000
690	[REDACTED]	FIRSTLN9.5B	2/4/2008	\$ 30,000
690	[REDACTED]	TDMVER18	2/4/2008	\$ 50,000
690	[REDACTED]	TAIN 7%08	2/6/2008	\$ 20,000
690	[REDACTED]	TAIN 7%08	2/7/2008	\$ 10,000
690	[REDACTED]	FEIN 7%09	2/11/2008	\$ 15,000
690	[REDACTED]	TDMVER36	2/19/2008	\$ 150,000
690	[REDACTED]	TDMVER07R	2/20/2008	\$ 10,000
690	[REDACTED]	TDMVER07R	2/20/2008	\$ 10,000
690	[REDACTED]	TDMVER07R	2/20/2008	\$ 10,000
690	[REDACTED]	TDMVER07R	2/20/2008	\$ 70,000
690	[REDACTED]	FEIN 7%09	2/27/2008	\$ 15,000
690	[REDACTED]	TDMVER07R	2/27/2008	\$ 15,000
690	[REDACTED]	TDMVER18	2/29/2008	\$ 100,000
690	[REDACTED]	TDMVER18	3/6/2008	\$ 25,000
690	[REDACTED]	TDMVER07R	3/17/2008	\$ 90,000
690	[REDACTED]	TDMVER07R	3/17/2008	\$ 90,000
690	[REDACTED]	FEIN 7%09	3/18/2008	\$ 80,000
690	[REDACTED]	FIIN 7%08	3/18/2008	\$ 80,000
690	[REDACTED]	TDMVER07R	3/18/2008	\$ 20,000
690	[REDACTED]	TDMVER36	3/18/2008	\$ 80,000
690	[REDACTED]	TDMVER36	3/20/2008	\$ 25,000
690	[REDACTED]	TDMVER07R	3/24/2008	\$ 27,500
690	[REDACTED]	TDMVER36	4/2/2008	\$ 25,000
690	[REDACTED]	TDMVER07R	4/8/2008	\$ 25,000
7	[REDACTED]	TDMVER07R	4/21/2008	\$ 25,000
690	[REDACTED]	TDMVER18	4/24/2008	\$ 10,000
690	[REDACTED]	FIRSTLN11B	5/29/2008	\$ 10,000
690	[REDACTED]	INEX9%	6/9/2008	\$ 107,500
690	[REDACTED]	INEX9%	6/9/2008	\$ 107,500
7	[REDACTED]	INEX9%	6/13/2008	\$ 42,500
690	[REDACTED]	INEX9%	6/17/2008	\$ 10,000
690	[REDACTED]	INEX9%	6/17/2008	\$ 25,000
7	[REDACTED]	INEX9%	6/17/2008	\$ 22,500
690	[REDACTED]	INEX9%	6/26/2008	\$ 50,000
690	[REDACTED]	INEX9%	6/26/2008	\$ 10,000
690	[REDACTED]	INEX9%	6/26/2008	\$ 10,000

