

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X

SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

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, :

*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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10 Civ. 00457 (GLS/DRH)

**DEFENDANT DAVID L SMITH'S ANSWER TO THE AMENDED COMPLAINT**

Defendant David L. Smith (“Defendant Smith”), by and through his attorneys, Gusrae, Kaplan, Bruno & Nusbaum PLLC, as and for his Answer to the Amended Complaint of the plaintiff the United States Securities and Exchange Commission (“SEC”) dated August 2, 2010, Docket No. 100 (the “Am. Complaint”), herein responds as follows:

1. In response to Paragraph 1 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

2. In response to Paragraph 2 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
3. In response to Paragraph 3 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
4. In response to Paragraph 4 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
5. In response to Paragraph 5 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
6. In response to Paragraph 6 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
7. The allegations set forth in Paragraph 7 of the Am. Complaint require no response and Defendant Smith respectfully refers the Court to the docket for a true and accurate descriptions of the matters set forth therein.
8. The allegations set forth in Paragraph 8 of the Am. Complaint require no response and Defendant Smith respectfully refers the Court to the docket for a true and accurate descriptions of the matters set forth therein.

9. The allegations set forth in Paragraph 9 of the Am. Complaint require no response and Defendant Smith respectfully refers the Court to the docket for a true and accurate descriptions of the matters set forth therein.
10. In response to Paragraph 10 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
11. In response to Paragraph 11 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
12. In response to Paragraph 12 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
13. In response to Paragraph 13 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
14. In response to Paragraph 14 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
15. In response to Paragraph 15 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

16. In response to Paragraph 16 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
17. The allegations set forth in Paragraph 17 require no response.
18. The allegations set forth in Paragraph 18 require no response.
19. The allegations set forth in Paragraph 19 require no response.
20. The allegations set forth in Paragraph 20 require no response.
21. In response to Paragraph 21 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
22. In response to Paragraph 22 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
23. In response to Paragraph 23 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
24. In response to Paragraph 24 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
25. In response to Paragraph 25 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

26. In response to Paragraph 26 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
27. In response to Paragraph 27 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
28. In response to Paragraph 28 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
29. In response to Paragraph 29 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
30. In response to Paragraph 30 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
31. In response to Paragraph 31 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
32. In response to Paragraph 32 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

33. In response to Paragraph 33 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
34. In response to Paragraph 34 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
35. In response to Paragraph 35 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
36. In response to Paragraph 36 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
37. In response to Paragraph 37 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
38. In response to Paragraph 38 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
39. In response to Paragraph 39 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

40. In response to Paragraph 40 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
41. In response to Paragraph 41 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
42. In response to Paragraph 42 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
43. In response to Paragraph 43 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
44. In response to Paragraph 44 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
45. In response to Paragraph 45 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
46. In response to Paragraph 46 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

47. In response to Paragraph 47 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
48. In response to Paragraph 48 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
49. In response to Paragraph 49 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
50. In response to Paragraph 50 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
51. In response to Paragraph 51 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
52. In response to Paragraph 52 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
53. In response to Paragraph 53 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.



54. In response to Paragraph 54 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
55. In response to Paragraph 55 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
56. In response to Paragraph 56 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
57. In response to Paragraph 57 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
58. In response to Paragraph 58 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
59. In response to Paragraph 59 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
60. In response to Paragraph 60 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

61. In response to Paragraph 61 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
62. In response to Paragraph 62 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
63. In response to Paragraph 63 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
64. In response to Paragraph 64 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
65. In response to Paragraph 65 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
66. In response to Paragraph 66 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
67. In response to Paragraph 67 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

68. In response to Paragraph 68 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
69. In response to Paragraph 69 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
70. In response to Paragraph 70 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
71. In response to Paragraph 71 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
72. In response to Paragraph 72 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
73. In response to Paragraph 73 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
74. In response to Paragraph 74 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

75. In response to Paragraph 75 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
76. In response to Paragraph 76 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
77. In response to Paragraph 77 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
78. In response to Paragraph 78 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
79. In response to Paragraph 79 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
80. In response to Paragraph 80 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
81. In response to Paragraph 81 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

