



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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**DIVISION OF
ENFORCEMENT**

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January 16, 2014

BY ECF

The Honorable Christian F. Hummel
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)(CFH)

Dear Judge Hummel:

Plaintiff Securities and Exchange Commission respectfully submits this letter to request an additional four business days to respond to the amended Memorandum of Law filed on January 15, 2014 by the David L. and Lynn A. Smith Irrevocable Trust U/A dated August 4, 2004 (Dkt. 668-1).

In his January 15, 2014 letter to the Court requesting permission to file an amended Memorandum of Law, the Trust's attorney, James Linnan, represented that: "The attached Memorandum of Law is identical to the one filed on January 3, 2014, with the exception of the insertion of appropriate legal citations and the correction of spelling and grammatical errors." However, instead of merely providing "appropriate legal citations" to the four cases cited in the original brief (three of which were in fact missing appropriate legal citations), Mr. Linnan added fifteen news cases to his brief. He also added four new citations to the Internal Revenue Code. This greatly expands the number of cases and legal authorities the Commission must now respond to, with the Commission's brief currently due tomorrow.

Accordingly, while we do not oppose Mr. Linnan's request to file a substantially altered brief two days before the Commission's response is due, and we leave it to the Court to determine whether Mr. Linnan's representations to the Court fairly described the scope of the changes to his brief, we respectfully request an additional four business days, from Friday, January 17, 2014 to Friday, January 24, 2014, to respond to the amended Memorandum of Law.

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Respectfully submitted,

s/ Kevin P. McGrath

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