Sales = \$220,000

Commissions at .8% = \$1760.00

WILLIAM F. LEX
SUMMARY OF SALES

Palen Exhibit 4k

Broker ID	Investment Registration Name	Product Code	Date	Ticketed Amount
690	[REDACTED]	INEX9%	6/26/2008	\$ 10,000
690	[REDACTED]	INEX9%	6/26/2008	\$ 20,000
690	[REDACTED]	INEX9%	6/26/2008	\$ 10,000
690	[REDACTED]	INEX9%	6/26/2008	\$ 75,000
690	[REDACTED]	INEX9%	6/30/2008	\$ 10,000
690	[REDACTED]	INEX9%	7/2/2008	\$ 10,000
690	[REDACTED]	INEX9%	7/2/2008	\$ 10,000
690	[REDACTED]	INEX9%	7/7/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/8/2008	\$ 30,000
690	[REDACTED]	INEX9%	7/11/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/16/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/16/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/16/2008	\$ 70,000
690	[REDACTED]	INEX9%	7/16/2008	\$ 15,000
690	[REDACTED]	INEX9%	7/24/2008	\$ 10,000
690	[REDACTED]	FORT13%	9/29/2008	\$ 40,000
690	[REDACTED]	FORT13%	9/30/2008	\$ 10,000
690	[REDACTED]	FORT13%	9/30/2008	\$ 10,000
690	[REDACTED]	FORT13%	9/30/2008	\$ 200,000
690	[REDACTED]	FORT13%	9/30/2008	\$ 10,000
690	[REDACTED]	FORT13%	10/1/2008	\$ 10,000
690	[REDACTED]	FORT13%	10/1/2008	\$ 10,000
690	[REDACTED]	FORT13%	10/1/2008	\$ 10,000
690	[REDACTED]	TDMVER24	11/21/2008	\$ 30,000
690	[REDACTED]	TDMVER18	11/21/2008	\$ 50,000
690	[REDACTED] S	FORT13%	12/19/2008	\$ 25,000
690	[REDACTED]	FORT13%	12/19/2008	\$ 50,000
690	[REDACTED]	FORT13%	12/19/2008	\$ 30,000
690	[REDACTED]	FORT13%	12/19/2008	\$ 45,000
690	[REDACTED] E	TDMVER0910%	1/5/2009	\$ 10,000
690	[REDACTED]	TDMVER0910%	1/5/2009	\$ 15,000
690	[REDACTED]	TDMVER0910%	1/5/2009	\$ 20,000
690	[REDACTED]	TDMVER0910%	1/5/2009	\$ 35,000
690	[REDACTED]	FORT13%	1/6/2009	\$ 50,000
690	[REDACTED]	TDMVER0910%	1/7/2009	\$ 10,000
690	[REDACTED]	TDMVER0910%	1/7/2009	\$ 35,000
690	[REDACTED]	TDMVER0910%	1/8/2009	\$ 5,000
690	[REDACTED]	TDMVER0910%	1/8/2009	\$ 15,000
690	[REDACTED]	TDMVER0910%	1/12/2009	\$ 50,000
690	[REDACTED]	TDMMCAB09-9%	1/26/2009	\$ 10,000
690	[REDACTED]	TDMVER0910%	1/27/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	1/28/2009	\$ 100,000
690	[REDACTED]	TDMMCAB09-9%	1/29/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	1/29/2009	\$ 10,000

WILLIAM F. LEX
SUMMARY OF SALES

Palen Exhibit 4k

Broker ID	Investment Registration Name	Product Code	Date	Ticketed Amount
690	[REDACTED]	TDMMCAB09-9%	1/30/2009	\$ 40,000
690	[REDACTED]	TDMMCAB09-9%	2/4/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	2/5/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	2/17/2009	\$ 30,000
690	[REDACTED]	TDMMCAB09-9%	2/19/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	2/19/2009	\$ 10,000
690	[REDACTED] R	TDMMCAB09-9%	2/19/2009	\$ 15,000
690	[REDACTED]	TDMMCAB09-9%	2/19/2009	\$ 20,000
690	[REDACTED]	TDMV07R9%	3/4/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	3/31/2009	\$ 25,000
690	[REDACTED]	TDMV07R9%	4/1/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	5/14/2009	\$ 70,000
690	[REDACTED]	TDMMCAB09-9%	5/19/2009	\$ 100,000
690	[REDACTED]	TDMMCAB09-9%	6/9/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	6/12/2009	\$ 10,000
690	[REDACTED]	TDMMCAB09-9%	6/15/2009	\$ 150,000
690	[REDACTED]	TDMMCAB09-9%	7/1/2009	\$ 100,000
690	[REDACTED]	TDMV08R-9%	7/14/2009	\$ 10,000
690	[REDACTED]	TDMV08R-9%	7/14/2009	\$ 25,000
690	[REDACTED]	TDMV08R-9%	7/17/2009	\$ 25,000
				<u>\$ 45,536,000</u>

EXHIBIT “E”

