

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/CFH)

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

Upon the Motion of William J. Brown, as Receiver, for an Order (I) Approving a Procedure for the Administration of Equity Interest Claims; (II) Establishing a Deadline for Filing Proofs of Interest; and (III) Approving the Form and Manner of Notice Thereof dated October 1, 2012 (“Motion”) (Docket No. 531), the Court having held a hearing thereon and no objections being sustained thereto, and good cause appearing therefor, it is hereby

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

ORDERED, that all claims based upon equity interests in the MS Entities (as defined in the Motion) shall be asserted in accordance with the Equity Claims Procedure (as defined in the Motion); and it is further;


ORDERED, to the extent required by the Equity Claims Procedure, Equity Claims (as defined in the Motion) shall be filed in writing with Phillips Lytle LLP, Attn: Karen M. Ludlow, 3400 HSBC Center, Buffalo, NY 14203, substantially in the form of the Equity Claim Form attached as Exhibit D to the Motion, and it is further

ORDERED, that the last day for Equity Holders (as defined in the Motion) to file a claim against the MS Entities is fixed as December 17, 2012 (“Equity Claims Bar Date”). Unless otherwise ordered by the Court, any Equity Holder who is required to file an Equity Claim Form in accordance with this Order, but fails to do so, on or before the Equity 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 Equity Claims Notice attached to the Motion as Exhibit C and the manner of publication of the Equity Claims Notice and other notice of the Equity Claims Procedure and Equity Claims Bar Date as set forth in the Motion is appropriate. The Equity Claims Notice shall be served by U.S. Mail, First Class postage prepaid within 21 days after entry of this Order on each Equity Holder 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 and/or establish a procedure for resolution of claims disputes is reserved.

Dated: October 17, 2012



Hon. Christian F. Hummel
United States Magistrate Judge

Doc # 01-2573751.4