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October 23, 2012

William J. Brown, Esq.  
At Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, NY 14203-2887

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

OCT 23 2012

LAWRENCE K. BAERMAN, CLERK  
ALBANY

Re: (1) Your letter of September 26, 2012 as Receiver of McGinn, Smith and Company  
(2) My letter of October 8, 2012.

Dear Mr. Brown:

I write in follow-up to my previous letter to you dated October 8, 2012. You had suggested in your letter that SIPC insurance might not apply to investors of the various McGinn/Smith notes if their investment checks were not made out directly to McGinn, Smith & Company. I had volunteered to share copies of various documents that should have previously been made available to you. (I have enclosed several examples of each). These reflect the fact that at least all of the notes in which I was invested were direct products of McGinn, Smith and Company. The initial investment checks were made out to various escrow accounts at the direction of McGinn/Smith. The prospectuses specified that the notes were offered by McGinn/Smith; the receipts were from McGinn/Smith with their letterhead; and the election forms for rolling funds to subsequent notes were under the letterhead of McGinn/Smith. Can some fine print in a SIPC policy remove this protection from hundreds of honest people who have been defrauded of some \$136 million by Tim McGinn and David Smith? The dollars distributed by SIPC to Madoff investors and MF Global investors have amounted to an order of magnitude greater than this \$136 million. Were all of the investment checks in those notable cases made out directly to those two entities? Has SIPC been given the opportunity to make a judgment on this issue relative to McGinn/Smith investors? If not, what stands in the way of this?

As suggested in the McGinn/Smith Receiver website, you appear to be approaching a distribution of the few remaining assets to the investors. I have a question with regards the Claims Procedure. As invited, I submitted documentation to your office supporting some upward modifications to the amounts due my wife and myself. That was June 1, 2012. There has not been any change in the dollar amounts posted on the website and we have received no communication from your office relative to any adjustment to our claims. Can you provide us any feedback on these claims?

Also with regards to the distribution process, can you share what formula will be used to fairly divide these dollars among the claimants? Among the various notes are several that were offered with different levels of seniority. More senior notes were elected by those who accepted lower interest rates of return in exchange for greater security. Respecting the terms of these notes would call for available funds being distributed to senior note holders in preference to more junior note holders. Honoring these criteria will make a very material difference to those who are holders of those more senior notes.

It is clear that Mr. McGinn and Mr. Smith put great effort into creating an exceptionally complex structure of interrelated entities, all under their own direct control. The court and yourself face a challenge to distribute the remaining funds equitably. I believe that respecting the established levels of seniority in applicable cases would fall within anyone's understanding of the term "equitable."

Reiterating my request for prompt and just restitution in line with actions taken by the courts and SIPC in the Madoff and MF Global cases, and as supported by my representatives in Congress, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Peter L. Latt". The signature is written in a cursive style with a long horizontal stroke at the end.

CC: Honorable Christian Hummel

Federal Magistrate Judge, NDNY