

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.*  
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**NOTICE OF MOTION OF WILLIAM J. BROWN, AS RECEIVER, FOR ORDER  
IN AID OF ADMINISTRATION (A) APPROVING PROCEDURE FOR NOTICE  
AND ABANDONMENT OF CLAIMS OF LOST INVESTORS AND INVESTORS  
WITH INCOMPLETE CLAIM FILES, (B) APPROVING REDISTRIBUTION OF  
ALLOCATED RECOVERIES TO RECEIVERSHIP ESTATE FOR BENEFIT OF  
INVESTORS WITH ALLOWED CLAIMS, (C) EXPUNGING ABANDONED  
CLAIMS AND INCOMPLETE CLAIMS AND (D) DISALLOWING CERTAIN  
REMAINING PAPER CLAIMS**

PLEASE TAKE NOTICE that upon the Motion of William J. Brown, as  
Receiver for Order in Aid of Administration (A) Approving Procedure for Notice and  
Abandonment of Claims of Lost Investors and Investors with Incomplete Claim Files, (B)  
Approving Redistribution of Allocated Recoveries to Receivership Estate for Benefit of

Investors with Allowed Claims, (C) Expunging Abandoned Claims and Incomplete Claims and (D) Disallowing Certain Remaining Paper Claims (“Motion”), Phillips Lytle LLP will move before the Hon. Christian F. Hummel, United States Magistrate Judge, United States District Court for the Northern District of New York, James T. Foley - U.S. Courthouse, 445 Broadway, Albany, New York 12207-2924, on December 19, 2019 at 9:30 a.m., seeking an Order to be entered approving the Motion. No oral argument is requested.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must be made in writing, and should be filed and served upon the undersigned at the address listed below in accordance with the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Northern District of New York.

PLEASE TAKE FURTHER NOTICE that if no responses are timely filed and served with respect to the Motion, the Court may enter an Order granting the Motion, approving a procedure for notice and abandonment of claims of Lost Investors and investors with incomplete claim files, approving the redistribution of allocated recoveries to the receivership estate for the benefit of investors with allowed claims, expunging those certain Abandoned Claims listed on Exhibits A-1 and A-2 to the Motion for which no further authorized responses are received, and disallowing those Remaining Paper Claims listed on Exhibit B to the Motion without further notice or opportunity to be heard offered to any party.

Dated: November 13, 2019

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  
125 Main Street  
Buffalo, New York 14203  
Telephone No.: (716) 847-8400

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, LYNN A. 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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**MOTION OF WILLIAM J. BROWN, AS RECEIVER, FOR ORDER IN AID OF  
ADMINISTRATION (A) APPROVING PROCEDURE FOR NOTICE AND  
ABANDONMENT OF CLAIMS OF LOST INVESTORS AND INVESTORS  
WITH INCOMPLETE CLAIM FILES, (B) APPROVING REDISTRIBUTION OF  
ALLOCATED RECOVERIES TO RECEIVERSHIP ESTATE FOR BENEFIT OF  
INVESTORS WITH ALLOWED CLAIMS, (C) EXPUNGING ABANDONED  
CLAIMS AND INCOMPLETE CLAIMS AND (D) DISALLOWING CERTAIN  
REMAINING PAPER CLAIMS**

William J. Brown, as Receiver (“Receiver”), by his counsel, Phillips Lytle LLP, moves (the “Motion”) for an Order in Aid of Administration (a) approving procedure for notice and abandonment of claims of Lost Investors and investors with incomplete claim files, (b) approving redistribution of allocated recoveries to receivership estate for benefit of investors with allowed claims, (c) expunging Abandoned Claims and (d) disallowing certain Remaining Paper Claims (each as defined in the accompanying Declaration), and respectfully represents as follows:

The Receiver files the Motion to request entry of an Order in Aid of Administration (a) approving a procedure for notice and abandonment of claims of Lost Investors and investors with incomplete claim files, including mailing to all investors with claims listed on **Exhibits A-1 and A-2** to the Motion the letter in the form attached as **Exhibit C** to the Motion, (b) approving the redistribution of allocated recoveries to the receivership estate for the benefit of investors with allowed claims, (c) expunging those certain abandoned claims and incomplete claims listed on Exhibits A-1 and A-2 to the Motion for which no further authorized responses are received, and (d) disallowing those paper claims listed on **Exhibit B** to the Motion, based on the accompanying Memorandum of Law and Declaration of William J. Brown, as Receiver (“Declaration”), each dated November 13, 2019.

**RELIEF REQUESTED**

The Receiver requests that the Court enter an Order in Aid of Administration substantially in the form attached as **Exhibit D** (“Order”) (a) approving procedure for notice and abandonment of claims of Lost Investors and investors with incomplete claim files (b) approving redistribution of allocated recoveries to receivership estate for benefit of investors with allowed claims, (c) expunging Abandoned Claims for which no further authorized

responses are received and (d) disallowing certain Remaining Paper Claims, together with such other and further relief as the Court deems just and proper.

The Receiver reserves all rights to object on any other basis to the claims of all investors or claimants.

Dated: November 13, 2019

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  
125 Main Street  
Buffalo, New York 14203  
Telephone No.: (716) 847-8400

Doc #4536040.1

# ***Exhibit A-1***

Exhibit A-1  
Claims of Lost Investors

<b>Claim No.</b>	<b>Description of Investment</b>
4108	Seton Hall Mortgage Note Holders
4109	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4123	Seton Hall Mortgage Note Holders
4139	Seton Hall Mortgage Note Holders
4140	Seton Hall Mortgage Note Holders
4146	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4150	Seton Hall Mortgage Note Holders
4199	Seton Hall Mortgage Note Holders
4200	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
4216	FAIN SECURED SENIOR NOTES
4217	FEIN SECURED SENIOR NOTES
4218	TAIN SECURED SENIOR NOTES
4227	Seton Hall Mortgage Note Holders
4228	Seton Hall Mortgage Note Holders
4236	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4237	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4321	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4322	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4340	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4362	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12
4363	TDM VERIFIER TRUST 09
4390	Seton Hall Mortgage Note Holders
4392	Seton Hall Mortgage Note Holders



4397	TDM VERIFIER TRUST 09
4403	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
4404	TDMM CABLE JR TRUST 09 11%
4449	McGinn, Smith Transaction Funding Corp.
4450	McGinn, Smith Transaction Funding Corp.
4452	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4453	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4479	Seton Hall Mortgage Note Holders
4510	FAIN SECURED SENIOR SUBORDINATED NOTES
4569	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4570	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4572	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4573	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4575	TDMM CABLE SR TRUST 09 9%
4576	FEIN SECURED SENIOR NOTES
4577	TDM VERIFIER TRUST 09
4578	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
4579	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
4580	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
4581	FORTRESS TRUST 08
4582	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11
4596	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4597	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4637	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4640	Seton Hall Mortgage Note Holders
4647	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4654	TAIN SECURED JUNIOR NOTES DUE 12/15/2009

4673	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4674	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4696	Seton Hall Mortgage Note Holders
4697	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4698	Seton Hall Mortgage Note Holders
4706	Seton Hall Mortgage Note Holders
4736	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4742	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4924	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4925	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4981	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4982	Seton Hall Mortgage Note Holders
5137	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5138	Seton Hall Mortgage Note Holders
5153	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5171	TDM VERIFIER TRUST 09
5213	Seton Hall Mortgage Note Holders
5230	TDMM BENCHMARK TRUST 09 11%
5251	TAIN SECURED SENIOR NOTES
5252	TAIN SECURED SENIOR NOTES
5305	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5332	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5337	TDMM CABLE JR TRUST 09 11%
5339	FAIN SECURED SENIOR SUBORDINATED NOTES
5340	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5341	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11
5342	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5343	TAIN SECURED SENIOR NOTES

