

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

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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Case No. 1:10-CV-457
(AMN/CFH)

**EIGHTH WRITTEN STATUS REPORT OF THE RECEIVER AND RESPONSE
TO NOVEMBER 6, 2023 TEXT ORDER (DOCKET NO. 1247)**

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) (“Receiver’s Website”).¹

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

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”), the Fourth Written Status Report of the Receiver (Docket No. 1024), the Revised Fourth Written Status Report of the Receiver (Docket No. 1026), the Fifth Written Status Report of the Receiver (Docket No. 1187), the Sixth Written Status Report of the Receiver (Docket No. 1236), and the Seventh Written Status Report of the Receiver Amending and Restating Status Report Filed December 14, 2023 (“Seventh Report”) (Docket No. 1249).

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 three distributions aggregating 23.84% to investors with allowed claims subject to any applicable offsets. Commencing on or about January 12, 2024 and concluding by approximately January 22, the Receiver mailed a Fourth Distribution of 1.20% each to investors with allowed claims subject to any applicable offsets. Thus, investors with allowed claims will have received four distributions totaling 25.04%, which exceeds the Receiver’s long-standing publicly announced recovery estimate of 13.5% to 21.7%. Consequently, investors should have received their final payments before March 2024.

**Conclusion of David Smith Litigation
and Commencement of Fourth Distribution to Investors**

Following the U.S. Supreme Court's denial of David Smith's petition for a writ of certiorari on October 30, 2023, as reported on page 2 of the Seventh Report, the Receiver's website announced on October 30, 2023 that the Fourth Distribution to Investors with allowed claims would commence.

After updating the Investor database and preparing a financial wind down model, the calculation of the Fourth Distribution was made and checks were prepared for the 2,781 claims. Checks for another 1.2% distribution were mailed beginning on January 5, 2024 with all Fourth Distribution checks mailed by January 22, 2024.

At the completion of the Fourth Distribution, the Receiver will have paid over \$23,000,000 to investors with allowed claims. This amounts to a 25.04% recovery to investors with allowed claims.

Storage Facility

The Receiver has maintained a storage location containing the remaining McGinn Smith paper records. Virtually all essential records are maintained in electronic form. The Receiver continues to shred and destroy those paper records (except those necessary for tax matters) 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 remaining final tax returns should all be filed by late 2024 after conclusion of the Fourth Distribution process.

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 26, 2024, estate assets total \$299,496 after payment of the first four distributions to investors with allowed claims. Efforts have and continue to be made to monetize an illiquid investment consisting of primarily subordinated securities. Those efforts will continue.

Response to November 6, 2023 Text Order (Docket No. 1247) Regarding Entering of Judgment Against Receivership Defendants

Further to the November 6, 2023 Text Order (Docket No. 1247) (“Text Order”), the Receiver has notified the Securities and Exchange Commission (“SEC”) that he has no objection to the entry of judgement against the Receivership Defendants provided that the judgements do not impact the rights of investors with Allowed Claims to receive distributions.

The SEC has informed the Receiver that they will file a Status Report with the Court respecting the proposed judgment by May 3, 2024 in accordance with the Text Order.

Receiver Estate Wrap-Up

The Receiver is dealing with the remaining administrative legal, tax, and financial matters necessary (including the reissuance, where necessary, of investor checks) 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 2024 in accordance with that Order.

Dated: April 29, 2024

PHILLIPS LYTTLE LLP

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