

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/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, 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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**NOTICE TO POTENTIAL BIDDERS FOR VERIFIER CAPITAL  
HOLDINGS LLC GUARANTEED PAYMENT UNITS AND  
COMMON UNITS REGARDING AUCTION DETAILS**

PLEASE TAKE NOTICE that pursuant to the Motion of William J. Brown, as Receiver, for an Order Approving Settlement with Verified Capital Holdings LLC With Respect to the Redemption of Guaranteed Payment Units and Common Units issued to TDM Cable Funding, LLC and McGinn Smith Funding, LLC Free and Clean of Liens, Claims and Encumbrances (“Motion”) (Docket No. 590) and the Court’s Order dated September 11, 2013

(Docket No. 593), the following shall apply respecting the September 30, 2013 auction approved by the Court Order:

1. The auction shall commence at 9:00 AM Eastern Time at the Albany, New York offices of Phillips Lytle LLP, Omni Plaza, 30 South Pearl Street, Albany, New York 12207, Tel: (518) 472-1224, and continue until completion as determined by the Receiver. The first competing bid shall be a minimum of \$50,000 (“Overbid”) in excess of \$4,000,000.

Thereafter, incremental bids shall be \$25,000 each until the completion of the auction.

2. By 4:00 p.m. Eastern Time on September 25, 2013 (“Document Deadline”), all potential bidders shall deliver to the Receiver by fax (delivery confirmed), or overnight courier, or e-mail (delivery confirmed) addressed to the Receiver at his Buffalo and Albany, New York offices whose addresses are given below, a track changes copy of the Redemption Agreement (in the form of a Purchase Agreement for any competing bidder) and marked forms of its exhibits which clearly show all proposed additions and deletions. A Word version of the Redemption Agreement will be provided upon written request to permit any bidder to provide their (a) proposed track changes version of their Purchase Agreement, and (b) marked documents to the Receiver by the Document Deadline.

3. If a bidder other than the Verifier is the successful bidder at the auction, the bidder must, before the conclusion of the auction, sign the Purchase Agreement in form acceptable to the Receiver, and deliver to the Receiver or his counsel a \$400,000 non-refundable deposit in the form of a certified check payable to William J. Brown, as Receiver. The successful bidder must also commit to close the transaction no later than October 15, 2013, time being of the essence. Both the next bidder (after the winning bidder of the auction) and Verifier (should it not be the winning bidder) shall each remain as backup bidders and the next highest

bidder in order shall close the transaction by October 15, 2013 or October 16, 2013 in the case of Verifier, should any successful competing bidder default.

4. The Receiver, in his reasonable discretion, may take such other actions as necessary to ensure that the marketing, auction and sales procedure are in accordance with his duty to maximize the value of the Securities (as defined in the Motion) for the benefit of the MS Entities (as defined in the Motion) and those entitled to the proceeds.

Questions concerning the process or any other matters should be directed to:

William J. Brown, Esq.  
Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203  
Tel: (716) 847-7089  
E-mail: wbrown@phillipslytle.com

Dated: September 16, 2013

PHILLIPS LYTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Joshua P. Fleury (Bar Roll #515418)  
Attorneys for Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No.: (518) 472-1224  
Facsimile No.: (518) 472-1227

and

3400 HSBC Center  
Buffalo, New York 14203  
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E-mail: wbrown@phillipslytle.com

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*Relief Defendants. and* :

GEOFFREY R. SMITH, Trustee of the :  
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Trust U/A 8/04/04, :

*Intervenor.* :

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**CERTIFICATE OF SERVICE**

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on September 16, 2013, a true and correct copy of the Notice to Potential Bidders for Verifier Capital Holdings LLC Guaranteed Payment Units and Common Units Regarding Auction Details was caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court's ECF filing system, and by e-mail on the parties indicated below:

Robert L. Hamberger  
AGI Corporate Finance Limited  
10 Hazelhurst Road  
Burnham  
Bucks  
SL1 8EE  
E-mail: [rhamburger@googlemail.com](mailto:rhamburger@googlemail.com)

Jerry Markowitz, Esq.  
Markowitz Ringel Trusty Hartog  
Suite 1800  
9130 South Dadeland Boulevard  
Miami, FL 33156  
E-mail: [JMarkowitz@mrthlaw.com](mailto:JMarkowitz@mrthlaw.com)

William C. Perez  
Adams and Reese LLP  
4500 One Shell Square  
710 Poydras Street  
New Orleans, LA 70139  
E-mail: [William.perez@arlaw.com](mailto:William.perez@arlaw.com)

Dated: September 16, 2013

/s/ Karen M. Ludlow

Karen M. Ludlow

Doc #01-2691823.3