5360	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5368	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5380	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5394	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5400	Seton Hall Mortgage Note Holders
5445	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
5446	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
5520	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5521	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
5522	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12
5523	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5524	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5525	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
5526	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12
5537	TDMM CABLE JR TRUST 09 11%
5567	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5568	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5569	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5616	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5617	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5618	INTEGRATED EXCELLENCE JR TRUST 08
5619	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
5620	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
5621	TDMM CABLE JR TRUST 09 11%
5622	TDMM CABLE SR TRUST 09 9%
5672	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12
5673	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11
5674	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
5675	TDM VERIFIER TRUST 09
5679	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5680	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
5681	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
5682	TDM VERIFIER TRUST 07R

5737	Seton Hall Mortgage Note Holders
5739	Seton Hall Mortgage Note Holders
5773	Seton Hall Mortgage Note Holders
5776	Seton Hall Mortgage Note Holders
5777	FAIN SECURED SENIOR SUBORDINATED NOTES
5778	FAIN SECURED SENIOR SUBORDINATED NOTES
5779	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
5780	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
5812	McGinn, Smith Funding, LLC
5813	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5826	Seton Hall Mortgage Note Holders
5868	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
5869	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
5909	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6006	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11
6041	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6062	Seton Hall Mortgage Note Holders
6073	FIRSTLINE TRUST 07 9.25% SENIOR CONTRACT CERTIFICATES DUE 09/01/10
6074	FIRSTLINE TRUST 07 9.25% SENIOR CONTRACT CERTIFICATES DUE 09/01/10
6094	FEIN SECURED SENIOR NOTES
6095	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
6096	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
6097	FIIN SECURED SENIOR NOTES
6194	FAIN SECURED SENIOR SUBORDINATED NOTES
6195	FAIN SECURED SENIOR SUBORDINATED NOTES
6196	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009

6197	TAIN SECURED SENIOR NOTES
6198	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
6199	FAIN SECURED SENIOR NOTES
6200	TAIN SECURED SENIOR NOTES
6202	Seton Hall Mortgage Note Holders
6205	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
6234	TDM Cable Funding LLC
6259	TDMM BENCHMARK TRUST 09 12%
6316	Seton Hall Mortgage Note Holders
6369	INTEGRATED EXCELLENCE JR TRUST 08
6370	TDM VERIFIER TRUST 09
6403	FORTRESS TRUST 08
6404	McGinn, Smith Transaction Funding Corp.
6405	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
6406	TDM VERIFIER TRUST 09
6407	Seton Hall Mortgage Note Holders
6408	Seton Hall Mortgage Note Holders
6434	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6457	Seton Hall Mortgage Note Holders
6471	FIRSTLINE TRUST 07 9.25% SENIOR CONTRACT CERTIFICATES DUE 09/01/10
6573	Seton Hall Mortgage Note Holders
6651	Seton Hall Mortgage Note Holders
6652	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
6663	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12
6664	FORTRESS TRUST 08
6665	INTEGRATED EXCELLENCE JR TRUST 08

6666	McGinn, Smith Transaction Funding Corp.
6667	TAIN SECURED SENIOR NOTES
6668	TAIN SECURED SENIOR NOTES
6669	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
6670	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
6671	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
6672	TDM VERIFIER TRUST 09
6673	TDM VERIFIER TRUST 11
6674	TDMM BENCHMARK TRUST 09 08%
6675	TDMM BENCHMARK TRUST 09 10%
6676	TDMM BENCHMARK TRUST 09 12%
6677	TDMM CABLE SR TRUST 09 9%
6703	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
6704	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
6705	FIRSTLINE TRUST 07 9.25% SENIOR CONTRACT CERTIFICATES DUE 09/01/10
6706	FIRSTLINE TRUST 07 9.25% SENIOR CONTRACT CERTIFICATES DUE 09/01/10
6707	PACIFIC TRUST
6708	PACIFIC TRUST
6751	TAIN SECURED SENIOR NOTES
6759	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6762	Seton Hall Mortgage Note Holders
6764	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
6765	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
6807	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
6833	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
6834	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
6844	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6864	Seton Hall Mortgage Note Holders
6875	Seton Hall Mortgage Note Holders
6897	FEIN SECURED SENIOR NOTES
6898	TAIN SECURED SENIOR NOTES
6899	TAIN SECURED SENIOR NOTES
6900	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009

6901	TDM VERIFIER TRUST 07R
6919	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
#4545202.1	

# ***Exhibit A-2***



Exhibit A-2  
Claims of Incomplete Investors

<b>Claim No.</b>	<b>Description of Investment</b>
4110	FIRSTLINE TRUST 07 9.25% SENIOR CONTRACT CERTIFICATES DUE 09/01/10
4119	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4120	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4303	Seton Hall Mortgage Note Holders
4304	Seton Hall Mortgage Note Holders
4352	Firstline Trust 07B Junior Contract Certificates 11% Due 10/01/12
4353	TAIN Secured Junior Notes Due 12/15/2009
4360	FORTRESS TRUST 08
4361	TAIN SECURED SENIOR NOTES
4467	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4468	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4469	Seton Hall Mortgage Note Holders
4470	TAIN SECURED SENIOR NOTES
4471	Cruise Charter Ventures, LLC
4472	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4473	FIIN SECURED SENIOR NOTES
4474	Seton Hall Mortgage Note Holders
4475	TDM VERIFIER TRUST 11
4476	No Liability, Claim to be Disallowed, Expunged and/or Reclassified
4480	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12
4481	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
4482	TDM VERIFIER TRUST 09

4483	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
4634	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4695	Seton Hall Mortgage Note Holders
4755	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4756	TDM VERIFIER TRUST 09 10% CONTRACT CERTIFICATES DUE 12/31/11
4782	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4783	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4784	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4785	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4786	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4787	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4788	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4789	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4790	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4791	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4792	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
4793	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
4794	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12

4795	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
4796	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
4797	INTEGRATED EXCELLENCE JR TRUST 08
4798	INTEGRATED EXCELLENCE JR TRUST 08
4799	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4800	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4801	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4802	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4803	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4804	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4805	Seton Hall Mortgage Note Holders
4814	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4815	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
4816	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
4817	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4827	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4828	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4829	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4830	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4831	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4832	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
4833	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010

4834	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
4835	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
4836	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4837	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4838	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4839	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4840	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4841	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4842	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4843	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4844	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4845	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4846	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
4847	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
4848	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11
4849	McGinn, Smith Transaction Funding Corp.
4850	McGinn, Smith Transaction Funding Corp.
4851	McGinn, Smith Transaction Funding Corp.
4852	McGinn, Smith Transaction Funding Corp.
4853	McGinn, Smith Transaction Funding Corp.
4854	McGinn, Smith Transaction Funding Corp.
4855	McGinn, Smith Transaction Funding Corp.

