



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office
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New York, NY 10281

DIVISION OF
ENFORCEMENT

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May 5, 2010

BY ECF

The Honorable David R. Homer
United States Magistrate Judge
United States District Court
Northern District of New York
United States Courthouse
Albany, New York 12207

Re: SEC v. McGinn, Smith & Co., Inc., et al., 10 CV 457 (GLS)(DRH)

Dear Judge Homer:

On behalf of the parties, I enclose for the Court's consideration a proposed Consent Order that, among other things, changes the date of the hearing on the SEC's motion for a preliminary injunction from May 18, 2010, to June 2, 2010.

Counsel for Mr. McGinn, Mr. Smith and counsel for relief defendant Lynn Smith have consented to the proposed Order.

Respectfully submitted,

A handwritten signature in cursive script that reads "David Stoelting".

David Stoelting

cc (by e-mail and US Mail): Michael Koenig, Esq.)
James Featherstonhaugh, Esq.

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; AND
DAVID L. SMITH,

Defendants, and

LYNN A. SMITH,

Relief Defendant.

CONSENT ORDER

WHEREAS, on April 20, 2010, plaintiff Securities and Exchange Commission (the "Commission") commenced this action by filing a Complaint, Order to Show Cause, and other papers, and, on that same day, the Court issued an Order to Show Cause, Temporary Restraining Order, and Order Freezing Assets and Granting Other Relief (the "Order"), that, among other things, temporarily froze the assets of the Defendants and the Relief Defendant; and set dates for a preliminary injunction hearing and for the submission of briefs;

WHEREAS, on April 30, 2010, the Court entered a Consent Order Extending Dates in Order to Show Cause;

NOW, THEREFORE:

I.

IT IS ORDERED that the Order is modified so that the preliminary injunction hearing referenced in Part I of the Order shall be scheduled for June 2, 2010, at 2:00 p.m., before Magistrate Judge David R. Homer.

II.

IT IS FURTHER ORDERED that Part XXII of the Order is modified so that Defendants and Relief Defendant shall serve any opposing papers in response to the Order no later than May 21, 2010, and the Commission shall have until May 26, 2010 to serve any reply papers upon the Defendants and Relief Defendant.

III.

IT IS FURTHER ORDERED that the Order is modified so that the responses of defendants Smith and McGinn to Part XVI of the Order, which requires that verified written accountings be provided, shall be filed and served on or before May 19, 2010.

IV.

IT IS FURTHER ORDERED that except as expressly modified herein, the Order shall remain in full force and effect until further order of this Court.

V.

IT IS FURTHER ORDERED that the time for defendants Smith and McGinn and the relief defendant to answer or otherwise respond to the Complaint is extended to June 9, 2010.

VI.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of the Order and this Consent Order, and for all other purposes.

SO ORDERED:

Dated: _____, 2010

UNITED STATES MAGISTRATE JUDGE