



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**

New York Regional Office  
Brookfield Place, 200 Vesey St.  
New York, NY 10281-1022

DIVISION OF  
ENFORCEMENT

David Stoelting  
Senior Trial Counsel  
(212) 336-0174 (direct)  
(212) 336-1324 (fax)

March 2, 2020

**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:

Plaintiff Securities and Exchange Commission respectfully encloses for the Court's consideration and approval a proposed *Turnover Order* (*Fed. R. Civ. P. 69(a)* and *NY CPLR §§ 5225(b)* and *5227*) to *National Financial Services LLC* (the "Proposed Order"). If approved by the Court, the Proposed Order would require National Financial Services LLC to turn over to the Receiver, for distribution pursuant to the Court-approved plan, an IRA account in the name of David Smith.

The funds in the IRA account should be transferred to the Receiver. On September 4, 2019, the Court's Summary Order denied a motion by David Smith to have the funds in his IRA account released to him, finding that "[state law] exemptions may be disregarded in the enforcement of a disgorgement judgment." Dkt. 1066 at 2.

Based on the foregoing, the Commission respectfully requests that the Court approve the Proposed Order.

Respectfully submitted,

*/s David Stoelting*

\_\_\_\_\_  
David Stoelting

cc (by email and ECF): William J. Dreyer, Esq., counsel to Defendant David L. Smith  
William J. Brown, Esq., Receiver

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

<hr/>		:
SECURITIES AND EXCHANGE COMMISSION,		:
	<i>Plaintiff,</i>	:
v.		:
		10 Civ. 457-GLS-CFH
		:
McGINN, SMITH & CO., INC., et al.,		:
	<i>Defendants.</i>	:
<hr/>		:

**[PROPOSED] TURNOVER ORDER (FED. R. CIV. P. 69(a) AND NY CPLR §§ 5225(b) AND 5227) TO NATIONAL FINANCIAL SERVICES LLC**

The Plaintiff-Judgment Creditor Securities and Exchange Commission (the “Commission”), having moved for a turnover order pursuant to Rule 69(a) of the Federal Rules of Civil Procedure and New York Civil Practice Law and Rules (“NY CPLR”) §§ 5225(b) and 5227 directed to the Respondent National Financial Services, LLC (“NFS”), and the Court having considered the papers submitted on such motion, and it appearing that such an order should be issued, it is hereby:

**I.**

**ORDERED** that the Respondent NFS shall turn over to the Court-appointed Receiver, William J. Brown, Esq. (the “Receiver”), certain property in its hands described as the balances in the following account:

<u>Beneficiary</u>	<u>Financial Institution</u>	<u>Account No.</u>	<u>Balance (approx.)</u>
David Smith (IRA) SSN: XXX-XX-XX09 DOB: XX/XX/1945	NFS	RMR XX0920	\$ 34,000

NFS shall, within 14 days of the service of this turnover order, make such payment to the Receiver, for inclusion in the receivership estate in this action and distribution pursuant to the Court-approved Plan. Payment shall be: (a) made by United States postal money order, certified check, bank cashier's check, or bank money order; (b) made payable to "William J. Brown, Receiver"; (c) hand-delivered or mailed to William J. Brown, Phillips Lytle LLP, Omni Plaza, 30 South Pearl Street, Albany, NY 12207; and (d) submitted with a copy of this Order and a cover letter that identifies: (i) NFS as submitting the payment and (ii) the name and number of this proceeding (*SEC v. McGinn Smith & Co., Inc.*, 10-cv-457 (N.D.N.Y.)). Further, Respondent shall simultaneously transmit photocopies of evidence of payment, the cover letter sent to the Receiver, and this Order to David Stoelting, Senior Trial Counsel, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

## II.

**ORDERED** that this Court shall retain jurisdiction to enforce compliance with this Order.

Dated: Albany, New York  
\_\_\_\_\_, 2020

---

UNITED STATES DISTRICT JUDGE