

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. :

**RECEIVER’S CONSENT TO ENTRY OF
PRELIMINARY INJUNCTION ORDER**

William J. Brown, in his capacity as Receiver of the MS Entities¹, by his attorneys, Phillips Lytle LLP, has reviewed the form of the Preliminary Injunction Order filed as Exhibit 1 to the Declaration of Lara Shalov Mehraban (“PI Order”) (Docket No. 46), and consents to the entry of the PI Order (subject to certain non-substantive changes presently being made) on behalf of defendants 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 and Third Albany Income Notes, LLC.

Dated: June 4, 2010

PHILLIPS LYTLE LLP

By /s/ Marc H. Goldberg

Marc H. Goldberg (Bar Roll #101803)

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¹ As defined in the Order to Show Cause, Temporary Restraining Order, and Order Freezing Assets and Granting Other Relief entered April 20, 2010 (Docket No. 5)