82. In response to Paragraph 82 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
83. In response to Paragraph 83 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
84. In response to Paragraph 84 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
85. In response to Paragraph 85 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
86. In response to Paragraph 86 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
87. In response to Paragraph 87 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
88. In response to Paragraph 88 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

89. In response to Paragraph 89 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
90. In response to Paragraph 90 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
91. In response to Paragraph 91 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
92. In response to Paragraph 92 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
93. In response to Paragraph 93 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
94. In response to Paragraph 94 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
95. In response to Paragraph 95 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

96. In response to Paragraph 96 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
97. In response to Paragraph 97 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
98. In response to Paragraph 98 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
99. In response to Paragraph 99 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
100. In response to Paragraph 100 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
101. In response to Paragraph 101 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
102. In response to Paragraph 102 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

103. In response to Paragraph 103 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
104. In response to Paragraph 104 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
105. In response to Paragraph 105 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
106. In response to Paragraph 106 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
107. In response to Paragraph 107 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
108. In response to Paragraph 108 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
109. In response to Paragraph 109 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.



110. In response to Paragraph 110 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
111. In response to Paragraph 111 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
112. In response to Paragraph 112 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
113. In response to Paragraph 113 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
114. In response to Paragraph 114 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
115. In response to Paragraph 115 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
116. In response to Paragraph 116 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

117. In response to Paragraph 117 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
118. In response to Paragraph 118 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
119. In response to Paragraph 119 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
120. In response to Paragraph 120 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
121. In response to Paragraph 121 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
122. In response to Paragraph 122 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
123. In response to Paragraph 123 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

124. In response to Paragraph 124 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
125. In response to Paragraph 125 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
126. In response to Paragraph 126 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
127. In response to Paragraph 127 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
128. In response to Paragraph 128 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
129. In response to Paragraph 129 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
130. In response to Paragraph 130 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

131. In response to Paragraph 131 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
132. In response to Paragraph 132 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
133. In response to Paragraph 133 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
134. In response to Paragraph 134 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
135. In response to Paragraph 135 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
136. In response to Paragraph 136 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
137. In response to Paragraph 137 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

138. In response to Paragraph 137 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to First Claim for Relief**

139. In response to the allegations set forth in Paragraph 139, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 138 above, as if fully set forth herein.

140. Defendant neither admits nor denies the allegations set forth in Paragraph 140 of the Am. Complaint which purport to state a legal conclusion for which a response is not required.

141. In response to Paragraph 141 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

142. In response to Paragraph 142 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Second Claim for Relief**

143. In response to the allegations set forth in Paragraph 143, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 142 above, as if fully set forth herein.

144. In response to Paragraph 144 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

145. In response to Paragraph 145 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Third Claim for Relief**

146. In response to the allegations set forth in Paragraph 146, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 145 above, as if fully set forth herein.

147. In response to Paragraph 147 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

148. In response to Paragraph 148 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

149. In response to Paragraph 149 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

150. In response to Paragraph 149 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

151. In response to Paragraph 151 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

152. In response to Paragraph 152 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Fourth Claim for Relief**

153. In response to the allegations set forth in Paragraph 153, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 152 above, as if fully set forth herein.

154. In response to Paragraph 154 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

155. In response to Paragraph 155 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

156. In response to Paragraph 156 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Fifth Claim for Relief**

157. In response to the allegations set forth in Paragraph 157, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 156 above, as if fully set forth herein.

158. In response to Paragraph 158 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

159. In response to Paragraph 159 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Sixth Claim for Relief**

160. In response to the allegations set forth in Paragraph 161, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 160 above, as if fully set forth herein.

161. In response to Paragraph 161 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

162. In response to Paragraph 162 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

163. In response to Paragraph 163 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

164. In response to Paragraph 164 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Seventh Claim for Relief**

165. In response to the allegations set forth in Paragraph 166, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 165 above, as if fully set forth herein.



166. In response to Paragraph 166 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

167. In response to Paragraph 167 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Eight Claim for Relief**

168. In response to the allegations set forth in Paragraph 169, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 168 above, as if fully set forth herein.