4856	McGinn, Smith Transaction Funding Corp.
4859	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4860	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4861	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4862	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4863	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
4864	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
4865	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
4866	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
4867	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4868	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4869	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
4870	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
4871	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
4872	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
4873	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
4874	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
4875	TDM VERIFIER TRUST 07 Misc
4876	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE TDMVER 18
4879	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4880	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
4881	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10

4882	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
4888	No Liability, Third Albany Income Notes LLC
4889	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
4890	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
4891	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
4892	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
4898	No Liability, McGinn Smith Funding
4908	McGinn, Smith Funding, LLC
5006	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
5007	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
5008	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11
5009	FAIN SECURED SENIOR SUBORDINATED NOTES
5010	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5011	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
5012	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5065	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
5066	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
5067	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11
5068	INTEGRATED EXCELLENCE SR TRUST 08
5069	TDMM CABLE SR TRUST 09 9%
5070	TAIN SECURED SENIOR NOTES
5071	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
5072	TDMM CABLE SR TRUST 09 9%

5154	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5155	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
5156	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
5290	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5351	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5352	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5452	Seton Hall Mortgage Note Holders
5556	FAIN SECURED SENIOR NOTES
5557	FAIN SECURED SENIOR NOTES
5558	FAIN SECURED SENIOR SUBORDINATED NOTES
5559	TAIN SECURED SENIOR NOTES
5560	TAIN SECURED SENIOR NOTES
5561	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
5634	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5635	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
5636	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
5637	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5638	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5639	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
5640	TDM VERIFIER TRUST 07R
5641	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36
5741	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5742	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009

5743	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5744	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5747	Seton Hall Mortgage Note Holders
5752	Seton Hall Mortgage Note Holders
5853	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
5910	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010
5929	FORTRESS TRUST 08
5930	TDM Verifier Trust 11 Contract Certificates 9%
5931	TDMM BENCHMARK TRUST 09 10%
5932	TDMM BENCHMARK TRUST 09 12%
5933	TDMM CABLE JR TRUST 09 11%
5934	TDMM CABLE SR TRUST 09 9%
5975	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
5976	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
5977	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5978	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
5979	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5980	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5981	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5982	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
5983	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
5984	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008



5985	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
5986	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008
5987	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
5988	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
5989	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5990	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5991	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
5992	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
5993	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
5994	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
5995	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
5996	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
5997	TDM Verifier Trust 07R Contract Certificates
5998	FIRSTLINE TRUST 07 11% JUNIOR CONTRACT CERTIFICATES DUE 05/01/12
5999	Seton Hall Mortgage Note Holders
6000	Seton Hall Mortgage Note Holders
6092	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12
6098	FAIN SECURED SENIOR SUBORDINATED NOTES
6099	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
6100	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
6101	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6102	FAIN SECURED SENIOR SUBORDINATED NOTES
6103	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009

6121	Seton Hall Mortgage Note Holders
6137	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12
6143	Seton Hall Mortgage Note Holders
6317	FAIN SECURED SENIOR SUBORDINATED NOTES
6320	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
6321	INTEGRATED EXCELLENCE JR TRUST 08
6322	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6323	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6324	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6325	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6326	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6327	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
6328	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
6329	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11
6331	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008
6332	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6333	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6334	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6335	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6336	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
6337	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
6338	Seton Hall Mortgage Note Holders
6339	Seton Hall Mortgage Note Holders
6340	Seton Hall Mortgage Note Holders
6342	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6343	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6344	TAIN SECURED JUNIOR NOTES DUE 12/15/2009
6345	TAIN SECURED JUNIOR NOTES DUE 12/15/2009

6346	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10
6347	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10
6348	Seton Hall Mortgage Note Holders
6378	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11
6484	FAIN SECURED SENIOR SUBORDINATED NOTES
6485	FAIN SECURED SENIOR SUBORDINATED NOTES
6486	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009
6487	INTEGRATED EXCELLENCE SR TRUST 08
6490	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009
6491	TAIN SECURED SENIOR NOTES
6514	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
6515	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
6535	FAIN SECURED SENIOR SUBORDINATED NOTES
6536	FAIN SECURED SENIOR NOTES
6648	McGinn, Smith Funding, LLC
6682	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009
6838	Seton Hall Mortgage Note Holders
6839	Seton Hall Mortgage Note Holders

#4545254.1

# ***Exhibit B***

## Exhibit B

## Remaining Paper Claims

Claim No.	Description of Investment	Amount of Paper Claim	Reason for Disallowance
N/A	SAI Trust 00	\$8,633.94	Excluded Entity
N/A	RTC Trust 02	\$1,045.00	No Liability
N/A	Atlantis Income Investors Notes, LLC	\$12,500.00	Non-Receivership
6857	Third Albany Income Notes, LLC	\$20,000.00	No Liability
6488	FIIN	\$65,000.00	No Liability
6489	TAIN	\$100,000.00	No Liability

# *Exhibit C*

**William J. Brown, as Receiver  
of McGinn, Smith & Co., Inc., et al.**

Tel: 716.847.7089  
www.mcginnsmithreceiver.com

One Canalside  
125 Main Street  
Buffalo, NY 14203

**IMPORTANT NOTICE AFFECTING YOUR CLAIMS**

December \_\_, 2019

Re: McGinn Smith & Co. Inc. - Receiver's Motion for Order in Aid of Administration (A) Approving Procedure for Notice and Abandonment of Claims of Lost Investors and Investors with Incomplete Claim Files, (B) Approving Redistribution of Allocated Recoveries to Receivership Estate for Benefit of Investors with Allowed Claims, (C) Expunging Abandoned Claims and Incomplete Claims and (D) Disallowing Certain Remaining Paper Claims ("Motion")

Dear Investor:

On or about November 13, 2019, a copy of the above-referenced Motion was sent to you because you hold one or more Abandoned Claim(s) (as defined in the Motion) listed on Exhibits A-1 and/or A-2 to the Motion. Your claim(s) were listed as Abandoned Claim(s) because you either (1) have never returned an Investor Questionnaire for such claim(s) or (2) have not submitted properly completed Investor Questionnaire(s) or provided additional documentation required by the Receiver to make a distribution on account of your claims.

Pursuant to the Motion, the Receiver has obtained an Order of the Court ("Order"), a copy of which is enclosed with this Letter, authorizing the Receiver to, among other things, (i) list the names of all investors holding Abandoned Claims on the Receiver's website (<https://mcginnsmithreceiver.com>), (ii) expunge any Abandoned Claims for which the Receiver does not receive an authorized response within thirty-one (31) days after entry of the Order and posting of investor names, and (iii) reallocate any recoveries otherwise owed in connection with such expunged Abandoned Claims to other investors with allowed claims.

**IF THE RECEIVER DOES NOT RECEIVE THE ATTACHED COMPLETED FORM FROM YOU BY \_\_\_\_\_, 2020, YOUR CLAIMS WILL BE EXPUNGED AND YOU WILL NOT RECEIVE A RECOVERY ON ACCOUNT OF THOSE CLAIMS.**

**If you wish to avoid your claim(s) being expunged, kindly send to the Receiver the attached properly completed form by mail at the address above by \_\_\_\_\_, 2020.**

**William J. Brown, as Receiver  
of McGinn, Smith & Co., Inc., *et al.***

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Tel: 716.847.7089  
www.mcginnsmithreceiver.com

One Canalside  
125 Main Street  
Buffalo, NY 14203

If you have any questions regarding the above, or if you do not know why your claim(s) have been listed as Abandoned Claims, you may call Karen M. Ludlow at (716) 218-4404.

