

# **EXHIBIT BB**



**FOIA Confidential Treatment Request  
Pursuant to 17 CFR § 200.83**

February 19, 2010

Michael D. Paley, Esq.  
Enforcement  
United States Securities and Exchange Commission  
3 World Financial Center, Room 400  
New York, NY 10281-1022

RE: Referral  
McGinn, Smith & Co., Inc.  
20080117152

Dear Mr. Paley:

In connection with our referral of the above-referenced matter, we are enclosing copies of the following documents:

DESCRIPTION	IDENTIFICATION/BATES NOS.
McGinn OTR Exhibits 1-11	F000000001 to F000000085
Smith OTR Exhibits 1-27	F000000086 to F000000273
CD containing Transcripts for: Smith Vol. I, Smith Vol. II, Smith Vol. III, Smith Vol. IV, McGinn Vol. I & McGinn Vol. II	F000000274

FINRA hereby claims that all materials provided to the Securities and Exchange Commission (SEC or the Commission) related to this request, including this letter and the materials accompanying this letter, are entitled to confidential treatment in accordance with the enumerated exemptions established under the Freedom of Information Act, including, but not limited to: FOIA Exemptions 4 (privileged and/or confidential trade secrets and/or commercial or financial information obtained by the SEC),<sup>1</sup> 7 (investigatory records obtained by the Commission in connection with a potential law enforcement proceeding),<sup>2</sup> and 8 (information "contained in, or related to, any examination, operating, or condition report prepared by, on behalf of, or for the use of, the Commission, or any securities self-regulatory organization, responsible for the regulation or supervision of financial institutions).<sup>3</sup> In addition, we believe that the protections available under the Privacy Act of 1974<sup>4</sup> also are applicable to the

<sup>1</sup> 5 U.S.C. § 552(b)(4) and Commission Rule 80(b)(4), 17 C.F.R. 200.80(b)(4), implementing this exemption.

<sup>2</sup> 5 U.S.C. § 552(b)(7) and Commission Rule 80(b)(7), 17 C.F.R. 200.80(b)(7), implementing this exemption.

<sup>3</sup> 5 U.S.C. § 552(b)(8) and Commission Rule 80(b)(8), 17 C.F.R. 200.80(b)(8), implementing this exemption.

<sup>4</sup> 5 U.S.C. § 552a.

Investor protection. Market integrity.

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Woodbridge, NJ  
07095

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Letter to Michael D. Paley, Esq.  
February 19, 2010  
Page 2 of 3

documents. This claim of confidentiality shall continue indefinitely unless we advise you otherwise.

Accordingly, we expect that all documents and copies of documents produced in connection with the Staff's request, including this letter and emails transmitted to or exchanged with SEC staff, will be kept in a non-public file and that the SEC will maintain the confidentiality of such documents. Should the Commission receive any request pursuant to the Freedom of Information Act for access to the documents produced hereunder, we expect that the SEC will assert all appropriate legal exemptions and privileges and that access to them by any third party not a member of the SEC or its staff will be denied. We further expect to be promptly notified of such request — or any intended public use of these documents — and to be given a reasonable opportunity to object to such disclosure, provide written substantiation of the request for confidential treatment and pursue any remedies that may be available. In such event, we request that the staff telephone the undersigned rather than rely upon the United States mail for such notice. We request that the staff also provide a written copy of such notice by certified mail to the Office of General Counsel, FINRA, 1735 K Street, NW, Washington, DC 20006.

If the Commission makes any of the materials produced hereunder available to another governmental or regulatory authority pursuant to Rule 24c-1 of the Exchange Act, the routine uses of information listed in Form 1661, a memoranda of understanding (MOU) or other such agreement or understanding entered into between the Commission and the requesting authority, it is our expectation that such documents will continue to receive confidential treatment under the Freedom of Information Act, the applicable state information disclosure law, and/or the confidentiality provisions agreed to under the MOU, as well as protection under the Privacy Act of 1974, if applicable.

Finally, until this matter is closed, FINRA has a continuing interest and will take further investigatory and/or other steps as it considers necessary in the discharge of its regulatory and investigatory duties and responsibilities. We understand that, in light of the regulatory and investigatory functions of FINRA, the SEC staff will use its best efforts to comply with FINRA's requests set forth in this letter.

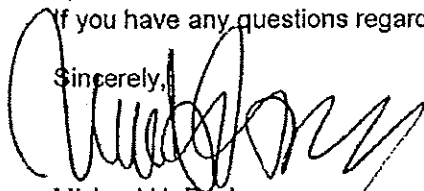
**FOIA CONFIDENTIAL TREATMENT REQUESTED BY FINRA**

F030960

Letter to Michael D. Paley, Esq.  
February 19, 2010  
Page 3 of 3

If you have any questions regarding this matter, please contact me at 732-596-2073.

Sincerely,



Michael H. Paulsen  
Examination Manager

cc: Office of Freedom of Information and Privacy Act Operations  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Mail Stop 5100  
Washington, DC 20549  
(via regular mail)  
(without attached records)

cc: FINRA  
Office of General Counsel  
CentralAccessGroup@finra.org  
(without attached records)

FINRA  
Member Regulation  
Julie Heinzman  
(via electronic mail)  
(without attached records)

Enclosure(s)

**FOIA CONFIDENTIAL TREATMENT REQUESTED BY FINRA**

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