

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

Case No. 1:10-CV-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, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY MCGINN, :

Defendants, :

LYNN A. SMITH and :
NANCY MCGINN, :

Relief Defendants, :

- and- :

GEOFFREY R. SMITH, Trustee of the :
David L. and Lynn A. Smith Irrevocable :
Trust U/A 8/04/04, :

Intervenor. :

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**AMENDED ORDER (I) APPROVING A PROCEDURE FOR THE ADMINISTRATION
OF CLAIMS; (II) ESTABLISHING A DEADLINE FOR FILING OF CLAIMS; AND
(III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

Upon the Motion of William J. Brown, as Receiver (“Receiver”), for an Order (I) Approving a Procedure for the Administration of Claims; (II) Establishing a Deadline for Filing of Claims; and (III) Approving the Form and Manner of Notice Thereof dated March 9, 2012 (“Motion”) (Docket No. 466) and the Receiver’s Motion for an Amendment (“Amendment Motion”) to the Court’s Order (I) Approving a Procedure for the Administration of Claims; (II)

Establishing a Deadline for Filing of Claims; and (III) Approving the Form and Manner of Notice Thereof (“Claims Procedure Order”) (Docket No. 475), the Court having held a hearing thereon and no objections being sustained thereto, and good cause appearing therefor, it is hereby

ORDERED, that the Amendment Motion is granted, and it is further

ORDERED, that the Claims Procedure Order is amended hereby, and it is further

ORDERED, that all claims against the MS Entities (as defined in the Motion)

shall be asserted in accordance with the Claims Procedure (as defined in the Motion) as modified in the Amendment Motion; and it is further;

ORDERED, to the extent required by the Claims Procedure, claims against the MS Entities shall be filed in writing with Phillips Lytle LLP, Attn: Jourdan L. Stevenson, 3400 HSBC Center, Buffalo, NY 14203, substantially in the form of the Claim Form attached as Exhibit D to the Motion, and it is further

ORDERED, that the last day for Creditors and Investors (as defined in the Motion) to file a claim against the MS Entities is fixed as **June 19, 2012** (“Claims Bar Date”). Unless otherwise ordered by the Court, any Creditor and Investor who is required to file a Claim Form in accordance with this Order, but fails to do so, on or before the Claims Bar Date, shall be barred, estopped and enjoined from asserting such claim against the MS Entities or the Receiver or receiving a distribution on account of such claim, and it is further

ORDERED, that the form and substance of the Claims Notice attached to the Amendment Motion as Exhibit B and the manner of publication of the Claims Notice and other notice of the Claims Procedure and Claims Bar Date as set forth in the Motion is appropriate. The Claims Notice shall be served by U.S. Mail, First Class postage prepaid within 14 days after entry of this Order on each Creditor and Investor known to the Receiver at the most recent

address contained in the Receiver's records, and otherwise published as set forth in the Motion, and it is further

ORDERED, that the right of the Receiver to file appropriate proceedings in this Court to object to claims, establish a procedure for resolution of claims disputes, and/or modify or reduce any claim or distribution or commence avoidance actions is reserved.

Dated: April 16, 2012

A handwritten signature in black ink, appearing to read "David R. Homer", written over a horizontal line.

Hon. David R. Homer
United States Magistrate Judge

Doc # 01-2570202.3