Very truly yours,

William J. Brown  
Receiver

EEEht  
Doc #4524886.3  
Enclosure



**William J. Brown, as Receiver  
of McGinn, Smith & Co., Inc., et al.**

Tel: 716.847.7089  
www.mcginnsmithreceiver.com

One Canalside  
125 Main Street  
Buffalo, NY 14203

**Information Questionnaire**

I certify that am the Investor in McGinn Smith Investments  
to whom this Questionnaire has been sent Yes \_\_\_ No \_\_\_

- or -

I certify that I know the Investor identified to whom this Questionnaire  
has been sent, and I am a relative or Executor of that investor Yes \_\_\_ No \_\_\_

Investor's Name \_\_\_\_\_

Relative or Executor's Name and  
relationship (if applicable) \_\_\_\_\_

Current Address \_\_\_\_\_

\_\_\_\_\_

Prior Address \_\_\_\_\_

\_\_\_\_\_

Telephone Number \_\_\_\_\_

\_\_\_\_\_  
*Your Signature*

\_\_\_\_\_  
*Print Your Name*

Date: \_\_\_\_\_, 2019

Return to:

William J. Brown, Receiver  
c/o Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203

# *Exhibit D*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
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

**ORDER APPROVING MOTION OF WILLIAM J. BROWN, AS RECEIVER,  
FOR ORDER IN AID OF ADMINISTRATION (A) APPROVING PROCEDURE  
FOR NOTICE AND ABANDONMENT OF CLAIMS OF LOST INVESTORS AND  
INVESTORS WITH INCOMPLETE CLAIM FILES, (B) APPROVING  
REDISTRIBUTION OF ALLOCATED RECOVERIES TO RECEIVERSHIP  
ESTATE FOR BENEFIT OF INVESTORS WITH ALLOWED CLAIMS, (C)  
EXPUNGING ABANDONED CLAIMS AND INCOMPLETE CLAIMS AND (D)  
DISALLOWING CERTAIN REMAINING PAPER CLAIMS**

Upon the Motion For Order in Aid of Administration (A) Approving  
Procedure for Notice and Abandonment of Claims of Lost Investors and Investors with  
Incomplete Claim Files, (B) Approving Redistribution of Allocated Recoveries to  
Receivership Estate for Benefit of Investors with Allowed Claims, (C) Expunging

Abandoned Claims and Incomplete Claims and (D) Disallowing Certain Remaining Paper Claims (“Motion”); and notice of the Motion having been given to the Securities and Exchange Commission, each of the claimants listed on each Exhibit to the Motion by first class mail at the address contained in the Receiver’s records, and all parties who have filed a Notice of Appearance in this action by ECF, and all creditors of the McGinn, Smith entities and other parties in interest via the Receiver’s website, which notice is deemed good and sufficient notice; and the Court having deemed that sufficient cause exists; it is therefore

ORDERED, that the Motion is approved, and it is further

ORDERED, that the Final Notice Procedure,<sup>1</sup> as described in the Motion, is approved, and it is further

ORDERED, that the Receiver is authorized to prominently post on the Receiver’s Website a list of the names of the Lost Investors listed on Exhibit A-1 to the Motion and Incomplete Investors listed on Exhibit A-2 to the Motion holding Abandoned Claims, and it is further

ORDERED, that after the date which is thirty-one days after entry of this Order and the posting of the Lost Investor and Incomplete Investor names on the Receiver’s Website, the Receiver shall file the Abandoned Claims List, and it is further

ORDERED, that the Abandoned Claims on the Abandoned Claims List shall be deemed struck and expunged, and it is further

ORDERED, that the Receiver’s rights to supplement the Abandoned Claims List should investors who initially respond to the Final Notice Procedure fail after at least one

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning assigned to them in the Motion.

more follow-up attempt by the Receiver to properly complete the documentation necessary to allow the Receiver to make a distribution are expressly preserved, and it is further

ORDERED, that each of the Remaining Paper Claims listed on Exhibit B to the Motion are disallowed; and the rights of the Receiver to object on any other basis to the claims of all investors or claimants are expressly preserved.

Dated: \_\_\_\_\_, 2019

---

HON. CHRISTIAN F. HUMMEL

Doc #4480968.3

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
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, LYNN A. 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

**DECLARATION OF WILLIAM J. BROWN, AS RECEIVER, IN SUPPORT  
OF MOTION FOR ORDER IN AID OF ADMINISTRATION (A)  
APPROVING PROCEDURE FOR NOTICE AND ABANDONMENT OF  
CLAIMS OF LOST INVESTORS AND INVESTORS WITH INCOMPLETE  
CLAIM FILES, (B) APPROVING REDISTRIBUTION OF ALLOCATED  
RECOVERIES TO RECEIVERSHIP ESTATE FOR BENEFIT OF INVESTORS  
WITH ALLOWED CLAIMS, (C) EXPUNGING ABANDONED CLAIMS  
AND INCOMPLETE CLAIMS AND (D) DISALLOWING CERTAIN  
REMAINING PAPER 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. (“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 Motion for an Order in Aid of Administration (“Motion”) (a) approving a procedure for notice and abandonment of claims of Lost Investors and investors with incomplete claim files, (b) approving the redistribution of allocated recoveries to the receivership estate for the benefit of investors with allowed claims, (c) expunging those certain Abandoned Claims (as defined herein) listed on Exhibits A-1 and A-2 to the Motion for which no further authorized responses are received, and (d) disallowing those Remaining Paper Claims (as defined herein) listed on Exhibit B to the Motion.

### **STATEMENT OF FACTS**

3. MS & Co. was a broker-dealer registered with the Securities and Exchange Commission (“SEC”) with its headquarters in Albany, New York from 1981 to 2009. From 2003 through 2010, the broker-dealer was owned by David L. Smith (“Smith” or “David Smith”), Timothy M. McGinn (“McGinn”), and Thomas E. Livingston.

4. On April 20, 2010, the SEC filed a Complaint initiating the above-captioned action (Docket No. 1). Also, on April 20, 2010, this Court granted a Temporary Restraining Order (Docket No. 5), which appointed the Receiver as temporary receiver with respect to numerous entities controlled or owned by Defendants McGinn and Smith,

including those listed on Exhibit A to the Preliminary Injunction Order entered in this action (Docket No. 96) (collectively, the “MS Entities”).

5. On July 26, 2010, following a hearing, the Court entered an order granting the SEC’s Motion for a Preliminary Injunction and appointing the Receiver as receiver, pending a final disposition of the action (Docket No. 96).

**A. Plan of Distribution Process**

6. On December 30, 2015, in my capacity as Receiver, I filed a Motion (Docket No. 847) (“Plan Distribution Motion”) to seek approval of (i) a plan of distribution of assets of the MS Entities to investors (“Plan of Distribution”); and (ii) interim distributions to investors with allowed claims scheduled or timely filed.

7. On October 31, 2016, the Court entered a Memorandum-Decision and Order (Docket No. 904) (“Plan Distribution Order”) granting the Plan Distribution Motion, overruling objections, approving the Plan of Distribution, and allowing the Receiver to make interim distributions on a rolling basis as set forth in the Plan Distribution Motion.

8. The Plan of Distribution provides for a reserve for disputed claims to allow the Receiver to make initial distributions, but to also provide for funds to be reserved until any objections to disputed claims can be heard and decided by final order of the Court. As of October 29, 2019, \$6,607,402.49 has been distributed to investors with allowed claims as an interim ten percent First Distribution (“First Distribution”). I estimate that investors will receive, at most, a total recovery ranging from approximately 13.5% to 21.7%, depending upon the outcome of certain claim objections. *See* Third Written Status Report of the Receiver (Docket No. 925).



**B. Claims Motions and Remaining Paper Claims**

9. To date, in my capacity as Receiver, I have filed nine Motions objecting to various investor claims. *See* Docket Nos. 937, 974, 984, 1009, 1025, 1052, 1056, 1067, and 1075. The Court has entered Orders granting five of the Receiver's Motions. *See* Docket Nos. 966, 990, 1042, and 1043. Four of the Receiver's Motions remain *sub judice*.

10. On October 11, 2019, in my capacity as Receiver, I filed the Ninth Claims Motion for an Order (A) Disallowing Certain Disputed Claims, (B) Reclassifying Certain Disputed Claims, (C) Applying Preferential Payment Offset to Certain Disputed Claims, and (D) Expunging Paper Claims (Docket No. 1075) ("Ninth Claims Motion"). In the Ninth Claims Motion, the Receiver sought to disallow and expunge all remaining paper claims for which there is no basis in the records of MS & Co. to make a distribution. After filing the Ninth Claims Motion, I discovered six remaining paper claims (collectively, the "Remaining Paper Claims") (which are included in the relief sought by the Motion) for which there is no basis to make any distributions, which may be categorized as Excluded Claims, Non-Receivership Claims or No Liability Claims (as defined below), as listed on Exhibit B to the Motion.

