



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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**DIVISION OF
ENFORCEMENT**

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October 28, 2019

BY ECF

The Honorable Gary L. Sharpe
United States District Judge
United States District Court
Northern District of New York
United States Courthouse
Albany, New York 12207

Re: *SEC v. McGinn, Smith & Co., Inc., et al., 10-cv-457 (GLS)(CFH)*

Dear Judge Sharpe:

On behalf of plaintiff Securities and Exchange Commission and Defendant/Relief Defendant Lynn A. Smith, I enclose for the Court's consideration and approval a proposed *Order Modifying Asset Freeze* (the "Proposed Order").

If approved by the Court, the Proposed Order would release from the Court's asset freeze the individual retirement account (IRA) in the name of Mrs. Smith, and fully resolve her pending motion to modify the asset freeze to release the IRA filed on September 30, 2019 (Dkt. 1073).

Mrs. Smith has informed me that she consents to the entry of the Proposed Order by the Court.

Respectfully submitted,

/s David Stoelting

David Stoelting

cc (by email w/encl.): Lynn A. Smith, *pro se*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>McGINN, SMITH & CO., INC., et al.,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>10 Civ. 475 (GLS/CFH)</p>
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ORDER MODIFYING ASSET FREEZE

WHEREAS on April 20, 2010, plaintiff Securities and Exchange Commission (“SEC”) commenced this action by filing a Complaint as well as a motion for a temporary restraining order (“TRO”) seeking to freeze certain assets of the defendants and relief defendants, and the Court granted the TRO and the Order Freezing Assets on that day (Dkt. 5);

WHEREAS, on July 22, 2010, the Court entered a Preliminary Injunction Order (Dkt. 96) that, among other things, continued the asset freeze that had been provisionally in effect since April 20, 2010;

WHEREAS, among the assets frozen pursuant to the Preliminary Injunction Order was an individual retirement account (“IRA”) in the name of Defendant and Relief Defendant Lynn A. Smith (“L. Smith”) held at National Financial Services, LLC, Account Number RMR-XXX912 (the “L. Smith IRA Account”);

WHEREAS, on June 25, 2015, the Court entered a Final Judgment as to L. Smith and others (Dkt. 837) (the “Final Judgment”) which, among other things, requires L. Smith to return certain assets that had been fraudulently conveyed;

WHEREAS, on September 30, 2019, L. Smith filed a motion to release the L. Smith IRA Account from the asset freeze, arguing that her IRA account is exempt from execution under New York State law, specifically N.Y. Civ. Prac. Law and Rules § 5205, and that this exemption cannot be disregarded because: (a) the Final Judgment is not a disgorgement order; and (b) L. Smith was not found to have violated the federal securities laws (Dkt. 1073),

NOW, THEREFORE,

I.

IT IS ORDERED that, on consent of the SEC and L. Smith, the Preliminary Injunction Order is modified such that the L. Smith IRA Account is released from the asset freeze.

II.

IT IS FURTHER ORDERED that with the exception of the modification set forth herein and in certain prior Court orders, the asset freeze as set forth in the Preliminary Injunction Order remains in full effect.

SO ORDERED

GARY L. SHARPE
United States District Judge

Dated: Albany, New York
_____, 2019