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March 3, 2011

Hon. Gary L. Sharpe  
U.S. District Judge  
James T. Foley U.S. Courthouse  
445 Broadway, Rm. 441  
Albany, New York 12207

Re: Securities Exchange Commission v. McGinn, Smith & Co., Inc., et al.  
Case No: 1:10-CV-457 (GLS/DRH)

Dear Judge Sharpe:

This office represents Defendant/Relief Defendant Lynn A. Smith (“Lynn Smith”) and Defendants David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04 and Trust beneficiaries Geoffrey and Lauren Smith (collectively “Trust”) in the above-referenced matter.

On December 15, 2010, this office filed a Motion to Dismiss the SEC’s Amended Complaint [224]. A hearing date on that motion has been scheduled for March 11, 2011. Since the date of that filing, this Firm was substituted as counsel for the Trust. On February 15, 2011 a Motion to Dismiss the SEC’s Amended Complaint was filed on behalf of the Trust with a Motion Hearing scheduled for that application on April 7, 2011 [283].

Many of the legal and factual issues raised in Lynn Smith’s Motion to Dismiss are the same or similar to the legal and factual issues raised in the Trust’s Motion to Dismiss. In the interest of judicial economy, I would respectfully request that these two motions be consolidated and heard by your Honor on the same date. I note that Mr. Stoelting of the SEC has made a request in an earlier filing today to extend his time to respond to the Trust’s motion. However, I do not believe this application would affect this Court’s ability to hear the two motions on April 7, 2011 if it would please the Court.

I have conferred with Mr. Stoelting and he has no objection to this application.

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Thank you for your consideration.

Very truly yours,

**Featherstonhaugh, Wiley & Clyne, LLP**

A handwritten signature in black ink, appearing to read "S. Ely", is written over the printed name "Scott J. Ely". The signature is stylized and somewhat illegible.

Scott J. Ely

SJE:cr

cc: David Stoelting