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Hon. David R. Homer
United States Magistrate Judge
James T. Foley Federal Courthouse
445 Broadway
Albany, NY 12207

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

Dear Judge Homer:

This letter is submitted on behalf of David Wojeski as Trustee of the David L. and Lynn A. Smith Irrevocable Trust in response to the Plaintiff's submission of a proposed Consent Order Regarding Pine Street Entities (Docket # 51). While my client's motion to intervene was granted for the limited purpose of opposing the Plaintiff's motion for a preliminary injunction, it is necessary that I address this proposed Consent Order to protect the Trust's interests affected by it and to preserve the Trust's interests to be decided at the preliminary injunction hearing to be held this Wednesday.

As a limited partner of Pine Street Capital Partners LP, the Trustee supports the immediate and complete release of the Pine Street Entities from the Receivership. I have been advised by the attorney for the Pine Street Entities that obtaining its immediate release from the Receivership and Asset Freeze Order is critical to the success of its pending and future business investments. While my letter is not intended to delay that release, my client objects to the Trust's assets being placed into Receivership by the provisions of the proposed Order which authorize the Receiver to disallow any distribution proposed by the Pine Street Entities, and which require the Pine Street Entities to distribute to accounts controlled by the Receiver any payments to the David L. and Lynn A. Smith Irrevocable Trust.

If the Plaintiff's main reason for delaying the Pine Street Entities' release from Receivership is Plaintiff's desire to delay or obstruct the distribution of Pine Street payments to Lynn Smith or the Trust, then the obvious and less intrusive solution is to direct the Pine Street Entities to continue to pay those distributions into the accounts which are presently frozen pending the hearing on the preliminary injunction motion. The Court's decision on the Plaintiff's motion for a preliminary injunction will dispose of the question whether Plaintiff is entitled to continue to

impinge the Trust's and Lynn Smith's assets. Since the distributions from Pine Street Capital Partners LP have heretofore been made directly into the very brokerage accounts which are under the asset freeze, there will be no harm in allowing those distributions to continue as they have been made in the past until a decision is rendered on the preliminary injunction hearing.

If the Court continues the asset freeze, then nothing will change. If the Court releases the brokerage accounts from the asset freeze, then the affected parties will have immediate access to their assets without making further application to the Court. Moreover, if the Court releases the brokerage account from the asset freeze, then there is clearly no basis for the Receiver to have any authority to control whether Pine Street Capital makes future distributions to the Trust. For that reason, any reference to the Trust should be stricken from the proposed Consent Order.

In the alternative, and particularly if striking the reference to the Trust would further delay the release of the Pine Street Entities from Receivership, then the Court should add a provision that the Consent Order will be modified to comport with the terms of the Court's impending decision on the preliminary injunction motion once that decision is rendered and/or give the Trustee standing to move to amend the Consent Order. This alternative should not be construed as a waiver of the Trustee's objection to having trust assets placed under the control of the Receiver; rather, it is being offered as a way to allow the Pine Street Entities immediate relief from the Receivership and asset freeze order while accomplishing the Plaintiff's goal of preserving the status quo and preserving the Trustee's right to protect trust assets.

Thank you for your consideration.

Very truly yours,

THE DUNN LAW FIRM PLLC

By: s/
Jill A. Dunn

JAD/jc

Cc: David Stoelting, Esq. (via ECF)
James D. Featherstonhaugh, Esq. (via ECF)
Michael Koenig, Esq. (via ECF)
Brian Mumford, Esq. (via email)