

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, and

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 0/04/04,

Intervenor.

**ANSWER OF RECEIVERSHIP DEFENDANTS
TO THE AMENDED COMPLAINT**

The Receiver, William J. Brown, by his counsel, Phillips Lytle LLP, answers the Amended Complaint on behalf of Defendants 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, and Third Albany Income Notes, LLC (collectively, "Receivership Defendants"), as follows:

1. The Receivership Defendants admit the allegations of the Complaint asserted against them on information and belief.

Dated: December 15, 2010

PHILLIPS LYTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
Todd A. Ritschdorff (Bar Roll #512601)

Counsel for Receiver
Omni Plaza
30 South Pearl Street
Albany, New York 12207
Telephone No. (518) 472-1224

and

3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400