169. In response to Paragraph 169 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

170. In response to Paragraph 170 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

171. In response to Paragraph 171 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

172. In response to Paragraph 172 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

Defendant Smith respectfully requests that the relief sought by the SEC in the Am. Complaint be denied in its entirety.

**FIRST AFFIRMATIVE DEFENSE**

Certain of the relief sought by the SEC relating to FIIN, FEIN, and TAIN are barred by the applicable statute of limitations.

**SECOND AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a claim upon which relief can be granted.

**THIRD AFFIRMATIVE DEFENSE**

The SEC does not have the authority to bring claims of violations of the New York Debtor and Creditor Law.

**FOURTH AFFIRMATIVE DEFENSE**

The SEC is barred from pursuing this action by the doctrine of equitable estoppel because its evidence was obtained in violation of Defendant Smith's Constitutional rights.

WHEREFORE, Defendant Smith respectfully requests that the Court dismiss the Amended Complaint in its entirety.

Dated: New York, New York  
December 15, 2010

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

By: /s/Martin P. Russo

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Bar Roll No. 516380

Martin P. Russo, Esq.

Bar Roll No. 516389

Alison B. Cohen, Esq.

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120 Wall Street

New York, New York 10005

Tel: (212) 269-1400

Bar Roll No. 516380

*Attorneys for defendants Timothy M.*

*McGinn and David L. Smith*

**CERTIFICATE OF SERVICE**

I, Alison B. Cohen, hereby certify that on this 15<sup>th</sup> day of December 2010, I served a copy of the forgoing Answer by CM/ECF upon the following:

David P. Stoelting  
Kevin P. McGrath  
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*Attorneys for defendant and intervenor, David M. Wojeski, as Trustee of the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/0, defendants Geoffrey R. Smith and Lauren T. Smith.*

Nancy McGinn  
nemcginn@yahoo.com  
*Appearing Pro Se*

/s/Alison B. Cohen

Alison B. Cohen, Esq.

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120 Wall Street

New York, NY 10005

*Attorneys for Defendants Timothy M. McGinn and  
David L. Smith*

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF NEW YORK

-----X	:	
SECURITIES AND EXCHANGE COMMISSION	:	
	:	
<i>Plaintiff,</i>	:	
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,	:	<b>DEFENDANT DAVID L</b>
FIRST INDEPENDENT INCOME NOTES, LLC,	:	<b>SMITH'S ANSWER TO</b>
THIRD ALBANY INCOME NOTES, LLC,	:	<b>THE AMENDED</b>
TIMOTHY M. MCGINN, AND	:	<b>COMPLAINT</b>
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,	:	
<i>Defendants,</i>	:	
	:	
LYNN A. SMITH, and	:	
NANCY MCGINN,	:	
<i>Relief Defendants, and</i>	:	
	:	
DAVID M. WOJESKI, Trustee of the David L.	:	
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,	:	
	:	
<i>Intervenor.</i>	:	
-----X		

Defendant David L. Smith (“Defendant Smith”), by and through his attorneys, Gusrae, Kaplan, Bruno & Nusbaum PLLC, as and for his Answer to the Amended Complaint of the plaintiff the United States Securities and Exchange Commission (“SEC”) dated August 2, 2010, Docket No. 100 (the “Am. Complaint”), herein responds as follows:

1. In response to Paragraph 1 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

2. In response to Paragraph 2 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
3. In response to Paragraph 3 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
4. In response to Paragraph 4 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
5. In response to Paragraph 5 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
6. In response to Paragraph 6 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
7. The allegations set forth in Paragraph 7 of the Am. Complaint require no response and Defendant Smith respectfully refers the Court to the docket for a true and accurate descriptions of the matters set forth therein.
8. The allegations set forth in Paragraph 8 of the Am. Complaint require no response and Defendant Smith respectfully refers the Court to the docket for a true and accurate descriptions of the matters set forth therein.

9. The allegations set forth in Paragraph 9 of the Am. Complaint require no response and Defendant Smith respectfully refers the Court to the docket for a true and accurate descriptions of the matters set forth therein.
10. In response to Paragraph 10 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
11. In response to Paragraph 11 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
12. In response to Paragraph 12 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
13. In response to Paragraph 13 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
14. In response to Paragraph 14 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
15. In response to Paragraph 15 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.