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1 Direct/Lex
 2 going after them, these customers, or had these
 3 customers come to you, or was it a combination of
 4 the two?
 5 A. Can I make a qualification?
 6 Q. Yes.
 7 A. I can't prove it, your Honor, but
 8 the ones that don't have check marks, they may
 9 very well have this alarm notes. I just didn't
 10 put them down because their records were so old,
 11 they got shredded, and I wasn't going to check
 12 something that I couldn't prove. Anyway, it could
 13 have been 100 percent, but anyway.
 14 Q. If you looked at these, if the
 15 customer hadn't owned alarm notes before 2003,
 16 were any of these customers on the first pages we
 17 put as part of Exhibit 154? Did they own any
 18 other product with you or obtain any other product
 19 with you before 2003?
 20 A. Yes. They had to be. They were
 21 all existing clients.
 22 Q. What kind of products might they
 23 have owned prior to 2003 if they didn't own alarm
 24 notes?
 25 A. Looking at this, variable

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1 Direct/Lex
 2 annuities, disability, life insurance, couple here
 3 had malpractice insurance.
 4 Q. The reasons for your selling only
 5 senior and senior subordinated, were you here when
 6 Mr. Rogers testified?
 7 A. Yes. Ryan Rogers.
 8 Q. Were the reasons that you only sold
 9 senior and senior subordinated similar to the
 10 reasons Mr. Rogers expressed?
 11 A. I think he did a pretty good job.
 12 MR. STOELTING: Objection.
 13 Q. What were the reasons you only sold
 14 senior and senior subordinated?
 15 A. I wanted my clients to have the
 16 best level of protection at maturity and/or
 17 liquidation.
 18 Q. And the senior note was explained
 19 as what?
 20 A. The senior note was first in line
 21 at a -- in other words, we never got to the point
 22 that it happened, but, for example, FIIN as it was
 23 described was supposed to liquidate in 2008. If
 24 somebody had renewed those four years and they
 25 were sitting in 2008, if the assets were

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1 Direct/Lex
 2 liquidated, the first 25 cents was paid to them,
 3 and I thought that was, you know, pretty good
 4 insulation.
 5 I mean, granted we all know there
 6 is risk in these things, but, boy, in my heart I
 7 thought -- and I didn't use this as a terminology,
 8 but this is why I bought them myself. I thought
 9 it is next to impossible not to get 25 cents on
 10 the dollar, again, we have to say without fraud
 11 going on. I mean, even poor investments should be
 12 worth 25 cents on the dollar.
 13 I just never -- so, I mean, I
 14 thought -- I thought my clients were on pretty
 15 solid ground having senior notes.
 16 Q. And senior subordinated was 50
 17 cents on the dollar?
 18 A. Yes.
 19 Q. While I think of it, I believe
 20 there has been testimony about commissions at
 21 1 percent on the seniors. What part of that did
 22 you get?
 23 A. Well, I got eight tenths of
 24 1 percent so I got 80 percent, your Honor, at --
 25 Q. There has been testimony --

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1 Direct/Lex
 2 JUDGE MURRAY: Did he cut you
 3 off?
 4 THE WITNESS: I was just going
 5 to say I can't swear to it, because I had
 6 nothing to do with payroll, but I think the
 7 standard for what I will say in-house brokers
 8 was .6.
 9 Of course, the justification
 10 for that was I pay everything.
 11 Q. What is "everything"?
 12 A. That's rent, secretaries, the
 13 401(k) for my staff. They got the best Blue Cross
 14 and Blue Shield. Lights, phones, you know, heat.
 15 Had to buy our own equipment.
 16 Today -- in fact, I just changed
 17 computer systems. I was up to \$1,600 a month
 18 having a computer guy service our network.
 19 Basically, that was the reason for
 20 the difference, because I cost McGinn Smith
 21 nothing if I didn't sell something, and that was
 22 the differential reason.
 23 Q. With respect to the senior
 24 subordinated notes, what was your commission?
 25 A. That was -- well, it was 80 percent