11. Once this Motion and all claims motions have been resolved by final order of this Court, I intend to commence making a second distribution to investors with allowed claims and to begin the process of concluding this Receivership.

**C. Abandoned Claims**

12. The Abandoned Claims represent claims held by (a) Lost Investors who have not responded to any correspondence mailed by the Receiver or (b) Incomplete

Investors who, despite various follow-up attempts by the Receiver, have not completed the documentation necessary for the Receiver to make a distribution on account of their claims. There are 441 Abandoned Claims, as set forth on Exhibits A-1 and A-2 to the Motion.

**1. Receiver's Efforts to Locate Lost Investors**

13. In accordance with Article II of the Plan of Distribution, in February 2017, I caused to be mailed notices and investor questionnaires ("Investor Questionnaires") to all investors with claims against MS & Co. using the mailing addresses in the books and records of MS & Co. Investors were asked to complete and sign an Investor Questionnaire for each claim they held against MS & Co. The Investor Questionnaire required investors to certify, as a condition of receiving a distribution, whether the investor applied for or received any compensation for their claimed loss from sources other than the Receivership and, if so, the amount of such compensation actually received. The Investor Questionnaire also required investors to submit properly completed IRS Form W-9's.

14. After the initial mailing of Investor Questionnaires, approximately 211 investors did not respond, including approximately 55 investors whose mailings were returned to me as undeliverable. If a forwarding address was provided, I caused the Investor Questionnaires to be forwarded to the address provided.

15. In early 2018, the Receiver's staff began using online resources to find current addresses for the so-called "undeliverable" investors. If they were able to locate a current address, a supplemental notice was sent to the investor, asking for confirmation of their identity and mailing address. If a completed supplemental notice was returned by an investor, I caused to be mailed copies of the Investor Questionnaires to the investor to

complete. If a supplemental notice was returned as undeliverable with a forwarding address, I caused the supplemental notice to be forwarded.

16. In September 2019, I caused to be mailed a second supplemental notice to every investor who did not return Investor Questionnaires to the Receiver. The second supplemental notice was sent to approximately 170 investors and approximately 35 were returned as undeliverable. As a result of the Receiver's supplemental mailings in 2018 and 2019, 54 investors have responded affirmatively. I then caused to be mailed copies of the Investor Questionnaires to be completed to those investors who responded to the supplemental notices. To date, I have not yet received Investor Questionnaires from approximately 106 investors holding approximately 198 claims, as listed on Exhibit A-1 to the Motion.

## **2. Receiver's Efforts to Contact Incomplete Investors**

17. In addition to the Lost Investors, the Incomplete Investors submitted Investor Questionnaires to the Receiver, but, despite the Receiver's follow-up efforts, they have not (a) properly completed their Investor Questionnaires, (b) have submitted some but not all of their Investor Questionnaires, or (c) have not provided the Receiver with required additional supplemental documentation.<sup>1</sup> Beginning in March 2017, as I reviewed submitted Investor Questionnaires, I began mailing to individual investors on a rolling basis requests to complete the Investor Questionnaires or for supplemental information, as needed. If investors completed their documentation and their claims were otherwise allowed, their claims were scheduled to receive a First Distribution. To the extent any

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<sup>1</sup> For example, if an investor had passed away before completing an Investor Questionnaire and a third-party completed the Investor Questionnaire and submitted it to the Receiver, the Receiver required documentation evidencing the third party's authority to act on the deceased investor's behalf.

investors did not respond to a request for information sent by the Receiver, in February 2018, a follow-up notice was mailed requesting the missing information. As I continued my review of submitted Investor Questionnaires after February 2018, I continued to mail to individual investors requests to complete the Investor Questionnaires or for supplemental information, as needed. In addition, in September 2019, I caused to be mailed a supplemental notice to every investor who did not return Investor Questionnaires to the Receiver, including certain Incomplete Investors. I am waiting for 49 investors with an aggregate of 238 claims to return properly completed Investor Questionnaires or to provide supplemental information, as listed on Exhibit A-2 to the Motion.

**D. Proposed Procedure for Final Notice to Holders of Abandoned Claims**

18. In my capacity as Receiver, I am seeking Court approval of the following three procedures (including public revelation of the names of the subject investors) for providing final notice to holders of Abandoned Claims (collectively, the “Final Notice Procedure”):

19. First, I will, in accordance with Rule 7.1 of the Local Rules of Practice for the United States District Court for the Northern District of New York, serve a copy of the Motion and all accompanying documents to each investor with a claim number listed on Exhibits A-1 and A-2 to the Motion at the address contained in the Receiver’s records.<sup>2</sup>

20. Second, in 2012, in connection with the claims process, the Court directed at my request that there be no public disclosure of investor names or other identifying information, such as addresses.<sup>3</sup> I now request permission, following entry of an

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<sup>2</sup> If the Court so requests, I will file unredacted versions of Exhibit A-1 and A-2 to the Motion under seal.

<sup>3</sup> Consequently, I have used a claims number system to identify investors.

Order approving the Motion, to prominently post on the Receiver's Website ([www.mcginnsmithreceiver.com](http://www.mcginnsmithreceiver.com)) a list of the names of the Lost Investors and Incomplete Investors (excluding addresses or any other personal information) holding the Abandoned Claims listed on Exhibits A-1 and A-2.

21. Third, upon entry of an Order approving the Motion, I will send to each investor holding Abandoned Claims a letter in the form attached to the Motion as Exhibit C asking the investor to return a simple informational questionnaire before the date which is thirty-one days after entry of the Order and the posting of investor names and explaining that the investor's claims are subject to be expunged if no further authorized response is received by that time. I will also provide any additional notice to holders of Abandoned Claims that the Court may require.

22. Finally, after thirty-one (31) days have passed after entry of the Order and after posting the list of investor names on the Receiver's Website, I will file with the Court updated versions of Exhibits A-1 and A-2 to the Motion omitting any Lost Investors or Incomplete Investors who delivered an authorized response to the Receiver since the Motion was filed (together, the "Abandoned Claims List"). At that time, the Abandoned Claims on the Abandoned Claims List shall be struck and expunged. The Securities and Exchange Commission has consented to the Final Notice Procedure. The Receiver also seeks to expressly reserve the right to supplement the Abandoned Claims List should investors who initially respond to the Final Notice Procedure fail, after at least one more follow-up attempt by the Receiver, to properly complete the documentation necessary to allow the Receiver to make a distribution.

**NOTICE**

23. In connection with the service of the Motion and all accompanying papers, including this Declaration, I will cause to be mailed to each claimant listed on Exhibits A-1, A-2 and B attached to the Motion a copy of the Motion and related pleadings.

Dated: November 13, 2019

/s/ William J. Brown  
William J. Brown

Doc #4533558.3

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
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, LYNN A. 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  
**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF WILLIAM J.  
BROWN, AS RECEIVER, FOR ORDER IN AID OF ADMINISTRATION (A)  
APPROVING PROCEDURE FOR NOTICE AND ABANDONMENT OF  
CLAIMS OF LOST INVESTORS AND INVESTORS WITH INCOMPLETE  
CLAIM FILES, (B) APPROVING REDISTRIBUTION OF ALLOCATED  
RECOVERIES TO RECEIVERSHIP ESTATE FOR BENEFIT OF INVESTORS  
WITH ALLOWED CLAIMS, (C) EXPUNGING ABANDONED CLAIMS  
AND INCOMPLETE CLAIMS AND (D) DISALLOWING CERTAIN  
REMAINING PAPER CLAIMS**

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William J. Brown, as Receiver (“Receiver”) of McGinn, Smith & Co., Inc. (“MS & Co.”), respectfully submits this Memorandum of Law in support of his Motion for an Order in Aid of Administration (“Motion”) (a) approving a procedure for notice and abandonment of claims of Lost Investors and investors with incomplete claim files, (b) approving the redistribution of allocated recoveries to the receivership estate for the benefit of investors with allowed claims, (c) expunging those certain Abandoned Claims (as defined herein) listed on Exhibits A-1 and A-2 to the Motion for which no further authorized responses are received, and (d) disallowing those Remaining Paper Claims (as defined herein) listed on Exhibit B to the Motion.

