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ATT: Honorable David R. Homer

REF: McGinn, Smith & Co. case# 1:10_cv_00457_GLS_DRH

DAVID R. HOMER
UNITED STATE MAGISTRATE JUDGE
ALBANY, NEW YORK

Honorable David R. Homer
U.S. District Court of Northern
445 Broadway, Room 441
Albany, NY 12207

Your Honor:

I feel that this letter and its subject matter is imperative at this time. I also feel it is the only way to instill in the many defrauded investors that the time is NOW to write to their Congressman and Senators urging them to contact Mary Schapiro, SEC Chairman to have the SEC initiate SIPC, to apply for coverage in the McGinn, Smith, Inc. fraud case, so that they would ultimately receive protection through SIPC.

The financial losses in notes and other debt obligations to constituents in New York alone amounts to MILLIONS of dollars and this amount does not include other additional equity related investments. As in other states, many have lost their entire financial security with no meaningful expectations of recovery from the court-appointed Receiver. Accordingly, we believe, and strongly urge the SEC to refer the case to SIPC for coverage.

We are aware of the outcome in the SEC vs. SIPC case, related to the \$7 billion Allen Stanford Ponzi scheme, in which the judge denied coverage for Stanford victims. However, the following two critical points highlight the principal distinctions between the Stanford and McGinn Smith cases:

1. Stanford victims deposited money into Stanford International Bank, an Antigua based bank which held the CDs, and not at Stanford Capital Group, the broker-dealer and SIPC member. In the McGinn, Smith, Inc. case, funds were sent to the broker-dealer (which also served as underwriter) and were then deposited and/or commingled with other funds under the McGinn, Smith, Inc. umbrella. McGinn, Smith, Inc. was a member of SIPC.
2. Definition of "Customer". The judge referenced the SIPA statute providing protection to the customers of SIPC members. The key issue in dispute is whether the persons who purchased the SIBL CDs were "customers" of SGC within the meaning of SIPA. The judge ruled that they were not. McGinn, Smith, Inc. investors to the contrary were "customers" of the broker-dealer. They received statements that listed and priced the investments, and those statements represented that McGinn, Smith, Inc. was a member of SIPC.

We appreciate your time and attention in evaluating this request. We are aware that

coverage through SIPC is offered in a limited numbers of cases, however, we feel strongly that our case merits consideration.

Most respectfully yours,

Vincent R. Gentile

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