

November 22, 2010

BY ECF

The Honorable David R. Homer
James T. Foley United States Courthouse
445 Broadway
Albany, New York 12207

Re: SEC v. McGinn, Smith & Co., Inc. (10 Civ.457 (GLS/DRH))

Dear Judge Homer,

We represent Defendants David L. Smith and Timothy L. McGinn in the above-captioned matter. On November 17, 2010, the Financial Regulatory Authority, Inc. and Gary Jaggs, Robert J. McCarthy, Michael Newman, and Randy Pearlman (collectively, "FINRA") filed a motion to quash subpoenas issued on them by Defendants (the "Motion to Quash") (Docket No. 192). This letter is submitted on behalf of both FINRA and Defendants.

As background, the Motion to Quash originated in the Southern District of New York, which is the district from which the subpoenas were issued. Judge Miriam Goldman Cedarbaum, United States Part I Judge for the Southern District of New York, at a hearing on November 2, 2010, stayed the proceeding, directed the parties to this Court for resolution of the motion, and reserved the parties' rights to return to a Part I Judge in the Southern District of New York for further relief if necessary. Given Judge Cedarbaum's order, the parties agree the Motion to Quash is to be resolved by this Court.

Following Judge Cedarbaum's referral of this matter to this Court, the parties discussed a briefing schedule which contemplated both that FINRA would have a right to reply to the Defendants' opposition papers, and that oral arguments would be held on the motion. On November 17, 2010 FINRA filed its moving papers in an attempt to honor the briefing schedule the parties had previously discussed. (Docket No. 192). On November 18, 2010, the Court issued a text notice setting the return date on FINRA's motion to quash for December 23, 2010, December 6, 2010 as the date to file Defendants' opposition, and stated that no oral argument will be heard on the motion.

The parties propose the following briefing schedule which generally comports with the schedule already contemplated by the Court:

Briefing. The parties are aware that pursuant to Local Rule 7.1, there is no right to a reply on non-dispositive motions. The parties, however, respectfully request that the Court grant FINRA leave to submit reply papers and Defendants the right to a surreply in the event that FINRA raises new arguments in its reply papers. The parties propose that Defendants be allowed to file their opposition on or before Wednesday, December 1, 2010, that FINRA be permitted to file a reply to Defendants' opposition on or before Monday, December 6, 2010, and that Defendants be permitted to file a surreply as to newly-raised issues, if any, on or before Thursday, December 9, 2010.

Oral Argument. The parties believe oral argument on the Motion to Quash would be helpful to the Court's disposition of the matter and, accordingly, jointly request that the Court take oral argument on the Motion to Quash on December 23, 2010 or some other date to be set by the Court.

Thank you in advance for your consideration.

Respectfully submitted,

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