#### **PRELIMINARY STATEMENT**

To date, of the approximately 2,846 investor claims being dealt with by the Receiver, approximately 106 investors holding approximately 198 claims have not returned Investor Questionnaires or otherwise had any communication with the Receiver (collectively, the “Lost Investors”). After the Investor Questionnaires were first mailed in February 2017, approximately 170 investors did not respond, including 55 investors whose mailings were returned as undeliverable by the United States Postal Service. As a result of subsequent address checks and recent additional mailings in an attempt to reach these Lost Investors, 54 investors have responded affirmatively. Duplicate copies of the Investor Questionnaires were forwarded to those investors to complete and return to the Receiver. The Receiver is also awaiting receipt from an additional 58 investors holding 243 claims of necessary information to proceed to process those claims (collectively, the “Incomplete Investors”).

The proposed Plan of Distribution was filed for Court approval on December 30, 2015 following the entry of final judgments in July 2015 in favor of the SEC in the civil action against, among others, Timothy McGinn and David Smith, while appeals of the final judgments by McGinn and Smith were pending. The United States Court of Appeals for the Second Circuit affirmed the judgments on April 18, 2016. On October 31, 2016, the Court approved the Plan of Distribution, overruling various objections made to the Plan of Distribution. Investor letters, Investor Questionnaires and Form W-9's were mailed for all claims between January and February 2017, which, upon return, were processed and incorporated into a Plan of Distribution database (as distinguished from the Receiver's claims database). Checks for a First Distribution of 10% began to be mailed to investors with allowed claims following receipt of completed Investor Questionnaires and completed Form W-9's in August 2017 and have continued since, with fifty-one payment schedules listing the First Distributions having been filed so far with the Court.

Anticipating moving towards the completion of this receivership, the Receiver now seeks to resolve the purported claims of the Lost Investors and the Incomplete Investors (collectively, "Abandoned Claims"). Resolution of the Abandoned Claims will allow the Receiver to determine how much money remains for subsequent distributions to investors with allowed claims. The Receiver proposes that, after making a final attempt to notice those Lost Investors and Incomplete Investors holding Abandoned Claims, any Abandoned Claims for which no authorized response is received be expunged and any distributions that otherwise might be owed in connection with those Abandoned Claims be reallocated and vest with the receivership estate for distribution in accordance with the Plan of Distribution, including to investors with allowed claims. Then, once the pending *sub*

*judice* claims objection motions are resolved, the Receiver will commence making a second interim distribution to investors with allowed claims<sup>1</sup> and, ultimately, complete the process to conclude the receivership estate.

### **STATEMENT OF FACTS**

MS & Co. was a broker-dealer registered with the Securities and Exchange Commission (“SEC”) with its headquarters in Albany, New York from 1981 to 2009. From 2003 through 2010, the broker-dealer was owned by David L. Smith (“Smith” or “David Smith”), Timothy M. McGinn (“McGinn”), and Thomas E. Livingston.

On April 20, 2010, the SEC filed a Complaint initiating the above-captioned action (Docket No. 1). Also, on April 20, 2010, this Court granted a Temporary Restraining Order (Docket No. 5), which appointed the Receiver as temporary receiver with respect to numerous entities controlled or owned by Defendants McGinn and Smith, including those listed on Exhibit A to the Preliminary Injunction Order entered in this action (Docket No. 96) (collectively, the “MS Entities”). Brown Dec’l. ¶4.<sup>2</sup>

On July 26, 2010, following a hearing, the Court entered an order granting the SEC’s Motion for a Preliminary Injunction and appointing the Receiver as receiver, pending a final disposition of the action (Docket No. 96).

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<sup>1</sup> A third distribution is possible depending upon a number of factors including additional collections and resolution of certain tax issues.

<sup>2</sup> “Brown Dec’l. ¶ \_\_” refers to the Declaration of William J. Brown dated November 13, 2019 filed in support of the Motion.

**A. Plan of Distribution Process**

On December 30, 2015, the Receiver filed a Motion (Docket No. 847) (“Plan Distribution Motion”) to seek approval of (i) a plan of distribution of assets of the MS Entities to investors (“Plan of Distribution”); and (ii) interim distributions to investors with allowed claims scheduled or timely filed.

On October 31, 2016, the Court entered a Memorandum-Decision and Order (Docket No. 904) (“Plan Distribution Order”) granting the Plan Distribution Motion, overruling objections, approving the Plan of Distribution, and allowing the Receiver to make interim distributions on a rolling basis as set forth in the Plan Distribution Motion.

The Plan of Distribution provides for a reserve for disputed claims to allow the Receiver to make initial distributions, but to also provide for funds to be reserved until any objections to disputed claims can be heard and decided by final order of the Court. As of October 29, 2019, \$6,607,402.49 has been distributed to investors with allowed claims as an interim ten percent First Distribution (“First Distribution”). Brown Dec’l. ¶8. The Receiver estimates that investors will receive, at most, a total recovery ranging from approximately 13.5% to 21.7%, depending upon the outcome of certain claim objections. *See* Third Written Status Report of the Receiver (Docket No. 925).

**B. Claims Motions and Remaining Paper Claims**

To date, the Receiver has filed nine Motions objecting to various investor claims. *See* Docket Nos. 937, 974, 984, 1009, 1025, 1052, 1056, 1067, and 1075. The Court has entered Orders granting five of the Receiver’s Motions. *See* Docket Nos. 966, 990, 1042, and 1043. Four of the Receiver’s Motions remain *sub judice*.

On October 11, 2019, the Receiver filed the Ninth Claims Motion for an Order (A) Disallowing Certain Disputed Claims, (B) Reclassifying Certain Disputed Claims, (C) Applying Preferential Payment Offset to Certain Disputed Claims, and (D) Expunging Paper Claims (Docket No. 1075) (“Ninth Claims Motion”). In the Ninth Claims Motion, the Receiver sought to disallow and expunge all remaining paper claims for which there is no basis in the records of MS & Co. to make a distribution. After filing the Ninth Claims Motion, the Receiver discovered six remaining paper claims (collectively, the “Remaining Paper Claims”) (which are included in the relief sought by the Motion) for which there is no basis to make any distributions, which may be categorized as Excluded Claims, Non-Receivership Claims or No Liability Claims (as defined below), as listed on Exhibit B to the Motion. Brown Dec’l. ¶ 10.

Once this Motion and all claims motions have been resolved by final order of this Court, the Receiver intends to commence making a second distribution to investors with allowed claims and to begin the process of concluding this Receivership. Brown Dec’l. ¶ 11.

**C. Abandoned Claims**

The Abandoned Claims represent claims held by (a) Lost Investors who have not responded to any correspondence mailed by the Receiver or (b) Incomplete Investors who, despite various follow-up attempts by the Receiver, have not completed the documentation necessary for the Receiver to make a distribution on account of their claims. There are 441 Abandoned Claims, as set forth on Exhibits A-1 and A-2 to the Motion. Brown Dec’l. ¶12.