16. In response to Paragraph 16 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
17. The allegations set forth in Paragraph 17 require no response.
18. The allegations set forth in Paragraph 18 require no response.
19. The allegations set forth in Paragraph 19 require no response.
20. The allegations set forth in Paragraph 20 require no response.
21. In response to Paragraph 21 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
22. In response to Paragraph 22 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
23. In response to Paragraph 23 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
24. In response to Paragraph 24 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
25. In response to Paragraph 25 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

26. In response to Paragraph 26 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
27. In response to Paragraph 27 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
28. In response to Paragraph 28 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
29. In response to Paragraph 29 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
30. In response to Paragraph 30 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
31. In response to Paragraph 31 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
32. In response to Paragraph 32 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

33. In response to Paragraph 33 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
34. In response to Paragraph 34 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
35. In response to Paragraph 35 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
36. In response to Paragraph 36 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
37. In response to Paragraph 37 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
38. In response to Paragraph 38 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
39. In response to Paragraph 39 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

40. In response to Paragraph 40 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
41. In response to Paragraph 41 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
42. In response to Paragraph 42 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
43. In response to Paragraph 43 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
44. In response to Paragraph 44 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
45. In response to Paragraph 45 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
46. In response to Paragraph 46 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

47. In response to Paragraph 47 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
48. In response to Paragraph 48 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
49. In response to Paragraph 49 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
50. In response to Paragraph 50 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
51. In response to Paragraph 51 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
52. In response to Paragraph 52 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
53. In response to Paragraph 53 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

54. In response to Paragraph 54 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
55. In response to Paragraph 55 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
56. In response to Paragraph 56 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
57. In response to Paragraph 57 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
58. In response to Paragraph 58 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
59. In response to Paragraph 59 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
60. In response to Paragraph 60 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

61. In response to Paragraph 61 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
62. In response to Paragraph 62 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
63. In response to Paragraph 63 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
64. In response to Paragraph 64 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
65. In response to Paragraph 65 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
66. In response to Paragraph 66 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
67. In response to Paragraph 67 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

68. In response to Paragraph 68 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
69. In response to Paragraph 69 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
70. In response to Paragraph 70 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
71. In response to Paragraph 71 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
72. In response to Paragraph 72 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
73. In response to Paragraph 73 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
74. In response to Paragraph 74 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.



75. In response to Paragraph 75 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
76. In response to Paragraph 76 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
77. In response to Paragraph 77 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
78. In response to Paragraph 78 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
79. In response to Paragraph 79 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
80. In response to Paragraph 80 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
81. In response to Paragraph 81 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

82. In response to Paragraph 82 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
83. In response to Paragraph 83 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
84. In response to Paragraph 84 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
85. In response to Paragraph 85 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
86. In response to Paragraph 86 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
87. In response to Paragraph 87 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
88. In response to Paragraph 88 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

89. In response to Paragraph 89 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
90. In response to Paragraph 90 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
91. In response to Paragraph 91 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
92. In response to Paragraph 92 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
93. In response to Paragraph 93 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
94. In response to Paragraph 94 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
95. In response to Paragraph 95 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

96. In response to Paragraph 96 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
97. In response to Paragraph 97 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
98. In response to Paragraph 98 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
99. In response to Paragraph 99 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
100. In response to Paragraph 100 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
101. In response to Paragraph 101 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
102. In response to Paragraph 102 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

103. In response to Paragraph 103 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
104. In response to Paragraph 104 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
105. In response to Paragraph 105 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
106. In response to Paragraph 106 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
107. In response to Paragraph 107 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
108. In response to Paragraph 108 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
109. In response to Paragraph 109 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

110. In response to Paragraph 110 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
111. In response to Paragraph 111 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
112. In response to Paragraph 112 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
113. In response to Paragraph 113 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
114. In response to Paragraph 114 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
115. In response to Paragraph 115 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
116. In response to Paragraph 116 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

117. In response to Paragraph 117 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
118. In response to Paragraph 118 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
119. In response to Paragraph 119 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
120. In response to Paragraph 120 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
121. In response to Paragraph 121 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
122. In response to Paragraph 122 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
123. In response to Paragraph 123 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

124. In response to Paragraph 124 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
125. In response to Paragraph 125 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
126. In response to Paragraph 126 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
127. In response to Paragraph 127 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
128. In response to Paragraph 128 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
129. In response to Paragraph 129 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
130. In response to Paragraph 130 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.



