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October 25, 2010

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By FedEx and ECF

Honorable David R. Homer
United States Magistrate Judge
United States District Court for the
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 to request that the Court add an issue to the conference scheduled for tomorrow, October 26, 2010 at 9 a.m. The parties have met and conferred by email and have been unable to agree to a disposition without Court intervention.

On or about October 22, 2010, the plaintiff the United States Securities and Exchange Commission (the "SEC") served its responses and objections to the Defendants' requests for the production of documents and interrogatories. In particular, Defendants take issue with the SEC's responses and objections to the interrogatories which seek the identification of all persons the SEC communicated with at FINRA, the Department of Justice, and the Federal Bureau of Investigation regarding the defendants in this action. The SEC simply made cursory, generalized objections to these requests without specifying a particular basis for the objections, and is withholding the requested information.

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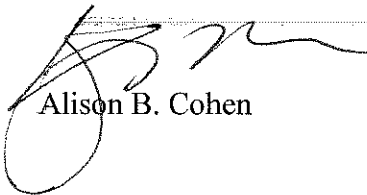
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Defendants' counsel sought to meet and confer on this issue with the SEC, but counsel was unavailable to speak by telephone. Thus, Defendants' counsel sent an email to the SEC stating that information sought is not privileged in any way and requesting that the SEC amend its response to those interrogatories. In response, the SEC indirectly implied without clarity that it is actually withholding the information on the basis of relevance, not privilege. Defendants believe that the information is relevant to assess whether their Fifth Amendment privilege against self incrimination was violated by the SEC's interaction with FINRA during its investigation and the compulsory testimony taken of the Defendants. The information sought impacts Defendants' Constitutional rights in the instant civil action, and may provide a basis to suppress all of the prior testimony.

Based on the foregoing, we respectfully request that the Court add the above-mentioned issue to the conference tomorrow so that the Defendants may seek leave to file a motion to compel the SEC to respond to Defendants' First Set of Interrogatories. Thank you in advance for your consideration.

Sincerely,



Alison B. Cohen

cc: David Stoelting
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