**1. Receiver's Efforts to Locate Lost Investors**

In accordance with Article II of the Plan of Distribution, in February 2017, the Receiver mailed notices and investor questionnaires (“Investor Questionnaires”) to all investors with claims against MS & Co. using the mailing addresses in the books and records of MS & Co. Investors were asked to complete and sign an Investor Questionnaire for each claim they held against MS & Co. Brown Dec’1. ¶13. The Investor Questionnaire required investors to certify, as a condition of receiving a distribution, whether the investor applied for or received any compensation for their claimed loss from sources other than the Receivership and, if so, the amount of such compensation actually received. The Investor Questionnaire also required investors to submit properly completed IRS Form W-9’s. *Id.*

After the initial mailing of Investor Questionnaires, approximately 170 investors did not respond, including approximately 55 investors whose mailings were returned to the Receiver as undeliverable. If a forwarding address was provided, the Receiver forwarded the Investor Questionnaires to the address provided. Brown Dec’1. ¶14.

In early 2018, the Receiver began using online resources to find current addresses for the so-called “undeliverable” investors. If the Receiver was able to locate a current address, a supplemental notice was sent to the investor, asking for confirmation of their identity and mailing address. Brown Dec’1. ¶15. If a completed supplemental notice was returned by an investor, the Receiver mailed copies of the Investor Questionnaires to the investor to complete. If a supplemental notice was returned as undeliverable with a forwarding address, the Receiver forwarded the supplemental notice. *Id.*

In September 2019, the Receiver sent a second supplemental notice to every investor who did not return Investor Questionnaires to the Receiver, including all Lost

Investors. The Receiver sent the second supplemental notice to approximately 170 investors and approximately 35 were returned as undeliverable. Brown Dec'l. ¶16. As a result of the Receiver's supplemental mailings in 2018 and 2019, 54 investors have responded affirmatively. The Receiver then mailed copies of the Investor Questionnaires to be completed to those investors who responded to the supplemental notices. To date, the Receiver has not received Investor Questionnaires from approximately 106 investors holding 198 claims, as listed on Exhibit A-1 to the Motion. *Id.*

## **2. Receiver's Efforts to Contact Incomplete Investors**

In addition to the Lost Investors, the Incomplete Investors submitted Investor Questionnaires to the Receiver, but, despite the Receiver's follow-up efforts, they have not (a) properly completed their Investor Questionnaires, (b) have submitted some but not all of their Investor Questionnaires, or (c) have not provided the Receiver with required additional supplemental documentation.<sup>3</sup> Brown Dec'l. ¶17. Beginning in March 2017, as the Receiver reviewed submitted Investor Questionnaires, the Receiver began mailing to individual investors on a rolling basis requests to complete the Investor Questionnaires or for supplemental information, as needed. If investors completed their documentation and their claims were otherwise allowed, their claims were scheduled to receive a First Distribution. *Id.* To the extent any investors did not respond to a request for information sent by the Receiver, in February 2018, a follow-up notice was mailed requesting the missing information. As the Receiver continued his review of submitted Investor Questionnaires after February 2018, the Receiver continued to mail to individual investors

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<sup>3</sup> For example, if an investor had passed away before completing an Investor Questionnaire and a third-party completed the Investor Questionnaire and submitted it to the Receiver, the Receiver required documentation evidencing the third party's authority to act on the deceased investor's behalf.



requests to complete the Investor Questionnaires or for supplemental information, as needed. In addition, in September 2019, the Receiver sent a supplemental notice to every investor who did not return Investor Questionnaires to the Receiver, including certain Incomplete Investors. The Receiver is waiting for 58 investors with an aggregate of 243 claims to return properly completed Investor Questionnaires or to provide supplemental information, as listed on Exhibit A-2 to the Motion. *Id.*

**D. Proposed Procedure for Final Notice to Holders of Abandoned Claims**

The Receiver seeks Court approval of the following three procedures (including public revelation of the names of the subject investors) for providing final notice to holders of Abandoned Claims (collectively, the “Final Notice Procedure”):

First, the Receiver will, in accordance with Rule 7.1 of the Local Rules of Practice for the United States District Court for the Northern District of New York, serve a copy of the Motion and all accompanying documents to each investor with a claim number listed on Exhibit A-1 and A-2 to the Motion at the address contained in the Receiver’s records.<sup>4</sup> Brown Dec’l. ¶19.

Second, in 2012, in connection with the claims process, the Court directed at the Receiver’s request that there be no public disclosure of investor names or other identifying information, such as addresses.<sup>5</sup> The Receiver now requests permission, following entry of an Order approving the Motion, to prominently post on the Receiver’s Website ([www.mcginnsmithreceiver.com](http://www.mcginnsmithreceiver.com)) a list of the names of the Lost Investors and

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<sup>4</sup> If the Court so requests, the Receiver will file a unredacted versions of Exhibits A-1 and A-2 to the Motion under seal.

<sup>5</sup> Consequently, the Receiver has used a claims number system to identify investors.

Incomplete Investors (excluding addresses or any other personal information) holding the Abandoned Claims listed on Exhibits A-1 and A-2. Brown Dec'1. ¶20.

Third, upon entry of an Order approving the Motion, the Receiver will send to each investor holding Abandoned Claims a letter in the form attached to the Motion as Exhibit C asking the investor to return a simple informational questionnaire before the date which is thirty-one days after entry of the Order and the posting of investor names and explaining that the investor's claims are subject to be expunged if no further authorized response is received by that time. The Receiver will also provide any additional notice to holders of Abandoned Claims that the Court may require. Brown Dec'1. ¶21.

Finally, after thirty-one (31) days have passed after entry of the Order and after posting the list of investor names on the Receiver's Website, the Receiver will file with the Court updated versions of Exhibits A-1 and A-2 to the Motion omitting any Lost Investors or Incomplete Investors who delivered an authorized response to the Receiver since the Motion was filed (together, the "Abandoned Claims List"). At that time, the Abandoned Claims on the Abandoned Claims List shall be struck and expunged. Brown Dec'1. ¶22. The Securities and Exchange Commission has consented to the Final Notice Procedure. The Receiver also seeks to expressly reserve the right to supplement the Abandoned Claims List should investors who initially respond to the Final Notice Procedure fail, after at least one more follow-up attempt by the Receiver, to properly complete the documentation necessary to allow the Receiver to make a distribution. *Id.*

### **ARGUMENT**

The district court has broad power and discretion to determine relief in an equity receivership. *See S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Basic*

*Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001). “In equity receiverships resulting from SEC enforcement actions, district courts have very broad powers and wide discretion to fashion remedies and determine to whom and how the assets of the Receivership Estate will be distributed.” *S.E.C. v. Detroit Mem’l Partners, LLC*, No. 1:13-cv-1817-WSD, 2016 WL 6595942 at \*5 (N.D. Ga. Nov. 8, 2016) (internal quotation omitted). “It is within a district court’s discretion to approve a distribution plan proposed by a receiver—and to defer to the receiver’s choices for the plan’s details—so long as the plan is ‘fair and reasonable.’” *Sec. & Exch. Comm’n v. Amerindo Inv. Advisors Inc.*, No. 5-CV-5231, 2016 WL 10821985, at \*3 (S.D.N.Y. May 20, 2016) (quoting *Sec. Exch. Comm’n v. Wang*, 944 F.2d 80, 81 (2d Cir. 1991)) (internal citation omitted).

**A. The Proposed Final Notice Procedure is Authorized by the Plan of Distribution and is Fair and Equitable**

In the Plan Distribution Order, the Court approved the Plan of Distribution and found that it “represents an equitable balancing to achieve a fair and reasonable result for all investors.” Plan Distribution Order at 15. The relief requested by the Receiver in the Motion falls within the scope of the Court-approved Plan of Distribution. Article XIII of the Plan of Distribution provides that the Receiver may seek Orders in Aid of Administration necessary to carry out the purpose and effect of the Plan of Distribution so long as any such Order does not adversely materially affect the treatment of investors with allowed claims. Plan of Distribution at 13. In order to make further distributions as contemplated by the Plan of Distribution, the Abandoned Claims must be resolved, either by the Receiver’s receipt of the Investor Questionnaires or other information necessary to make a distribution or by expunging the Abandoned Claims. Resolution of the Abandoned Claims will allow the Receiver to determine how many funds remain for a second interim

distribution to investors and the size of such distribution. Approval of the Final Notice Procedure will, therefore, assist the Receiver in carrying out the purpose and effect of the Plan of Distribution.

