

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

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

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

*Defendants,* :

LYNN A. SMITH and :  
NANCY MCGINN, :

*Relief Defendants. and* :

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

*Intervenor.* :

-----X

**RECEIVER’S REPLY TO FRANK CHIAPPONE RESPONSE TO  
RECEIVER’S THIRD MOTION FOR AN ORDER DISALLOWING  
CERTAIN CLAIMS (BROKER CLAIMS)**

William J. Brown, as Receiver (“Receiver”), by his counsel, Phillips Lytle LLP, respectfully submits (i) this Reply (“Reply”) to Frank Chiappone’s Response to the 3rd Motion of William J. Brown, as Receiver, for an Order Disallowing Certain Claims (Broker

Claims) (Docket No. 995) (“Chiappone Objection”) and (ii) the Declaration of William J. Brown, as Receiver, in Support of the Reply to Frank Chiappone’s Response to Third Motion for an Order Disallowing Certain Claims (Broker Claims) (“Brown Declaration”).

### **PRELIMINARY STATEMENT**

The Chiappone Objection ignores the basis for the relief sought by the Receiver in the Motion (as defined below). The Receiver seeks subordination or disallowance of the Broker Claims based on the undisputed inequitable behavior of the Brokers, including Frank Chiappone (“Chiappone”). The Receiver does not seek to subordinate or disallow Chiappone’s claims based upon the legal determinations made by the ALJ<sup>1</sup> in the Initial Decision, and the Receiver does not seek a legal determination from this Court that Chiappone violated the Securities Act or the Exchange Act. As the Chiappone Objection has not provided a basis for denying the relief requested in the Motion, the Receiver respectfully requests that the Chiappone Objection be overruled.

### **BACKGROUND**

On March 19, 2018, the Receiver filed the Third Motion of William J. Brown, as Receiver, for an Order Disallowing Certain Claims (Broker Claims) (Docket No. 984) (“Motion”). No other Broker filed an objection to the Motion.

On March 26, 2018, Chiappone sent a letter to the Receiver, attached to the Brown Declaration as **Exhibit A**, asking that the Receiver correct certain alleged factual errors in the Memorandum of Law filed in Support of the Motion (Docket No. 985) (“Memorandum”). As Chiappone failed to identify any substantive factual errors in the Memorandum, counsel to the Receiver responded by letter dated March 28, 2018, attached

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<sup>1</sup> Terms not otherwise defined in the Reply have the meaning given to them in the Memorandum.

to the Brown Declaration as **Exhibit B**, informing Chiappone that there was nothing in the Memorandum or the Motion that required correction.

The factual points which serve as the basis for the Receiver's requested relief against Chiappone remain undisputed, including that Chiappone discovered that the investors in Firstline Trust, a trust offering, were being paid with proceeds from other trusts, inconsistent with the PPM's. Notwithstanding these concerns, and after receiving assurances from Smith, Chiappone sold \$80,000 in Firstline Notes in May 2018. Memorandum at 6.

**A. The Receiver Does Not Rely on the ALJ's Legal Determinations**

The Chiappone Objection is devoted to an analysis of why the ALJ's legal reasoning in the Initial Decision is erroneous. The Memorandum, however, does not rely on the ALJ's legal conclusions as a basis for the relief sought in the Motion. Instead, the Memorandum relies on the ALJ's factual findings. The factual findings of a trial court are subject to a high level of deference by a reviewing court. Rule 52(a)(6) of the Federal Rules of Civil Procedure provides that:

Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

Fed. R. Civ. P. 52(a)(6); *see also Taylor v. Potter*, 148 Fed.Appx. 33, 34 (2d Cir. 2005) (“[I]t is an axiom of appellate procedure that we review . . . questions of fact for clear error.”) (internal quotation omitted). Deference is given to the original finder of facts because “the trial judge’s major role is the determination of fact, and with experience in fulfilling that role comes expertise.” *Anderson v. City of Bessemer, N.C.*, 470 U.S. 564, 574 (1985). Even greater deference is demanded when the trial judge’s findings are based on determinations of credibility, “for only the trial judge can be aware of the variations in demeanor and tone of

voice that bear so heavily on the listener's understanding or and belief in what is said." *Id.* at 575.