131. In response to Paragraph 131 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
132. In response to Paragraph 132 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
133. In response to Paragraph 133 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
134. In response to Paragraph 134 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
135. In response to Paragraph 135 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
136. In response to Paragraph 136 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.
137. In response to Paragraph 137 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

138. In response to Paragraph 137 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to First Claim for Relief**

139. In response to the allegations set forth in Paragraph 139, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 138 above, as if fully set forth herein.

140. Defendant neither admits nor denies the allegations set forth in Paragraph 140 of the Am. Complaint which purport to state a legal conclusion for which a response is not required.

141. In response to Paragraph 141 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

142. In response to Paragraph 142 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Second Claim for Relief**

143. In response to the allegations set forth in Paragraph 143, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 142 above, as if fully set forth herein.

144. In response to Paragraph 144 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

145. In response to Paragraph 145 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Third Claim for Relief**

146. In response to the allegations set forth in Paragraph 146, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 145 above, as if fully set forth herein.

147. In response to Paragraph 147 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

148. In response to Paragraph 148 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

149. In response to Paragraph 149 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

150. In response to Paragraph 149 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

151. In response to Paragraph 151 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

152. In response to Paragraph 152 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Fourth Claim for Relief**

153. In response to the allegations set forth in Paragraph 153, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 152 above, as if fully set forth herein.

154. In response to Paragraph 154 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

155. In response to Paragraph 155 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

156. In response to Paragraph 156 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Fifth Claim for Relief**

157. In response to the allegations set forth in Paragraph 157, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 156 above, as if fully set forth herein.

158. In response to Paragraph 158 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

159. In response to Paragraph 159 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Sixth Claim for Relief**

160. In response to the allegations set forth in Paragraph 161, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 160 above, as if fully set forth herein.

161. In response to Paragraph 161 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

162. In response to Paragraph 162 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

163. In response to Paragraph 163 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

164. In response to Paragraph 164 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Seventh Claim for Relief**

165. In response to the allegations set forth in Paragraph 166, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 165 above, as if fully set forth herein.

166. In response to Paragraph 166 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

167. In response to Paragraph 167 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

**Response to Eight Claim for Relief**

168. In response to the allegations set forth in Paragraph 169, Defendant repeats and reasserts each and every response set forth in Paragraphs 1 through 168 above, as if fully set forth herein.

169. In response to Paragraph 169 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

170. In response to Paragraph 170 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

171. In response to Paragraph 171 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

172. In response to Paragraph 172 of the Am. Complaint, Defendant Smith asserts his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution.

Defendant Smith respectfully requests that the relief sought by the SEC in the Am. Complaint be denied in its entirety.

**FIRST AFFIRMATIVE DEFENSE**

Certain of the relief sought by the SEC relating to FIIN, FEIN, and TAIN are barred by the applicable statute of limitations.

**SECOND AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a claim upon which relief can be granted.

**THIRD AFFIRMATIVE DEFENSE**

The SEC does not have the authority to bring claims of violations of the New York Debtor and Creditor Law.

**FOURTH AFFIRMATIVE DEFENSE**

The SEC is barred from pursuing this action by the doctrine of equitable estoppel because its evidence was obtained in violation of Defendant Smith's Constitutional rights.

WHEREFORE, Defendant Smith respectfully requests that the Court dismiss the Amended Complaint in its entirety.

Dated: New York, New York  
December 15, 2010

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

By: /s/Martin P. Russo

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*Attorneys for defendants Timothy M.*

*McGinn and David L. Smith*



**CERTIFICATE OF SERVICE**

I, Alison B. Cohen, hereby certify that on this 15<sup>th</sup> day of December 2010, I served a copy of the forgoing Answer by CM/ECF upon the following:

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Nancy McGinn  
nemcginn@yahoo.com  
*Appearing Pro Se*

/s/Alison B. Cohen

Alison B. Cohen, Esq.

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David L. Smith*