

EXHIBIT A

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,

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 8/04/04,

Intervenor.

**PLAINTIFF'S RESPONSES AND OBJECTIONS
TO DEFENDANTS DAVID L. SMITH
AND TIMOTHY M. MCGINN'S
FIRST SET OF INTERROGATORIES**

October 22, 2010

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff Securities and Exchange Commission (the "Commission") responds as follows to Defendants David L. Smith ("Smith") and Timothy M. McGinn's ("McGinn") First Set of Interrogatories to Plaintiff ("Interrogatories").

GENERAL OBJECTIONS AND RESPONSES

The Commission asserts the following objections to these Interrogatories in their entirety and incorporates such objections in the Commission's response to each Interrogatory:

1. This response is made without waiver, and with express reservation of: (a) all objections as to the competence, relevance, materiality, and admissibility of the responses and their subject matter as evidence for any person in any further proceeding in this action (including the trial of this action) and in any other proceeding; (b) all objections as to any privilege(s) applicable to the responses and their subject matter; (c) the right to object to the use of the responses on any grounds in any proceeding in this action (including the trial of this action) and in any other proceeding; (d) the right to object on any grounds at any time to any demand or request for further response to these Interrogatories or any other discovery relating to the same matter; and (e) the right at any time to amend, correct, add to, strike, delete, supplement or clarify any of the responses.

2. The Commission objects to the extent that these Interrogatories require information protected from disclosure by law, including but not limited to the attorney-client privilege, the law enforcement privilege, the deliberative process privilege, the attorney work product doctrine or any other applicable privilege or doctrine. The Commission will not provide such information.

3. Nothing in this response to these Interrogatories is intended as or shall be construed to be a waiver of any privileges or doctrines.

4. The Commission objects to these Interrogatories to the extent that they seek information that is beyond the scope of information specified in Rule 33 of the Federal Rules of Civil Procedure.

5. The Commission objects to the extent that these Interrogatories seek information that is not relevant to this action, or not reasonably calculated to lead to the discovery of admissible evidence.

6. The Commission's responses shall not be construed so as to limit in any way the facts or evidence that the Commission may offer or rely upon at trial of this action or at any pretrial hearing. The Commission reserves the right to offer or rely on witnesses and other evidentiary sources that the Commission has not expressly referred to in response to any Interrogatory.

7. The Commission reserves the right to supplement or revise its responses to these Interrogatories.

8. The foregoing General Responses and Objections are incorporated into each Specific Response and Objection below.

SPECIFIC RESPONSES AND OBJECTION

Interrogatory No. 1:

Identify each FINRA employee with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 1:

The Commission objects to this Interrogatory for the reasons stated in the General Objections and Responses set forth above.

Interrogatory No. 2:

Identify each person associated with the Department of Justice, including but not limited to persons associated with the Department of Justice, including but not limited to persons associated with United States Attorneys' Office for the Northern District of New York with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 2:

The Commission objects to this Interrogatory for the reasons stated in the General Objections and Responses set forth above.

Interrogatory No. 3:

Identify each person associated with the Federal Bureau of Investigations with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 3:

The Commission objects to this Interrogatory for the reasons stated in the General Objections and Responses set forth above.

Interrogatory No. 4:

Identify each Investor with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 4:

Without waiving the General Objections and Responses, the Commission's staff has had communications with the following Investors concerning the subject matter of this action:

Joseph and Suzanne Allegretta,
Joan Stearns Johnsen, Esq.

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Albany, NY 12208

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Amar Bhandari

Bob Blank



William Briggs

Jim Burke

Paul Carus

Duckkyu and Ken Chang
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Malecki Law
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Stanley and Beatrice Christoff,

Bernard Cohen

Elieen Cornacchia

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Claire Friedland

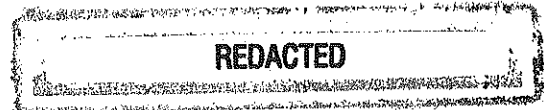
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Herman Laufer

Lesley Levy

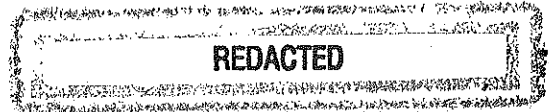
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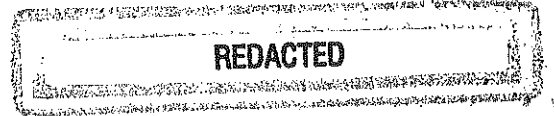
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Earl B. Seguire, Jr.

Edwin Utter

Frank Vaselewski

Gary VonGlinow

Tom and Margaret S. Wagner



Greg and Arlene Waldron

Evalyn Wills

Paul Zindell

Interrogatory No. 5:

Identify any person who was a customer of McGinn Smith with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 5:

Without waiving the General Responses and Objections, the Commission refers defendants Smith and McGinn to Response to Interrogatory No. 4.