The ALJ's factual findings are entitled to same deference as a trial court's factual determinations. The ALJ has experience as a trier of fact presiding over administrative proceedings initiated by the SEC. Moreover, during the hearing to consider the SEC's Order Instituting Administrative and Cease-and-Desist Proceedings, the ALJ saw the evidence and heard the testimony first-hand from both the SEC's and the Brokers' witnesses. Accordingly, the ALJ's factual findings are due the same weight as any other trial court's factual determinations.

**B. The ALJ's Factual Findings Support the Relief Sought by the Receiver**

The ALJ's undisputed factual findings support the relief sought by the Receiver. The ALJ found that Chiappone was aware of several troubling facts about the private placements sold by MS & Co. *See* Memorandum at 6. Specifically, the ALJ found that Chiappone continued to sell notes in Firstline Trust, even though he knew that investors in Firstline Trust were being paid inconsistently with the PPMs. Initial Decision at 14. The ALJ found that, in August 2008, Chiappone wrote an email to Smith accusing him of mismanaging the Four Funds' assets and lying about the cause of the Four Funds' liquidity problems. *Id.* at 13. The ALJ also found that, after sending that email, Chiappone continued selling MS & Co. placements, without mentioning his misgivings to his clients. *Id.* Finally, the ALJ found that, as early as 2007, Chiappone was aware that redemption requests would not be honored unless replacement investors were brought in.<sup>2</sup> *Id.* at 12.

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<sup>2</sup> As a matter of regulatory law, the ALJ held that knowledge of the redemption requests was not a "red flag" triggering a broker-dealer's duty to investigate under *Hanly v. S.E.C.*, 415 F.2d 589 (2d Cir. 1969) and its progeny. ID at 93.

These factual findings made by the ALJ support the Receiver's request that Chiappone's claims be equitably subordinated or disallowed. Chiappone recklessly furthered McGinn's and Smith's Ponzi scheme by continuing to sell MS & Co. private placements, in spite of his knowledge of troubling facts about the private placements - in particular, that he knew investors were being paid in ways inconsistent with the PPMs and that he suspected Smith of lying and mismanaging the investments. *See, e.g., S.E.C. v. Forte*, Civil Nos. 09-63, 09-64, 2012 WL 1719145 at \*3 (E.D.Pa. May 16, 2012) (holding that Investors who, by their reckless behavior, further a Ponzi scheme "are not 'innocent' and so are not entitled to the same relief as truly innocent investors."). Chiappone should have realized there was a strong probability that harm would result to innocent and unsuspecting investors who bought private placements from him. Accordingly, Chiappone should not be entitled to share in distributions with truly innocent investors.

**C. The Objection Does Not Provide a Basis for Denying the Motion**

The Objection does not dispute the factual findings described above. Rather, the Objection argues that the Motion should be denied because the ALJ's Initial Decision is not final and the ALJ's authority to issue the Initial Decision has been challenged. Objection at 2-3. However, the Receiver's argument rests solely on the ALJ's findings of fact, which findings are entitled to a high level of deference. Thus, the fact that the Initial Decision has not yet been ratified by the SEC is not relevant to the Motion. For the same reason, the pending Constitutional challenge to the ALJ's authority is also irrelevant to the question of whether Chiappone acted recklessly in selling MS & Co. private placements based on the undisputed facts found by the ALJ.

The Objection also attacks the underlying reasoning of the ALJ's legal determinations and argues that the ALJ's analysis of regulatory caselaw is erroneous. *Id.* at 6-11. The Receiver does not rely on the ALJ's legal analysis in his request for relief. Although the ALJ's legal holding that Chiappone violated both the Securities Act and the Exchange Act certainly weighs in favor of equitably subordinating or disallowing Chiappone's claims, it is not necessary to conclude that Chiappone's claims should be equitably subordinated or disallowed.

