

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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**FIFTH WRITTEN STATUS REPORT OF THE RECEIVER**

This Report describes relevant events respecting the status of the Receivership Estates at this time and also incorporates by reference updates which have been posted regularly on the Receiver’s website since the commencement of this action (www.mcginnsmithreceiver.com).<sup>1</sup> This Report also supplements the First Report of the Receiver (Docket No. 49), the Second Written Report of the Receiver (Docket No. 425), the Third Written Status Report of the Receiver (Docket No. 925) (“Receiver’s Third Report”),

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<sup>1</sup> The Receiver’s website contains more detailed descriptions of many of these events and others which were reported to investors contemporaneously with their occurrence.

the Fourth Written Status Report of the Receiver (Docket No. 1024), and the Revised Fourth Written Status Report of the Receiver (Docket No. 1026) (“Receiver’s Fourth Report”). The Receiver’s Motion for an Order (I) Approving Plan of Distribution of Estate Assets (“Plan”) and (II) Authorizing Interim Distributions was approved by Court Order on October 31, 2016 (Docket No. 904).

### **Summary of Investor Distribution Events**

As reported in detail on pages 4 through 6 of the Receiver’s Third Report, the Receiver established procedures for the implementation of investor distributions once the Plan of Distribution was approved by the Court and became a final Order. The Receiver has completed two distributions of ten percent (10%) each to investors with allowed claims subject to any applicable offsets. Commencing the week of May 10, 2021, the Receiver will begin mailing Third Distribution checks of 3.84% each to investors with allowed claims subject to any applicable offsets. Thus, investors with allowed claims will have received distributions totaling 23.84%, which exceeds the Receiver’s long-standing publicly announced recovery estimate of 13.5% to 21.7%. The mailing of investor Third Distribution checks will be completed by May 21, 2021. Consequently, investors should have their final payments before June 2021.

At the completion of the Third Distribution, the Receiver will have paid over \$21,744,773 to investors with allowed claims.

The distribution letter sent to investors with their Third Distribution checks is attached as **Exhibit A**.

### **Storage Facility**

The Receiver continues to maintain a storage location containing the remaining McGinn Smith paper records. Virtually all essential records are maintained in electronic form. The Receiver will begin to shred and destroy those records (except those necessary

for tax matters) after completion of the Third Distribution in accordance with a prior Court Order.

### **Tax and Entity Matters**

Since the commencement of the Receivership, the Receiver has filed more than 600 tax returns for the many McGinn Smith entities. Some of those entities are trusts, which by their terms, have expired, and final tax returns for those entities whose terms expired were filed in 2017 through 2020. The Receiver has also filed final tax returns for most of the other McGinn Smith entities other than those necessary to make the investor distributions.

The Receiver has filed with various states requests to dissolve the many inactive McGinn Smith entities as part of his wind-up activities.

### **Liquid Assets of the Estate**

As of April 30, 2021, estate assets total \$4,938,097 after payment of the First and Second Distributions to investors. This compares favorably to the initial account balance of \$485,491.63 at the time of the commencement of the Receivership in 2010, as described in more detail in the First Report of the Receiver (Docket No. 49). There are several minor and one potentially significant illiquid securities remaining to be liquidated if possible. Although efforts to monetize these illiquid investments, consisting of private equity investments and subordinated securities, have been attempted from time to time, buyers have not been located. Those efforts will continue.

### **Receiver Estate Wrap-Up**

The Receiver now turns to the remaining administrative, legal, tax and financial matters necessary to close these estates in furtherance of the Order Granting Receiver's Omnibus Motion for Approval of (I) Destruction of Files, Recycling of Computers and Other Wind-Up Activities, (II) Continuation of Receivership to Accomplish Foregoing, and (III) Termination of the Receivership and Discharge of the Receiver, All Following

Completion of Final Distributions to Investors With Allowed Claims and the Filing of the Receivers Final Report (Docket No. 1165). A final Receiver's Report will be filed prior to year-end 2021 in accordance with that Order.

Dated: May 10, 2021

PHILLIPS LYTTLE LLP

By /s/ William J. Brown  
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 #9663899.2

**Exhibit A**

Receiver's Third Distribution Check Letter

**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

May 10, 2021

Re: Third and Final McGinn Smith Investor Distribution Check

Dear McGinn Smith Investor:

Enclosed is a check representing your Third Investor Distribution. This check is a final distribution of 3.84% on your allowed claim after application of any applicable offsets. If you have more than one McGinn Smith investment being treated under the court-approved Plan of Distribution, you will receive a separate letter and check for 3.84% of each allowed claim. Thus, the Receiver will have paid to investors holding allowed claims a total of 23.84% of the amount of their allowed claims subject to allowed offsets or deductions.

**The enclosed check will be void if not cashed within ninety days. Please cash the check promptly.**

As Receiver, I have worked to collect and monetize the so-called McGinn Smith assets and have now paid as of this date over \$21,744,773 to investors with allowed claims. The Receivership will now complete its wind-down and is expected to cease all material activities by year-end.

I have filed a Fifth Written Status Report of the Receiver with the Court. It is available on the Receiver's website ([www.mcginnsmithreceiver.com](http://www.mcginnsmithreceiver.com)) in an Investor Update dated May 7, 2021. The Receiver's Final Report will be subsequently filed and available on the Receiver's website before year-end 2021.

It has been my honor to assist each of you.

Very truly yours,



William J. Brown  
Receiver

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Enclosure