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1 Direct/Lex
 2 of 2 percent which would have been 1.6 percent.
 3 Q. Again, you had all the expenses
 4 yourself; is that correct?
 5 A. Yes.
 6 I might add, that rate was whether
 7 I sold one thing or 100. It wasn't any
 8 differential in volume.
 9 Q. So there were no bonuses given by
 10 McGinn Smith for volume or special trips
 11 somewhere, anything like that?
 12 A. Not to me.
 13 JUDGE MURRAY: You didn't get a
 14 ticket for that dinner?
 15 THE WITNESS: I got one dinner
 16 a year, your Honor. I stand corrected, but I
 17 had to pay my way to Albany for that. Sorry.
 18 Q. And the commission on the senior
 19 subordinateds, would you get a commission each
 20 year if it was a 3-year note?
 21 A. Yes, you would.
 22 Q. So it looks like there is about a
 23 25 percent - 2 percent - a 25 percent
 24 differential between what they were paying the
 25 other brokers and you by virtue of the fact that

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1 Direct/Lex
 2 you had your own expenses; is that correct?
 3 A. Yes. I will never figure it out,
 4 but that sounds right.
 5 Q. I want to go back to when you
 6 presented these notes, the Four Fund notes, I
 7 would like to know what you presented, whether you
 8 presented one product or more than one product
 9 when you presented these notes.
 10 A. Well, I mean, each situation was
 11 different, and I had, I mean, continuing - I
 12 mean, flow of conversations with my clients.
 13 All products were discussed from
 14 time to time. I mean, I would say, you know, the
 15 main competing products to these private
 16 placements would have been whether somebody wanted
 17 a fixed or variable annuity or a corporate bond.
 18 I mean, just from the standpoint -
 19 I mean, leaving risk out of it for a minute,
 20 ignoring risk but just saying what were people
 21 considering, you know, as an alternative to this.
 22 Q. So you would present, offer more
 23 than one product to the customer?
 24 A. Yes. I mean, every - I mean, I
 25 think what this list shows is that there was a

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1 Direct/Lex
 2 high demand from people who were just, you know,
 3 as comfortable, as comfortable could be with a
 4 McGinn Smith product and -
 5 Q. Based on what?
 6 A. Based on three, four, five, six
 7 years of payments and redemptions and whatever.
 8 Again, I never thought about how,
 9 you know, so many people signed up so fast, but it
 10 was a case that I had people saying "Promise me
 11 the next time an offering is available." I mean,
 12 it is a nice position to be in, but that was very
 13 frequent.
 14 Q. What I am trying to find out is
 15 when you would present, let's say, a variable
 16 annuity or fixed annuity at the same time you
 17 would present a McGinn Smith note - did that
 18 happen, by the way?
 19 A. Oh, yes, yes.
 20 Q. And a mutual fund at the same time?
 21 A. Yes. We didn't talk about mutual
 22 funds that often because my clients like variable
 23 annuities versus a mutual fund. Even though it
 24 was a little more expense, people liked the idea,
 25 you bought a variable annuity. Your beneficiary

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1 Direct/Lex
 2 got the greater, what they put in or what it was
 3 worth.
 4 Believe me, if you died in 2008,
 5 your family was very happy you had a variable
 6 annuity.
 7 Q. Would you explain the relative
 8 risks of the variable annuity as opposed to the
 9 private placement in one of the Four Funds when
 10 you would make the presentation?
 11 A. Sure. I mean, even with a variable
 12 annuity, for example, a variable annuity, if I am
 13 talking to somebody a variable annuity, a lot of
 14 times people would say "What if that company goes
 15 bankrupt?"
 16 I would say "Actually, if a
 17 variable annuity company goes bankrupt, there is
 18 really not much risk. It is more of an
 19 inconvenience because with the insurance
 20 department's insolvency funds" - like if
 21 Prudential went bankrupt, Metropolitan would
 22 probably take over, but the people's assets aren't
 23 with Metropolitan, they are with all these sub
 24 funds.
 25 So the risk of a variable annuity

EXHIBIT “F”

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Duckkyu Chang, Kee Chang, and Duckkyu Chang TTEE Cumberland Pathology Associates, LLC (Claimants) vs. McGinn, Smith & Co., Inc., Timothy M. McGinn, David L. Smith, Thomas E. Livingston, Lex & Smith Associates Ltd., William F. Lex, McGinn Smith Advisors, LLC, and McGinn, Smith Capital Holdings Corp. (Respondents)

Case Number: 08-04924

Hearing Site: Philadelphia, Pennsylvania

Nature of the Dispute: Customers vs. Member, Associated Persons, and Non-Members.

