

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

10 Civ. 00457 (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, AND :  
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, :

**NOTICE OF MOTION**

*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.* :

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**TO THE CLERK OF THE COURT AND ALL PARTIES OF RECORD:**

Please take notice that pursuant to the Court's October 26, 2010 Order (Docket No. 161), defendants Timothy M. McGinn and David L. Smith shall move this Court on December 16, 2010 at 9:00 AM, or any other date convenient for the Court, before the Honorable David. R. Homer, United States Magistrate Judge, United States Court for the Northern District of New York, 445 Broadway, Albany, NY, for an order compelling the Securities and Exchange

Commission to answer in full Request Nos. 1, 2 and 3 of the defendants' First Set of Interrogatories.

Dated: New York, New York  
November 15, 2010

Respectfully submitted,

**GUSRAE, KAPLAN, BRUNO &  
NUSBAUM PLLC**

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*McGinn and David L. Smith*