In addition, Article VIII of the Plan of Distribution contemplates that the Receiver may retain de minimis distributions for distribution to investors with allowed claims. Plan of Distribution at 13. To the extent that the Receiver holds a distribution of less than \$50 for the benefit of an investor with an allowed claim, such claim shall be deemed expunged and such distribution shall vest with the Receiver for distributions to other investors holding allowed claims. *Id.* While distributions owed on account of the Abandoned Claims will likely exceed \$50, the proposed Final Notice Procedure will result in expunging Abandoned Claims for which no response is received and reallocating and vesting any distributions otherwise owed on account of such Abandoned Claims with the receivership estate for subsequent distributions to investors with allowed claims. Accordingly, distributions on account of any expunged Abandoned Claims is consistent with Article VIII of the Plan of Distribution. *Id.* at 14.

The Motion is within the scope of the approved Plan of Distribution and will achieve a fair and equitable result. Although the relief requested in the Motion may result in expunging what would otherwise be allowed claims, the Receiver must resolve the Abandoned Claims in order to proceed with making further distributions to investors and eventually closing the receivership estate. The Receiver has already made numerous attempts to contact the holders of Abandoned Claims. By the Motion, the Receiver seeks Court permission to take the additional and final step of posting the names of Lost Investors and Incomplete Investors on the Receiver's Website (together with any additional notice as

may be required by the Court) in order to solicit responses. Abandoned Claims will only be expunged if (i) there are no responses from the Lost Investors or Incomplete Investors holding Abandoned Claims following the posting of the names, or (ii) if an initially responding investor or duly authorized representative fails to properly complete documentation necessary to allow the Receiver to make a distribution after at least one more follow-up attempt by the Receiver. It is neither fair nor equitable to make other investors with allowed claims wait for an indeterminate period of time to receive further interim distributions to which they are entitled while the Receiver attempts to locate or obtain missing information from the holders of Abandoned Claims. The receivership has been in place for almost ten years and the Plan was approved in 2016. The Final Notice Procedure will permit the Receiver to continue making distributions to investors who have long awaited their recoveries.

**B. The Remaining Paper Claims Should be Disallowed**

The Remaining Paper Claims described on Exhibit B to the Motion should be disallowed because there is no basis in the books and records of MS & Co. to justify a distribution on account of the Remaining Paper Claims. Expunging the Remaining Paper Claims will further the main objective of equality in Receivership distributions by preserving amounts for distribution to investors with legitimate claims.

The Remaining Paper Claims are comprised of (a) No Liability Claims, (b) Non-Receivership Claims and (c) Excluded Claims. No Liability Claims represent filed paper claims for investments which are not reflected in the books and records of McGinn Smith for a variety of reasons. No Liability Claims should be disallowed because there is no basis in the books and records of McGinn Smith for the payment of such claims.

Non-Receivership Claims represent filed paper claims for investments in entities that are not part of the Receivership. Because these entities are not included in the Receivership, the Receiver cannot make distributions on account of these claims with Receivership funds. Accordingly, Non-Receivership Claims should be disallowed.

Excluded Claims represent paper claims filed for investments in entities that were excluded from the Receivership by the Plan Distribution Order. These entities include SAI Trust 00 and SAI Trust 03, which were foreclosed on and liquidated before the commencement of the Receivership. The Excluded Claims should be disallowed because holders of such claims are not entitled to any further distribution following the foreclosure and liquidation of these entities.

**C. Summary Proceedings are Appropriate**

The Receiver has sought to provide holders of Abandoned Claims and Remaining Paper Claims with appropriate notice and sufficient time to respond to the Motion. Accordingly, the Receiver has complied with the claim objection and notice procedures set forth in the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) because, although bankruptcy law does not legally govern equity receiverships, it does provide a workable and tried method for providing notices to claimants in connection with the claims adjudication process. Bankruptcy Rule 3007 requires that a claim objection must be filed and served at least thirty days before any scheduled hearing and that the objection must be served on the claimant by first class mail. Fed. R. Bankr. P. 3007(a)(1), (2).

In accordance with Rule 7.1 of the Local Rules of Practice for the United States District Court for the Northern District of New York, the Receiver has filed and will serve the Motion on each investor holding claims listed on Exhibits A-1, A-2 and B attached

to the Motion at least thirty-one days in advance of the scheduled return date of December 19, 2019. The Receiver will give notice of the Motion to the Securities and Exchange Commission, all parties who have filed a Notice of Appearance in this action by ECF, and all creditors and parties in interest via the Receiver's Website ([www.mcginnsmithreceiver.com](http://www.mcginnsmithreceiver.com)), as well as posting at the top of the Receiver's website an explanation of the Motion. Additionally, notice by first class mail to the last known address will be given to each investor holding Abandoned Claims or Remaining Paper Claims.

Brown Dec'1. ¶23.

The Receiver requests that the Court enter an order granting the relief requested in this Motion without a hearing with respect to those claims for which an objection is not timely interposed. Disallowance or adjustment of a claim without a hearing where there is no factual dispute is an appropriate and preferred procedure in federal receivership cases. *See S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (holding that summary proceedings are favored in federal receivership cases because a summary proceeding "reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets"); *United States v. Fairway Capital Corp.*, 433 F. Supp. 2d 226, 241 (D. R.I. 2006) ("Receivership courts can employ summary procedures in allowing, disallowing and subordinating claims of creditors").

**CONCLUSION**

The Receiver requests that the Court enter an Order in Aid of Administration substantially in the form attached to the Motion as Exhibit D (a) approving the procedure for notice and abandonment of claims of Lost Investors and investors with incomplete claim files, (b) approving the redistribution of allocated recoveries to the receivership estate for the benefit of investors with allowed claims, (c) expunging those certain Abandoned Claims listed on Exhibits A-1 and A-2 to the Motion for which no further authorized responses are received, and (d) disallowing those Remaining Paper Claims on Exhibit B, together with such other and further relief as the Court deems just and proper.

Dated: November 13, 2019

PHILLIPS LYTTLE LLP

By           /s/ Catherine N. Eisenhut            
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Doc #4511769.7



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

**CERTIFICATE OF SERVICE**

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on November 13, 2019, a true and correct copy of the (i) Notice of Motion and Motion of William J. Brown, as Receiver, for an Order in Aid of Administration (A) Approving Procedure for Notice and Abandonment of Claims of Lost Investors and Investors with Incomplete Claim Files, (B) Approving Redistribution of Allocated Recoveries to Receivership Estate for Benefit of Investors with Allowed Claims, (C) Expunging Abandoned Claims and Incomplete Claims and (D) Disallowing Certain Remaining Paper Claims (“Motion for Order in Aid of Administration”), (ii) Declaration of William J. Brown, as Receiver, in Support of Motion in Aid of Administration, and (iii) Memorandum of Law in Support of Motion in Aid of Administration (collectively, “Motion in Aid of Administration Documents”) were 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:

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- **Frank H. Chiappone** chiappone55@gmail.com
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- **Benjamin Zelsermyer** bzlaw@optonline.net,seincav@aol.com

And, I hereby certify that on November 13, 2019, I mailed, via first class mail using the United States Postal Service, copies of the Motion in Aid of Administration Documents to the individuals listed below and on the investors with the claim numbers listed on the attached Exhibits A-1, A-2 and B which were filed with the Motion herewith.

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Dated: November 13, 2019

/s/ Karen M. Ludlow  
Karen M. Ludlow