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September 7, 2010

By FedEx and ECF

Honorable David R. Homer
United States Magistrate Judge
United States District Court Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, NY 12207

Re: *SEC v. McGinn, Smith & Co., Inc., et al*, 10-Civ.- 457 (GLS/DRH)

Dear Judge Homer:

We represent defendants David L. Smith and Timothy M. McGinn (the "Defendants") in the above-referenced matter, and write regarding the Securities and Exchange Commission's ("SEC") September 3, 2010 letter which requests a pre-motion conference relating to the Defendants' credit card use. While we do not object to the SEC's request for the conference, we feel compelled to inform the Court that the parties have not fully met and conferred as required by Local Rule 7.1 (b)(2). Specifically, we requested that the SEC provide us with authority supporting its position that the use of an unsecured credit line was an "encumbrance" of a frozen asset. Rather than provide such authority, the SEC requested a Court's conference.

We understand that the Court will hold a pre-motion conference by telephone tomorrow afternoon at 4:30 pm and will appear for our clients. At that time, we intend to request that the Court permit us to cross-move for the following relief:

(1) release of sufficient assets on a monthly basis to preserve other assets subject to the injunction by paying mortgages and carrying expenses to avoid foreclosure on such property;

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(2) release of the Defendants' pension fund accounts which have improperly been frozen;

(3) release of sufficient assets to allow for reasonable living expenses (food, utilities, and other such necessary items); and

(4) release of assets for the purpose of paying attorneys' fees so that the Defendants may properly defend themselves in this action.

Thank you in advance for your consideration.

Respectfully submitted,



Martin P. Russo

cc:

(by ECF only)

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