REPRESENTATION OF PARTIES

Claimants Duckkyu Chang ("D. Chang"), Kee Chang ("K. Chang"), and Duckkyu Chang TTEE Cumberland Pathology Associates, LLC ("Cumberland"), hereinafter collectively referred to as "Claimants": Jenice L. Malecki, Esq., Malecki Law, New York, NY.

Respondents McGinn, Smith & Co., Inc. ("MS & Co."), Timothy M. McGinn ("McGinn"), David L. Smith ("Smith"), Thomas E. Livingston ("Livingston"), Lex & Smith Associates Ltd. ("Lex & Smith"), William F. Lex ("Lex"), McGinn, Smith Advisors, LLC ("MS Advisors"), and McGinn, Smith Capital Holdings Corp. ("MS Capital"), hereinafter collectively referred to as "Respondents": David C. Franceski, Jr., Esq., Stradley, Ronon, Stevens & Young, LLP, Philadelphia, PA. Previously represented by Christine M. Debevec, Esq., Stradley Ronon Stevens & Young, LLP, Philadelphia, PA.

CASE INFORMATION

Statement of Claim filed on or about: December 22, 2008.

D. Chang signed the Uniform Submission Agreement: December 16, 2008.

K. Chang signed the Uniform Submission Agreement: December 16, 2008.

Cumberland signed the Uniform Submission Agreement: December 16, 2008.

Joint Statement of Answer filed by Respondents MS & Co., Smith, and Lex on or about: March 12, 2009.

MS & Co. signed the Uniform Submission Agreement: March 12, 2009.

Smith signed the Uniform Submission Agreement: March 12, 2009.

Lex signed the Uniform Submission Agreement: March 12, 2009.

McGinn did not file an Answer.

McGinn signed the Uniform Submission Agreement: August 4, 2009.

Livingston did not file an Answer.

Livingston signed the Uniform Submission Agreement: August 5, 2009.

Lex & Smith did not file an Answer or sign the Uniform Submission Agreement.

MS Advisors did not file an Answer or sign the Uniform Submission Agreement.

MS Capital did not file an Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitable investments, negligence, negligent supervision, breach of contract, violations of industry rules, failure to diversify, *respondeat superior*, breach of fiduciary duty, fraud, misrepresentations, and omissions. The causes of action relate to unspecified private placement products, notes, and trusts.

Unless specifically admitted in their Answer, Respondents MS & Co., Smith, and Lex denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$2,577,000.00, commissions, interest, attorneys' fees, costs, and punitive damages.

Respondents MS & Co., Smith, and Lex requested Claimants' claims be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

Respondents Lex & Smith, MS Advisors, and MS Capital are not members or associated persons of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to Claimants' claims against Respondents Lex & Smith, MS Advisors, and MS Capital.

On or about June 30, 2009, Claimants filed a Motion in Support for Default Judgment against Respondents Timothy M. McGinn and Thomas E. Livingston. On or about July 10, 2009, Respondents filed an Opposition to Claimants' Motion. On August 4, 2009 a pre-hearing conference was conducted to address the Motion and the Panel, having considered the submissions and oral arguments of the parties and after due deliberation, denied the Motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

ARBITRATORS' FINDINGS

The arbitrators have provided an explanation of their decision in this Award, the explanation is for the information of the parties only and is not precedential in nature.

Dr. Chang and his wife as individuals and Dr. Chang in his role as trustee of Cumberland Pathology pension accounts appear to be intelligent, accomplished people. However, the Arbitration Panel finds no logical carryover from being very experienced at the practice of medicine or music theory or the use of Quicken software programs to account for small-business accounts receivable and accounts payable to any understanding of private placement prospectus.

Furthermore, Mr. Lex seems to be a conscientious broker and insurance salesman who is congenial. McGinn, Smith & Company as the supervisor of Mr. Lex had necessary procedures and policies in place to carry out its duties to potential customers as they had standard education programs for brokers and industry-standard supervision procedures for individual broker accounts.

