

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

No. 10-CV-457
(GLS/DRH)

McGINN, SMITH & CO. INC., et al.,

Defendants.

ORDER

Presently pending is the motion of plaintiff Securities and Exchange Commission for an order compelling non-party Martin Finn, Esq. in the law firm of LaVelle & Finn LLP to comply with subpoenas served upon them on April 7 and June 21, 2011. Dkt. No. 338. Conferences were held on-the-record on August 10 and 12, 2011 with counsel for plaintiff, the non-parties, and defendants David and Lynn Smith to establish procedures for the resolution of this motion. As directed at the conclusion of the conference on August 12, 2011, and without objection, it is hereby

ORDERED that:

1. On or before **August 19, 2011**, the non-parties and defendants David and Lynn Smith shall serve upon plaintiffs a privilege log in accordance with Fed.R.Civ.P. 45(d)(2)(A)(ii);
2. On or before **August 31, 2011**, non-parties Martin Finn and LaVelle & Finn shall submit to the chambers of the undersigned for ex parte in camera review the documents which are responsive to the subpoenas at issue on this motion;
3. On or before **August 31, 2011**, David and Lynn Smith shall file:
 - a. Any opposition addressing plaintiff's contention that the documents in question are subject to disclosure under the crime-fraud exception to the attorney-client privilege and

that they have waived any objection to production of the documents based on that privilege;¹
and

b. Any presentation which either defendant wishes to make that, assuming the applicability of the crime-fraud exception or the waiver doctrine, the documents submitted for ex parte, in camera review are not subject to disclosure under either theory;²

4. On or before **September 9, 2011**, plaintiff may file reply papers to the publicly filed opposition papers of either defendant; and

5. The motion will be taken on submission without oral argument.

IT IS SO ORDERED.

Dated: August 16, 2011
Albany, New York


United States Magistrate Judge

¹Any such opposition papers shall be filed in the docket of this case not under seal.

²Any such opposition on this ground may be submitted directly to the chambers of the undersigned and will be filed in the docket of this case under seal.