

**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 are (1) the request of the David L. and Lynn Smith Irrevocable Trust ("Trust") for leave to file a motion to release certain assets from the asset freeze currently in this case pursuant to N.D.N.Y.L.R. 7.1(b)(2) (Dkt. No. 433), and (2) the request of plaintiff Securities and Exchange Commission (SEC) to establish a briefing schedule for dispositive motions (Dkt. No. 434). A telephone conference was held on-the-record on February 3, 2012. During that conference, defendants David Smith and Timothy McGinn requested leave to file motions to release assets from the asset freeze order for the payment of counsel fees expenses in connection with a related criminal case and to move for a stay of the above-captioned case pending resolution of the criminal case. Additionally, Receiver, William Brown, advised that he intends to file a motion to distribute the proceeds of certain assets to investors where the Receiver contends there is no dispute among the parties that investors are entitled to such assets.

As discussed and determined during the conference on February 3, 2012, and for the reasons stated at that time which are incorporated herein by reference, it is hereby

ORDERED the request of the Trust for leave to file a motion to unfreeze assets is **GRANTED** and such motion shall be filed according to the following schedule:

- a. The Trust's motion shall be filed on or before **February 10, 2012**;
- b. Any opposition thereto shall be filed on or before **February 24, 2012**;
- c. Any reply by the Trust shall be filed on or before **March 2, 2012**; and
- d. Such motion shall be taken on submission without oral argument.

2. Dispositive motions shall be filed according to the following schedule:

- a. Any dispositive motion shall be filed on or before **April 2, 2012**;
- b. Any response to any such motion shall be filed on or before **May 1, 2012**;
- c. Any reply papers shall be filed on or before **May 15, 2012**; and
- d. Unless otherwise ordered by the district court, any such motion shall be taken

on submission without oral argument.

3. The request of defendants David Smith and Timothy McGinn to file motions to unfreeze certain assets for the payment of attorney's fees and expenses in connection with a related criminal case is **GRANTED** and any such motions shall be filed according to the following schedule:

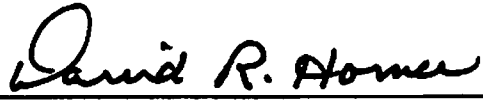
- a. Defendants' motion shall be filed on or before **February 10, 2012**;
- b. Any opposition thereto shall be filed on or before **February 24, 2012**;
- c. Any replies by defendants shall be filed on or before **March 2, 2012**; and
- d. Any such motion shall be taken on submission without oral argument.

4. The request of defendants David Smith and Timothy McGinn for leave to move for a stay of the above-captioned case pending completion of the related criminal case is **GRANTED** and any such motion may be filed whenever deemed appropriate by either defendant; and

5. Receiver, William Brown, is granted leave to move for a distribution of certain assets presently held by the Receiver under the asset freeze order and any such motion may be filed whenever deemed appropriate by the Receiver.

IT IS SO ORDERED.

Dated: February 6, 2012
Albany, New York



United States Magistrate Judge