The Panel has come to a unanimous decision that there is some definitive fault by Dr. Chang and some fault by three of the Respondents - Mr. Lex, Mr. David Smith, and McGinn, Smith & Co. As a preface to this decision, the Panel finds there was no role by the two individuals - Mr. Thomas Livingston or Mr. McGinn. However, in light of this finding being joint and several, and, in light of McGinn, Smith & Co. being liable, it is entirely a matter of the contractual ownership and employment relationship between either Mr. Livingston or Mr. McGinn and McGinn, Smith & Co. as to any contribution these two gentlemen may owe McGinn, Smith & Co. At the risk of being redundant, this arbitration decision does not affect any contractual responsibility Mr. Livingston and Mr. McGinn may have, if any, to reimburse McGinn, Smith & Co. for damages McGinn, Smith & Co. ultimately provides the Claimants. Furthermore, while neither party requested any expungement action by the Panel, after a review of the entire record, which included direct and cross-examination of Mr. Livingston and Mr. McGinn, on its own initiative, the Panel unanimously finds, as a matter of justice and equity, that any mention of this claim, including all allegations originating from this claim, be stricken from all FINRA records and those records FINRA may advise upon concerning both Mr. Thomas Livingston and Mr. McGinn.

The quantitative reasoning and reason for the assignment of fault is set out immediately below.

Dr. Chang and Kee Mann Chang are found to be responsible for the consequences of their own investment decisions after their stating repeatedly verbally and in writing that they had the opportunity to read investment literature and query resources such as Mr. Lex about the risks and rewards of the subject private placement notes.

The fault of Mr. Lex, Mr. Smith, and McGinn, Smith & Company is derived from the overconcentration of the Claimants' investments in these private placement notes. While Mr. Lex is certainly not responsible for preventing the Claimants from investing all of their funds into a single instrument, Mr. Lex and McGinn, Smith & Co. through Mr. David Smith [because Mr. David Smith oversaw Mr. Lex as the compliance officer for a large majority of the time period in question] could have just told Dr. Chang and Kee Mann Chang that McGinn, Smith & Co. would not play a part in these disproportionate investment actions as they developed. Mr. Lex and/or McGinn, Smith & Co. could have declined to conduct the sale of any more of these notes once the over-concentration

reached a critical mass.

As to some counter-arguments presented to the arbitration Panel, the Panel finds the line of reasoning that these private placement notes were both diversified within each note, and the five or more notes were separately varied so there was not concentration, to be disingenuous. There are about a dozen or maybe two dozen small to moderately capitalized LLCs within these notes that are all either consumer service companies like residential alarm companies or discretionary-consumer goods companies like swimming pool supply firms or golf club accessory supply firms. A truly diversified portfolio would have some selections of small, mid and large capitalized businesses among the number of business areas such as some greater number of the 98 categories of businesses that Value Line created. Another counterpoint raised in the arbitration hearing with colored "pie-charts" depicting the percentage of the Chang's assets that were invested in these private placements, was that the Respondents concluded that the subject private placement notes were only 40 to 60% of the Claimants' total assets; this statement by the Respondents rings hollow. Of the liquid or near liquid assets Dr. Chang and Kee Mann Chang had, these subject notes were close to 90% of their net worth, and this aspect of the over-concentration is exacerbated by Mr. Lex only knowing a fraction of Dr. Chang's and Kee Mann Chang's total liquid/near liquid assets.

As to one other counterpoint raised by the Respondents in this case, the Panel finds that the Respondents' argument, that rescission is impossible because the "wrong" parties were sued, to be a fiction. Even while the Respondents referenced briefly and vaguely to regulatory prohibitions at the end of the Arbitration Hearing, this Panel finds that it is within regulatory parameters for Mr. Lex and/or Mr. David Smith to own the notes as individuals if McGinn, Smith & Co. believes it cannot do so. As a result of the Panel's award being joint and several, McGinn, Smith & Co. could compensate Mr. Lex and/or Mr. David Smith if McGinn, Smith & Co. chose to do so in the possible ownership interest in the subject notes ordered here to be returned by the Claimants.