Finally, the Objection argues that Chiappone was unaware of the Ponzi scheme and that Chiappone could not be expected to have discovered the fraud if agencies like the SEC and FINRA did not discover it. Objection at 3-4. The Memorandum does not allege that Chiappone knew of the fraud - rather, the Memorandum clearly supports the fact that Chiappone was aware of certain facts that he should have known would have resulted in harm to innocent investors. Memorandum at 14-15. Further, what the SEC and FINRA found or did not find in the course of their investigations of MS & Co. has no bearing on the undisputed facts at hand, which are that Chiappone was aware of certain troubling facts about MS & Co. and the private placements that he was selling, which should have alerted him that harm would result to innocent investors.

The Objection does not provide a basis for denial of the Motion. The Receiver's request for relief is premised solely on the findings of fact made by the ALJ in the Initial Decision, which facts are not disputed in the Objection. Accordingly, the Objection should be overruled.

**CONCLUSION**

The Receiver requests that the Court (i) overrule the Objection and (ii) enter an Order substantially in the form attached to the Motion disallowing the Broker Claims listed on Exhibit A to the Motion and (iii) grant such other and further relief as the Court deems just and proper.

Dated: May 4, 2018

PHILLIPS LYTTLE LLP

By /s/ Catherine N. Eisenhut  
William J. Brown (Bar Roll #601330)  
Catherine N. Eisenhut (Bar Roll #520849)  
Attorneys for Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No. (518) 472-1224

and

One Canalside  
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Buffalo, New York 14203  
Telephone No.: (716) 847-8400

Doc #01-3116365.2

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

*Plaintiff,* :

vs. :

Case No. 1:10-CV-457  
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McGINN, SMITH & CO., INC., :  
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Individually and as Trustee of the David L. and :  
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :  
LAUREN T. SMITH, and NANCY MCGINN, :

*Defendants,* :

LYNN A. SMITH and :  
NANCY MCGINN, :

*Relief Defendants,* :

- and - :

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

*Intervenor.* :

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**DECLARATION OF WILLIAM J. BROWN, AS RECEIVER, IN SUPPORT OF  
REPLY TO FRANK CHIAPPONE RESPONSE TO RECEIVER'S THIRD MOTION  
FOR AN ORDER DISALLOWING CERTAIN CLAIMS (BROKER CLAIMS)**

William J. Brown, as Receiver, declares, under the penalty of perjury, pursuant to 28

U.S.C. § 1746, as follows:



1. I am the Receiver of McGinn, Smith & Co. Inc., et al. (“MS & Co.”) appointed by the Court in this action pursuant to the Preliminary Injunction Order dated July 26, 2010 (Docket No. 96).

2. I make this Declaration in support of the Receiver’s Reply to Frank Chiappone Response to Receiver’s Third Motion for an Order Disallowing Certain Claims (Broker Claims).

### **BACKGROUND**

3. On March 26, 2018, Chiappone sent a letter to the Receiver, attached to this Declaration as **Exhibit A**, asking that I correct certain alleged factual errors in the Memorandum of Law in Support of the Third Motion of William J. Brown, as Receiver, for an Order Disallowing Certain Claims (Broker Claims) (Docket No. 985) (“Memorandum”).

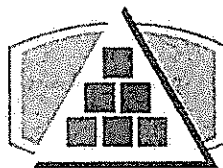
4. As Chiappone failed to identify any substantive factual errors in the Memorandum, counsel to the Receiver responded by letter dated March 28, 2018, attached to this Declaration as **Exhibit B**, informing Chiappone that there was nothing in the Memorandum or the Motion that required correction.

5. On April 16, 2018, Chiappone untimely served the Receiver with Respondent Frank Chiappone’s Response to the 3rd Motion of William J. Brown, as Receiver, for an Order Disallowing Certain Claims (Broker Claims) (Docket No. 995) (“Objection”) by e-mail. I responded by letter, attached to this Declaration as **Exhibit C**, informing Chiappone that the submission of the Objection was untimely.

