



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**

New York Regional Office  
Three World Financial Center  
New York, NY 10281

DIVISION OF  
ENFORCEMENT

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May 28, 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

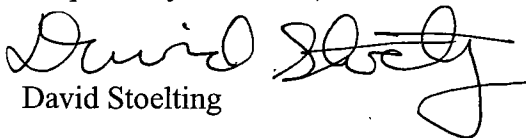
**Re: SEC v. McGinn, Smith & Co., Inc., et al., 10 CV 457 (GLS)(DRH)**

Dear Judge Homer:

The Court's Order entered today does not provide a date for a written submission by plaintiff in response to the Order to Show Cause filed by the Intervenor, David Wojeski. In addition, plaintiff's response to Lynn Smith's motion would otherwise be due today. I had intended to raise these issues yesterday when we were before Your Honor but neglected to do so. As a result, plaintiff respectfully requests that it be allowed until Wednesday, June 2, 2010, to file and serve a response to the Intervenor's Order to Show Cause and Lynn Smith's motion.

Counsel for Lynn Smith and the Intervenor have kindly agreed to this request. The Intervenor has also asked for the opportunity to file and serve reply papers by June 7, 2010. A proposed Order is attached.

Respectfully submitted,

  
David Stoelting

cc (by e-mail): Michael Koenig, Esq.  
James Featherstonhaugh, Esq.  
Jill Dunn, Esq.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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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.*

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**CONSENT ORDER**

**IT IS ORDERED** that plaintiff shall file and serve any responses to: (1) the Order to Show Cause filed by Intervenor David Wojeski, and (2) Lynn Smith's opposition to the motion for a preliminary injunction, on or before June 2, 1020. The Intervenor shall file and serve any reply papers on or before June 7, 2010.

**SO ORDERED:**

Dated: May \_\_, 2010

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UNITED STATES MAGISTRATE JUDGE