In determining the Award of \$805,110.00, the Arbitration Panel has accounted for in a partial rescission of the purchase of the subject notes: (1) the interest earned by the notes while the Claimants actually held these notes, (2) an imputed interest the Claimants would have conservatively earned with the \$805,110.00 if they had never purchased some of these notes, and (3) there is no purposeful assault on the public good by the Respondents so NO punitive damages are awarded.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents McGinn, Smith & Co., Inc., William Lex, and David Smith are jointly and severally liable for and shall pay to Claimants \$805,110.00 in compensatory damages. Concurrently Dr. Chang, Kee Mann Chang, and Cumberland Pathology Associates are to provide ownership rights to the Respondents of 45% of the face value of the initial value of private placement notes as defined below.
 - a. Payment of \$805,110.00 shall be made within 30 days of the issuance

- of this Award, and any amount paid after 30 days from the Award issuance date will be subject to post-judgment interest of 6% per Pennsylvania statutes.
- b. Concurrently with the payment of the full amount of funds to the Claimants in the amount of \$805,110.00, the Claimants shall sign over to the specific Respondent party(s) [designated before hand by the Respondents] all ownership rights the Claimants have to 45% of the face value of the "notes" to the Respondents [the particular private placement notes will be chosen by the Claimants].**
 - c. The 45% shall be that percentage of the face value [initial purchase value before commissions are deducted] of the total subject "notes" value when initially purchased by the Claimants.**
 - d. The universe of these "notes" are defined as: all FEIN, FIIN, TAIN, notes held by Dr. Chang on December 11, 2009; and all FAIN, FIRST LINE, INEX notes held by Dr. Chang's IRA as of December 11, 2009; and all FIIN, FAIN, FEIN notes held by Kee Mann Chang as of December 11, 2009; and all INEX and FAIN notes held by Cumberland Pathology Associates, LLC as of December 11, 2009.**
 - e. In addition, if any interest/return of principal of the universe of notes as set out above occurs from the date of this Award until the funds are actually received by the Claimants, then the amount of the interest/return of principal shall also be returned to the Respondents immediately.**
- 2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Timothy M. McGinn's (CRD #813935) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to Notice to Members 04-16, Respondent Timothy M. McGinn must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.**

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to the Rule 12805 of the Code, the arbitration panel has made the following Rule 2080 affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The arbitration panel has made the above Rule 2080 finding based on the following reasons:

The Panel has come to a unanimous decision that there is some definitive fault by Dr. Chang and some fault by three of the Respondents - Mr. Lex, Mr. David Smith, and McGinn, Smith & Co. As a preface to this decision, the Panel finds there was no role by the two individuals - Mr. Thomas Livingston or Mr. McGinn. However, in light of this finding being joint and several, and, in light of McGinn,

Smith & Co. being liable, it is entirely a matter of the contractual ownership and employment relationship between either Mr. Livingston or Mr. McGinn and McGinn, Smith & Co. as to any contribution these two gentlemen may owe McGinn, Smith & Co. Furthermore, while neither party requested any expungement action by the Panel, after a review of the entire record, which included direct and cross-examination of Mr. Livingston and Mr. McGinn, on its own initiative, the Panel unanimously finds, as a matter of justice and equity, that any mention of this claim, including all allegations originating from this claim, be stricken from all FINRA records and those records FINRA may advise upon concerning both Mr. Thomas Livingston and Mr. McGinn.

- 3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Thomas E. Livingston's (CRD #864264) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to Notice to Members 04-16, Respondent Thomas E. Livingston must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.**

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to the Rule 12805 of the Code, the arbitration panel has made the following Rule 2080 affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The arbitration panel has made the above Rule 2080 finding based on the following reasons:

The Panel has come to a unanimous decision that there is some definitive fault by Dr. Chang and some fault by three of the Respondents - Mr. Lex, Mr. David Smith, and McGinn, Smith & Co. As a preface to this decision, the Panel finds there was no role by the two individuals - Mr. Thomas Livingston or Mr. McGinn. However, in light of this finding being joint and several, and, in light of McGinn, Smith & Co. being liable, it is entirely a matter of the contractual ownership and employment relationship between either Mr. Livingston or Mr. McGinn and McGinn, Smith & Co. as to any contribution these two gentlemen may owe McGinn, Smith & Co. Furthermore, while neither party requested any expungement action by the Panel, after a review of the entire record, which included direct and cross-examination of Mr. Livingston and Mr. McGinn, on its own initiative, the Panel unanimously finds, as a matter of justice and equity, that any mention of this claim, including all allegations originating from this claim, be stricken from all FINRA records and those records FINRA may advise upon concerning both Mr. Thomas Livingston and Mr. McGinn.