Dated: May 4, 2018

/s/ William J. Brown  
William J. Brown

# *Exhibit A*



**Tuczinski Gilchrist  
Cavalier Tingley**  
ATTORNEYS AT LAW  
TRUST • INTEGRITY • SERVICE

*Roland M. Cavalier*  
rcavalier@tgtflegal.com  
(518) 238-3759 ext. 208

March 26, 2018

William J. Brown, Receiver  
One Canalside  
125 Main Street  
Buffalo, NY 14203

**Re: Third Motion to Disallow Broker Claims**

Mr. Brown:

I represent Frank Chiappone in connection with the SEC proceedings brought against various McGinn Smith brokers. I have reviewed the papers in your motion to disallow or subordinate claims made by certain brokers who invested in private placement securities offered by McGinn Smith & Company. I represent only Mr. Chiappone as to your Third Motion

I am writing this letter as I believe your motion papers contain certain errors as regards statements made relating to Mr. Chiappone. We are therefore asking that you submit a further statement to Judge Hummel, correcting those errors.

The primary error is your statement that Mr. Chiappone sold \$80,000 in notes issued by Firstline at a time when he was aware that Firstline had filed for bankruptcy. This is not correct. In fact, Mr. Chiappone's sale of \$80,000 in Firstline took place well more than a year (actually, 16 months) before he first found out that Firstline was in bankruptcy. Mr. Gamello testified that he first learned of the Firstline bankruptcy at a September, 2009 meeting (Tr. 5952- 5953). Mr. Chiappone also testified that he first learned of the Firstline bankruptcy in September, 2009, and that he was very upset upon learning that MS & Co. had known of the bankruptcy which occurred in January of 2008 (Tr. 2578-2579 and Tr. 5573-5575). In fact, MS & Co. kept that information from the brokers for some 19 months after Firstline actually filed for Bankruptcy (Tr. 5575). Mr. Chiappone's sale of Firstline offerings were all done well before he (or any of the other brokers) learned of the Firstline bankruptcy. See Palen Exhibit 4c (within SEC Ex. 2), which clearly shows that Mr. Chiappone's first sale of Firstline occurred on June 1, 2007 and his last sale of Firstline occurred on May 15, 2008. Also incorrect is the statement that Mr. Chiappone spoke to Mr. Smith about the Firstline situation, when in fact he called Mr. McGinn before he sold Firstline in April 2008 and was assured that the deal was proceeding as it was when the notes were first offered in 2007. Tr. 5572

William J. Brown, Receiver  
March 26, 2018  
Page 2 of 2

Another error is found in your March 23, 2018 filing, in which you claim that Mr. Chiappone sold private placement investments even though there was a redemption policy in place. I direct your attention to page 93 of the ALJ's Initial Decision, wherein she specifically did not find that the alleged redemption policy, stating:

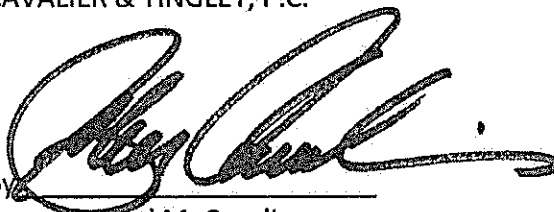
"The preponderance of the evidence does not support the claim that MS & Co. had a redemption policy that was, in these circumstances, a red flag that warranted investigation. ... However, there is no evidence that a registered representative who did not find a new purchaser was ever unable to redeem a client. It was reasonable for the registered representatives to accept MS & Co.'s efforts to create a secondary market for illiquid securities and Smith's preference for resales rather than having to liquidate assets to meet redemptions." (Initial Decision, at page 93).

Although not relevant to the issues in your motion, you should know that Mr. Chiappone worked at MS & Co. from 1988 (not 1998) to December of 2009.

On behalf of Mr. Chiappone, I request that you correct these errors in your submissions to Judge Hummel.

Very truly yours,

TUCZINSKI, GILCHRIST,  
CAVALIER & TINGLEY, P.C.

By   
Roland M. Cavalier

RMC/lam

cc: Frank Chiappone

# ***Exhibit B***



**Phillips Lytle** LLP

Via E-Mail and U.S. Mail

March 28, 2018

Roland M. Cavalier  
Tuczinski Gilchrist Cavalier Tingley, P.C.  
500 Federal Street, 4th Floor  
Troy, New York 12180

Re: Frank Chiappone - Third Motion to Disallow Broker Claims

Mr. Cavalier:

I am writing this letter in response to your March 26, 2018 letter. In your letter, you state that certain facts in the Memorandum of Law filed in support of the Receiver's Third Motion to Disallow Certain Claims (Docket No. 985) ("Memorandum") were made in error. Contrary to your assertions, the facts in the Memorandum are accurately cited from the Administrative Law Judge's ("ALJ") findings of facts in the Initial Decision entered in the underlying S.E.C. action against Mr. Chiappone ("Initial Decision").

To your first assertion, the Memorandum does not state that Mr. Chiappone was aware of the Firstline bankruptcy before he sold \$80,000 of Firstline notes in May 2008. Rather, the Memorandum correctly cites to the ALJ's finding that Mr. Chiappone was aware that Firstline investors were being paid with proceeds from other trusts before he sold Firstline notes in May 2008. *See* Initial Decision at 14.

To your second assertion, the fact that Mr. Chiappone was aware of the redemption policy was a factual finding made by the ALJ. *See* Initial Decision at 12. The fact that Mr. Chiappone was aware of this redemption policy, along with other very troubling facts including red flags, while continuing to sell private placements to unknowing investors only supports the Receiver's position that Mr. Chiappone's reckless behavior - and the resulting harm to unsuspecting investors - should disqualify him from participating in distributions with those harmed investors.

CATHERINE N. EISENHUT

DIRECT 716 847 8323 CEISENHUT@PHILLIPSLYTLLE.COM

ATTORNEYS AT LAW

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

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Roland M. Cavalier  
Page 2

March 28, 2018

As you have failed to identify any substantive errors of fact in the Memorandum, there is nothing for us to correct.

Very truly yours,

Phillips Lytle LLP

A handwritten signature in blue ink that reads "Catherine N. Eisenhut".

By

Catherine N. Eisenhut

CNE  
Doc #01-311194.2

# *Exhibit C*





**Phillips Lytle LLP**

**Via E-Mail and U.S. Mail**

April 16, 2018

Roland M. Cavalier, Esq.  
Tuczinski, Gilchrist, Cavalier & Tingley, P.C.  
P.O. Box 28  
Troy, NY 12181

Re: Securities and Exchange Commission v. McGinn, Smith & Co. Inc. - Untimely  
Response of Frank Chiappone  
Case No. 1:10-CV-457

Dear Mr. Cavalier:

We received this morning from you via overnight courier the pleading entitled *Respondent Frank Chiappone's Response to the 3rd Motion of William J. Brown, as Receiver, for an Order Disallowing Certain Claims (Broker Claims)* ("Response"). The Response is dated April 13, 2018, and the Certificate of Service is dated the same date.

The Response is materially untimely since it was due to be filed and served no later than April 2, 2018. You were well aware of this date as a practicing attorney, from the Notice of Motion (Docket No. 984), and by your having received a response from us on March 28, 2018 (copy attached) responding to your March 26, 2018 letter (also attached), which made assertions that the facts recited in the Receiver's Memorandum of Law (Docket No. 985) were in error.

The Receiver's Third Motion objecting to broker claims was based solely on factual findings and not on any law cited in the Initial Decision. Irrespective of any legal issues associated with law or procedure involved in the Initial Decision, the Initial Decision's fact-finding is consistent with the facts as known by the Receiver and evident from the record.

Pursuant to Northern District of New York Local Rule 7.1(b)(3), "the Court shall not consider any papers required under this Rule that are not timely filed or are otherwise

ATTORNEYS AT LAW

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ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTLLE.COM



Roland M. Cavalier, Esq.  
Page 2

April 16, 2018

not in compliance with this Rule unless good cause is shown." No good cause has or can be shown for your delay.

Accordingly, we reject the Response you sent by overnight courier to us delivered today as grossly untimely.

Very truly yours,

Phillips Lytle LLP

By

A handwritten signature in blue ink, appearing to read 'W. J. Brown', written over a horizontal line.

William J. Brown

EEEht  
Doc #01-3115823.1  
Attachment

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION

*Plaintiff,*

vs.

