

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457(GLS/DRH)

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, DAVID L. SMITH,
LYNN A. SMITH, DAVID M. WOJESKI, Trustee of
the David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04, GEOFFREY R. SMITH,
LAUREN T. SMITH, and NANCY MCGINN,

Defendants,

LYNN A. SMITH, and
NANCY MCGINN,

Relief Defendants, and

DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.

DECLARATION OF DAVID STOELTING

I, David Stoelting, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney in the Enforcement Division of the New York Regional Office of the Securities and Exchange Commission ("SEC"). This declaration is made

to modify paragraph 51 of my declaration filed August 3, 2010, filed in support of the SEC's motion for an order to show cause and for emergency relief.

2. Paragraph 51 of my declaration dated August 3, 2010, as filed on that date, read as follows:

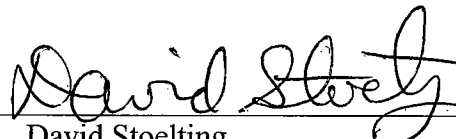
Attached hereto as Exhibit 14, are 28 pages of handwritten notes addressed to "Tim" and signed by "DLS" and "Dave". Upon information and belief, the notes were found in David Smith's desk pursuant to a search warrant executed on April 20, 2010. The notes were subsequently provided to the SEC by the U.S. Attorney's Office.

3. Paragraph 51 is hereby modified to read as follows:

Attached hereto as Exhibit 14, are 28 pages of handwritten notes addressed to "Tim" and signed by "DLS" and "Dave". Upon information and belief, the notes were found at David Smith's residence in Saratoga Springs, NY, pursuant to a search warrant executed on April 20, 2010. The notes were subsequently provided to the SEC by the U.S. Attorney's Office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
August 5, 2010


David Stoelting