- 4. Any and all relief not specifically addressed herein, including punitive damages, is denied.**

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial claim filing fee = \$1,800.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, McGinn, Smith & Co., Inc., is assessed the following:

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: August 11, 2009 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$3,600.00
Pre-hearing conferences: May 4, 2009 1 session
August 4, 2009 1 session
September 10, 2009 1 session

Twenty (20) Hearing sessions @ \$1,200.00 = \$24,000.00
Hearing Dates: October 12, 2009 2 sessions
October 13, 2009 2 sessions
October 14, 2009 2 sessions
October 15, 2009 2 sessions
October 16, 2009 2 sessions
October 19, 2009 2 sessions
October 20, 2009 2 sessions
December 8, 2009 2 sessions
December 10, 2009 2 sessions
December 11, 2009 2 sessions

Total Hearing Session Fees = \$28,050.00

1. The Panel has assessed \$14,025.00 of the hearing session fees jointly and severally to Claimants.

- 2. The Panel has assessed \$14,025.00 of the hearing session fees jointly and severally to Respondents McGinn, Smith & Co., Inc., William F. Lex, and David L. Smith.**

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Thomas B. Saizer - Public Arbitrator, Presiding Chairperson
Edward Greer - Public Arbitrator
Kenneth J. Beahan - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Thomas B. Saizer
Public Arbitrator, Presiding Chairperson

12-31-09
Signature Date

Edward Greer
Public Arbitrator

Signature Date

Kenneth J. Beahan
Non-Public Arbitrator

Signature Date

December 31, 2009

Date of Service (For FINRA Dispute Resolution use only)

ARBITRATION PANEL

Thomas B. Selzer - Public Arbitrator, Presiding Chairperson
Edward Greer - Public Arbitrator
Kenneth J. Boshan - Non-Public Arbitrator

Consenting Arbitrators' Signatures

Thomas B. Selzer
Public Arbitrator, Presiding Chairperson

Signature Date

Edward Greer
Edward Greer
Public Arbitrator

12/30/09
Signature Date

Kenneth J. Boshan
Non-Public Arbitrator

Signature Date

December 31, 2009
Date of Service (For FINRA Dispute Resolution use only)

ARBITRATION PANEL

Thomas B. Selzer - Public Arbitrator, Presiding Chairperson
Edward Greer - Public Arbitrator
Kenneth J. Boshan - Non-Public Arbitrator

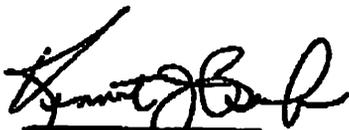
Consenting Arbitrators' Signatures

Thomas B. Selzer
Public Arbitrator, Presiding Chairperson

Signature Date

Edward Greer
Public Arbitrator

Signature Date



Kenneth J. Boshan
Non-Public Arbitrator

12/30/2009
Signature Date

December 31, 2009
Date of Service (For FINRA Dispute Resolution use only)

UNITED STATES OF AMERICA
Before the
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.	:

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I served copies of the foregoing pleading on the following persons via e-mail and 1st class mail, postage prepaid, addressed as follows:

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Haimavathi V. Marlier, Esquire
Michael D. Birnbaum, Esquire
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stoeltingd@sec.gov
marlierh@sec.gov
birnbaumm@sec.gov

Hon. Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
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Washington, D.C. 20549
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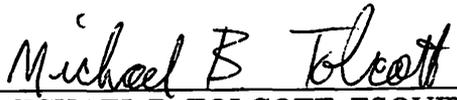
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DATE: 3-6-15


MICHAEL B. TOLCOTT, ESQUIRE