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

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

*Defendants,*

LYNN A. SMITH and  
NANCY McGINN,

*Relief Defendants. and*

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

*Intervenor.*  
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**CERTIFICATE OF SERVICE**

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on May 4, 2018, a true and correct copy of the Receiver’s Reply to Frank Chiappone Response to Receiver’s Third Motion for an Order Disallowing Certain Claims (Broker Claims) and the Declaration of William J. Brown, as Receiver, in Support (“Reply and Declaration”) was caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court’s ECF filing system, and by First Class Mail to the parties indicated below:

- **William J. Brown** wbrown@phillipslytle.com,khatch@phillipslytle.com
- **Certain McGinn Smith Investors**apark@weirpartners.com
- **Elizabeth C. Coombe** elizabeth.c.coombe@usdoj.gov, paul.condon@usdoj.gov, CaseView.ECF@usdoj.gov,kelly.ciccarelli@usdoj.gov
- **William J. Dreyer** wdreyer@dreyerboyajian.com, bhill@dreyerboyajian.com, lowens@dreyerboyajian.com,coconnell@dreyerboyajian.com
- **Scott J. Ely** sely@elylawpllc.com,shm@fwc-law.com
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- **James H. Glavin** , IVhglavin@glavinandglavin.com
- **Bonnie R. Golub** bgolub@weirpartners.com
- **James E. Hacker** jhacker@joneshacker.com, sfebus@joneshacker.com, thiggs@joneshacker.com
- **Erin K. Higgins** EHiggins@ckrpf.com
- **Benjamin W. Hill** bhill@dreyerboyajian.com, cjoy@dreyerboyajian.com, coconnell@dreyerboyajian.com
- **E. Stewart Jones** , resjones@joneshacker.com, mleonard@joneshacker.com, pcampione@joneshacker.com, kjones@joneshacker.com
- **Edward T. Kang** ekang@khflaw.com, mlagoumis@khflaw.com, jarcher@khflaw.com, jpark@khflaw.com, golberding@KHFlaw.com
- **Jack Kaufman** kaufmanja@sec.gov
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- **James D. Linnan** jdlinnan@linnan-fallon.com, lawinfo@linnan-fallon.com
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- **Michael J. Murphy** mmurphy@carterconboy.com, abell@carterconboy.com, tcozzy@carterconboy.com
- **Joshua M. Newville** newvillej@sec.gov
- **Craig H. Norman** cnorman@chnesq.com, jbugos@coopererving.com
- **Andrew Park** apark@weirpartners.com, imarciniszyn@weirpartners.com
- **Thomas E. Peisch** TPeisch@ckrpf.com, apower@ckrpf.com
- **Terri L. Reicher** Terri.Reicher@finra.org
- **Richard L. Reiter** reiterr@wemed.com, richard.reiter@wilsonelser.com
- **Sheldon L. Solow** sheldon.solow@kayescholer.com, kenneth.anderson@kayescholer.com
- **David P. Stoelting** stoeltingd@sec.gov, mehrabanl@sec.gov, mcgrathk@sec.gov, paleym@sec.gov, wbrown@phillipslytle.com
- **Charles C. Swanekamp** cswanekamp@bsk.com, mhepple@bsk.com
- **Walter Weir** ww@weirpartners.com, smorris@weirpartners.com
- **Bryan M. Westhoff** bryan.westhoff@kayescholer.com
- **Benjamin Zelsermyer** bzlaw@optonline.net, steincav@aol.com

And, I hereby certify that on May 4, 2018, I mailed, via first class mail using the United States Postal Service, a copy of the Reply and Declaration to the individuals listed below:

Nancy McGinn  
426-8th Avenue  
Troy, NY 12182

Thomas J Urbelis  
Urbelis & Fieldsteel, LLP  
155 Federal Street  
Boston, MA 02110-1727

Michael L. Koenig, Esq.  
Greenberg Traurig, LLP  
54 State Street, 6th Floor  
Albany, NY 12207

RBS Citizen, N.A.  
Cooper Erving & Savage LLP  
39 North Pearl Street  
4th Floor  
Albany, NY 12207

Charles C. Swanekamp, Esq.  
Bond, Schoeneck & King PLLC  
Avant Building - Suite 900  
200 Delaware Avenue  
Buffalo, NY 14202-2107

Frank Chiappone  
3 Dutchess Path  
Clifton Park, NY 12065

Kimellen & William Lex  
450 Langdale Court  
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