



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**

New York Regional Office  
Three World Financial Center  
New York, NY 10281

**DIVISION OF  
ENFORCEMENT**

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June 8, 2010

**BY ECF**

The Honorable David R. Homer  
United States Magistrate Judge  
United States District Court  
Northern District of New York  
United States Courthouse  
Albany, New York 12207

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

Dear Judge Homer:

I enclose for the Court's consideration a proposed Consent Order, agreed to by Michael Koenig, counsel for Mr. McGinn and Mr. Smith.

Respectfully submitted,

/s

David Stoelting

cc (by e-mail and US Mail): Michael Koenig, Esq.  
James Featherstonhaugh, Esq.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

v.

10 Civ. 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,

*Defendants, and*

LYNN A. SMITH,

*Relief Defendant.*

**CONSENT ORDER**

**IT IS ORDERED** that the time for defendants David Smith and Timoth McGinn to answer or otherwise respond to the Complaint is extended to June 18, 2010.

**SO ORDERED:**

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE