

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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,
LYNN A. SMITH, GEOFFREY R. SMITH, Trustee
of the David L. and Lynn A. Smith Irrevocable Trust
U/A 8/04/04, GEOFFREY R. SMITH, LAUREN
T. SMITH, and NANCY McGINN,

Case No.: 1:10-CV-457

(GLS/DRH)

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.

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the accompanying Memorandum of Law in Support of David L. Smith's Motion to Modify the Asset Freeze to Permit the Release of the Irrevocable Life Insurance Trust, Declarations of David L. Smith and William J. Dreyer and accompanying exhibits submitted in support thereof, defendant David L. Smith will move this Court before the

Honorable David R. Homer, at the United States Courthouse, 445 Broadway, Albany, New York, at a date and time to be determined by the Court, for an order granting the release of the David L. Smith Irrevocable Life Insurance Trust for Mr. Smith's payment of attorneys' fees and costs in his parallel criminal case.

Dated: April 26, 2012
Albany, New York

DREYER BOYAJIAN/LLP



WILLIAM J. DREYER, ESQ.

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