Interrogatory No. 6:

Identify any person who is not an Investor in FAIN, FEIN, FIIN, TAIN, or the Trusts with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 6:

The Commission objects to this Interrogatory for the reasons stated in the General Objections and Responses. The Commission further objects to this Interrogatory on the ground that it is overbroad and unduly burdensome and that it seeks material not calculated to lead to relevant and admissible evidence. Without waiving those objections, the Commission refers defendants Smith and McGinn to section I of its Initial Disclosures and states that individuals identified therein have knowledge of information relevant to the subject matter of this action. The Commission also refers defendants Smith and McGinn to the documents described in section II of its Initial Disclosures, from which defendants Smith and McGinn may readily derive additional non-privileged information responsive to this Interrogatory. The Commission also refers defendants Smith and McGinn to the other responses to the Interrogatories and states that the individuals identified therein have knowledge relevant to the subject matter of this action.

Interrogatory No. 7:

Identify each person who has ever been employed by McGinn Smith with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 7:

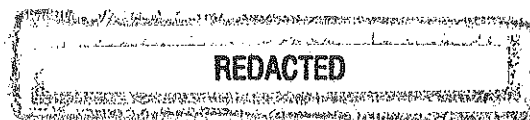
Without waiving the General Objections and Responses, the Commission's staff has had communications with the following former employees of McGinn Smith.

Marlene Brustle

Joseph Carr

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90 State Street
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David McQuade

David Rees

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Patricia Sicluna
c/o Joseph McCoy, Esq.
220 Columbia Turnpike
Rensselaer, NY 12144

Geoffrey Smith

c/o Jill Dunn, Esq.
99 Pine Street
Albany, NY 12207

Interrogatory No. 8:

Identify each person who has ever been employed by FAIN with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 8:

Without waiving the General Objections and Responses, the Commission refers defendants Smith and McGinn to section I of its Initial Disclosures and states that individuals identified therein have knowledge of information relevant to the subject matter of this action. The Commission also refers defendants Smith and McGinn to the documents described in section II of its Initial Disclosures, from which defendants Smith and McGinn may readily derive additional non-privileged information responsive to this Interrogatory. The Commission also refers defendants Smith and McGinn to the other responses to the Interrogatories and states that the individuals identified therein have knowledge relevant to the subject matter of this action.

Interrogatory No. 9:

Identify each person who has ever been employed by FEIN with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 9:

Without waiving the General Objections and Responses, the Commission refers defendants Smith and McGinn to section I of its Initial Disclosures and states that individuals identified therein have knowledge of information relevant to the subject matter of this action. The Commission also refers defendants Smith and McGinn to the documents described in

section II of its Initial Disclosures, from which defendants Smith and McGinn may readily derive additional non-privileged information responsive to this Interrogatory. The Commission also refers defendants Smith and McGinn to the other responses to the Interrogatories and states that the individuals identified therein have knowledge relevant to the subject matter of this action.

Interrogatory No. 10:

Identify each person who has ever been employed by FIIN with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 10:

Without waiving the General Objections and Responses, the Commission refers defendants Smith and McGinn to section I of its Initial Disclosures and states that individuals identified therein have knowledge of information relevant to the subject matter of this action. The Commission also refers defendants Smith and McGinn to the documents described in section II of its Initial Disclosures, from which defendants Smith and McGinn may readily derive additional non-privileged information responsive to this Interrogatory. The Commission also refers defendants Smith and McGinn to the other responses to the Interrogatories and states that the individuals identified therein have knowledge relevant to the subject matter of this action.

Interrogatory No. 11:

Identify each person who has ever been employed by TAIN with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 11:

Without waiving the General Objections and Responses, the Commission refers defendants Smith and McGinn to section I of its Initial Disclosures and states that individuals

identified therein have knowledge of information relevant to the subject matter of this action.

The Commission also refers defendants Smith and McGinn to the documents described in section II of its Initial Disclosures, from which defendants Smith and McGinn may readily derive additional non-privileged information responsive to this Interrogatory. The Commission also refers defendants Smith and McGinn to the other responses to the Interrogatories and states that the individuals identified therein have knowledge relevant to the subject matter of this action.

Interrogatory No. 12:

Identify each person who has ever been employed by any of the Trusts with whom the SEC has had communications concerning McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 12:

Without waiving the General Objections and Responses, the Commission refers defendants Smith and McGinn to section I of its Initial Disclosures and states that individuals identified therein have knowledge of information relevant to the subject matter of this action. The Commission also refers defendants Smith and McGinn to the documents described in section II of its Initial Disclosures, from which defendants Smith and McGinn may readily derive additional non-privileged information responsive to this Interrogatory. The Commission also refers defendants Smith and McGinn to the other responses to the Interrogatories and states that the individuals identified therein have knowledge relevant to the subject matter of this action.

Interrogatory No. 13:

Identify each and every person who has possession, custody, or control of documents relating to McGinn Smith, Smith, McGinn, FAIN, FEIN, FIIN, TAIN, or the Trusts, including the name, telephone number, address, email address, and title of such individuals.

Response to Interrogatory No. 13:

Without waiving the General Objections and Responses, the Commission refers defendants Smith and McGinn to the documents described in section II of its Initial Disclosures, which may be relevant to the claims against defendants Smith and McGinn and from which defendants Smith and McGinn may readily derive additional non-privileged information responsive to this Interrogatory. The Commission also refers defendants Smith and McGinn to the other responses to the Interrogatories and states that the individuals identified therein have knowledge relevant to the subject matter of this action.

Dated: New York, NY
October 22, 2010

s/ David Stoelting
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