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September 30, 2011

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., et al., 10 CV 457 (GLS)(DRH)

Dear Judge Homer:

We are in receipt of the SEC's September 27, 2011 proposed Order Directing Payment of Money to the Receiver and the SEC's proposed Judgment for entry. Included within the SEC's proposed Order Directing Payment of Money to the Receiver, the SEC is seeking the ability for either the Commission or the Receiver to enforce the proposed judgment by moving for civil contempt against the Relief Defendant/Defendant, Lynn A. Smith.

As the Court and counsel for the SEC are aware, the bulk of the Relief Defendant/Defendant's assets are frozen precluding any ability for her to presently satisfy the SEC's proposed Order and proposed Judgment. Both the Relief Defendant/Defendant and the Trust have filed appeals from the Court's July 20, 2011 Decision and Order which serves as the basis for the SEC's proposed Judgment and proposed Order. Currently pending before this Court is a Motion filed by the Trust seeking a stay of the July 20, 2011 Decision and Order which is returnable on October 20, 2011.

Given these circumstances, it is respectfully requested that this Court refrain from executing the SEC's proposed Order Directing Payment of Money to the Receiver and the SEC's proposed Judgment for entry until a final disposition of the Motion for a stay pending appeal is determined. It is also respectfully requested that should the Court approve an order directing payment of money to the Receiver in the future that such an order not include the ability for either the Commission or the Receiver to enforce the judgment by moving for civil contempt

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against the Relief Defendant/Defendant while the asset freeze is still in effect and while her appeal in this matter is pending.

Thank you for your consideration.

Respectfully Submitted,

Featherstonhaugh, Wiley & Clyne, LLP

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