

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457 (GLS)
(DRH)

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, DAVID L. SMITH,
LYNN A. SMITH, DAVID M. WOJESKI, Trustee of
the David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04, GEOFFREY R. SMITH,
LAUREN T. SMITH, and NANCY MCGINN,

Defendants, and

LYNN A. SMITH, and
NANCY MCGINN,

Relief Defendants and:

DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 0/04/04,

Intervenor.

**JOINDER OF RECEIVER TO PLAINTIFF’S MOTION
TO AMEND THE PRELIMINARY INJUNCTION ORDER**

William J. Brown, as Receiver, by his counsel, Phillips Lytle LLP, files this Joinder of Receiver to Plaintiff’s Motion to Amend the Preliminary Injunction Order (Docket No. 143) (“SEC Motion”), and respectfully states as follows:

1. The Receiver has reviewed the SEC Motion and the various responses which have been filed in response to it. After consideration of the positions of the parties, the

Receiver has determined that it is in the best interests of the estates that the relief requested in the SEC Motion be granted since the further incurrence of debt by David L. Smith, Lynn A. Smith and Timothy McGinn on a potentially unlimited and undisclosed basis has a dilutive effect on any recovery the plaintiff may obtain.

Dated: October 19, 2010

PHILLIPS LYTLE LLP

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

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