



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**

New York Regional Office  
Three World Financial Center  
New York, NY 10281

DIVISION OF  
ENFORCEMENT

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June 4, 2010

**BY ECF**

The Honorable David R. Homer  
United States Magistrate Judge  
United States District Court  
Northern District of New York  
United States Courthouse  
Albany, New York 12207

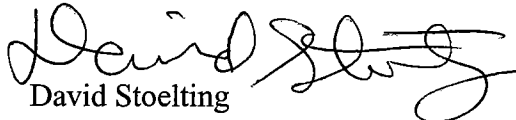
**Re: SEC v. McGinn, Smith & Co., Inc., et al., 10 CV 457 (GLS)(DRH)**

Dear Judge Homer:

I enclose for the Court's review and approval a proposed Order that would remove the Pine Street Entities from the Receivership. This proposed Order has the consent of plaintiff, the Receiver and counsel for the Pine Street Entities, Brian Mumford.

On June 2, 2010, I provided the proposed Order to counsel for defendants David Smith and Timothy McGinn, relief defendant Lynn Smith and the Intervenor, and requested their consent. To date, however, they have not expressed to me either their consent or their opposition to this Order.

Respectfully submitted,

  
David Stoelting

cc (by e-mail): Michael Koenig, Esq.  
James Featherstonhaugh, Esq.  
Jill Dunn, Esq.  
Brian Mumford, Esq.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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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.*

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**ORDER REGARDING PINE STREET ENTITIES**

**IT IS ORDERED** that Pine Street Capital Partners, LP, Pine Street Capital Partners LLC, and Pine Street Capital Management LLC (collectively the “Pine Street Entities”), which were included on Exhibit A to the Order to Show Cause dated April 20, 2010, are hereby removed from Exhibit A and shall not be part of the Receivership. Pending final disposition of this action, and considering that the Pine Street Entities hold assets under the control and authority of the Receiver, the Pine Street Entities shall:

- (1) provide the Receiver with a minimum of ten (10) days’ notice of any distribution from the Pine Street Entities, including distributions for payment of quarterly

management fees and how such fees were calculated, and the Receiver may disallow any distribution;

(2) distribute to accounts controlled by the Receiver any payments to: (i) David L. Smith, Lynn A. Smith or the David L. Smith and Lynn A. Smith Irrevocable Trust dated August 4, 2004, which will be held by the Receiver in segregated accounts, or (ii) any MS Entity;

(3) provide the Receiver with monthly bank statements for the Pine Street Entities;

(4) cooperate with the Receiver and provide the Receiver with monthly updates;

(5) allow the Receiver to conduct audits of the Pine Street Entities at his discretion; and

(6) copy the Receiver on all communications to limited partners.

The Commission or the Receiver may, upon good cause, move for an Order amending or rescinding this Order Regarding Pine Street Entities.

**SO ORDERED:**

Dated: June \_\_, 2010

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UNITED STATES MAGISTRATE JUDGE