



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 21, 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:

I enclose for the Court's consideration a proposed Consent Order, agreed to by Michael Koenig, counsel for Mr. McGinn and Mr. Smith.

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

IT IS ORDERED that Part II of the Consent Order entered on May 7, 2010 is modified so that defendants David Smith and Timothy McGinn shall file and serve any papers opposing the Order to Show Cause no later than May 26, 2010, and the Commission shall have until June 1, 2010 to file and serve any reply papers.

SO ORDERED:

Dated: May __, 2010

UNITED STATES MAGISTRATE JUDGE