

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
(AMN/PJE)

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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**RECEIVER'S STATEMENT TO COURT OF PENDING MATTERS
AFFECTING THE FILING OF THE RECEIVER'S FINAL REPORT**

1. The Receiver files this Statement to notify the Court that the Receiver is prepared to implement the final steps described in paragraph 2 below to permit the Receivership to be closed in accordance with 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 Receiver, All Following Completion of Final Distributions to Investors with Allowed Claims and the Filing of the Receiver's Final Report dated November 10, 2020 ("Closing Order") (Docket No. 1165) subject to the disposition of two pending Motions ("Pending Motions") on the Court's Docket, as follows:

- a. Final Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses (Docket No. 1266); and
- b. Final Application of Chiampou Travis Besaw & Kershner LLP for Approval of Fees and Expenses (Docket No. 1267).

2. The Closing Order, a copy of which is attached as Exhibit A, states in its fourth Ordered paragraph:

ORDERED, that upon the filing of the Final Report, a certificate of completion, and entry of a judgment against the MS Entities, the Receivership over the property of the Receivership Entities is terminated; and it is further

3. Since, pursuant to the Closing Order, the Receivership will automatically be terminated and closed upon the filing of (a) the Final Report, (b) a certificate of completion, and (c) the Court's entry of judgment against the MS Entities, the Receiver is withholding the Final Report and certificate of completion until the Pending Motions are decided so that the Receiver can administer the funds which may be approved by the Orders deciding the Pending Motions.

4. Upon the issuance of Orders disposing of the Pending Motions, the Receiver is prepared to promptly file the Final Report and certificate of completion. The SEC has already filed with the Court at Docket No. 1265 the proposed judgment against the MS Entities.

Dated: June 20, 2025

PHILLIPS LYTTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
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Exhibit A

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NORTHERN DISTRICT OF NEW YORK

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(GLS/CFH)

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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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**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 RECEIVER'S FINAL REPORT**

Upon the Motion requesting approval of (i) destruction of files, recycling of computers and other wind-up activities, (ii) continuation of the Receivership to accomplish the foregoing, and (iii) termination of the Receivership and discharge of the Receiver, all following the completion of final distributions to investors with allowed claims and the filing of the Receiver's Final Report dated July 22, 2020 ("Motion"); and notice of the Motion having been given by first class mail to the Securities and Exchange Commission, the Internal Revenue Service, the New York Department of Taxation and Finance, by ECF to all parties who have filed a Notice of Appearance in this action, and via the Receiver's website to all creditors of the

McGinn, Smith entities and other parties in interest, which notice is deemed good and sufficient notice; and the Court having considered the Motion, the Court finds that cause exists to grant the relief requested therein; it is therefore

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

ORDERED, that, following the completion of the Final Notice Procedure and the final distribution to investors, the Receiver shall destroy by shredding all remaining paper business records of the Receivership Entities and wipe the hard drives of all computers of the Receivership Entities and thereafter dispose or recycle those computers, except for those records necessary to support tax returns which have or will be filed; and it is further

ORDERED, that the Receivership is continued to complete the Final Notice Procedure, the final distribution process, the destruction of records and computers, the filing of final tax returns, and the resolution of any pending litigation, with the Receiver to file a Final Report, which shall notify the Court that judgment may be entered against the MS Entities, and a certificate of completion with the Court upon completion of the foregoing tasks; and it is further

ORDERED, that upon the filing of the Final Report, a certificate of completion, and entry of a judgment against the MS Entities, the Receivership over the property of the Receivership Entities is terminated; and it is further

ORDERED, that upon the filing of the certificate of completion, the Receiver and his employees, agents, attorneys and representatives are hereby released from all further liability to this Receivership estate and to the Receivership Entities, and their successors, assigns, affiliates and subsidiaries and their respective creditors, claimants, beneficiaries and owners; and it is further

ORDERED, that all persons who receive notice of this Order, or of this proceeding, are enjoined from commencing or prosecuting any action against the Receiver or his agents in connection with or arising out of the Receiver's service to this Court in this Receivership, without leave of this Court and the Court will retain jurisdiction over this action for the purpose of enforcing the above injunctive; and it is further

ORDERED, that this Order is without prejudice to the Receiver's limited authority to process additional checks or refunds that might come to his attention in the process of checks or refunds as appropriate, as well as to dispose of by appropriate means any remaining property of the Receivership Entities.

Dated: November 10, 2020
Albany, New York


HON. GARY L. SHARPE