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BY ECF FILING

Honorable Christian F. Hummel
United States Magistrate Judge
United States District Court
Northern District of New York
James T. Foley U.S. Courthouse
Albany, NY 12207

Re: SEC v. McGinn Smith & Co., Inc., et al
10-CV-457 (GLS/CFH)
Motion to Pay Taxes Due and Owing

Dear Judge Hummel:

In response to Mr. Stoelting's July 24, 2013 letter, Dkt No. 584, the defendants David L. Smith and Lynn A. Smith, by James D. Featherstonhaugh, who joins in this letter, submit that 18 U.S.C. § 3664(i) is not applicable to Mrs. Smith's application to pay her outstanding tax responsibilities. The statute is limited to instances where the United States is a victim of loss as the result of a conviction against a defendant. Lynn Smith has not been convicted of any crime and only seeks to satisfy a tax obligation with her own assets.

Furthermore, even if 18 U.S.C. § 3664(i) could be applied to Mrs. Smith, its application depends upon a number of conditions that have not yet been established. Thus, the SEC's assertions, even if considered by this Court, are without merit and untimely.

Respectfully submitted,

DREYER BOYAJIAN LLP

By: /s/ William J. Dreyer

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