



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**

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DIVISION OF  
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July 9, 2014

**BY ECF**

The Honorable Gary L. Sharpe, Chief Judge  
United States District Court  
James T. Foley United States Courthouse  
Albany, New York 12207

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

Dear Judge Sharpe:

Plaintiff Securities and Exchange Commission respectfully submits this letter in response to the letters of counsel for Lynn Smith, the Smith Trust and Geoffrey and Lauren Smith asking the Court not to consider the SEC's motion for summary judgment because it was filed commencing shortly after the Court's 4 p.m. deadline yesterday. First, we apologize to the Court and opposing counsel for not meeting the 4 p.m. deadline. We greatly appreciate the fact that the Court allowed the parties additional time for the filing and we endeavored to meet that deadline. We had numerous people working on converting into electronic form the final moving papers, and over 300 exhibits, but several scanning problems resulted in our not commencing the filing until four minutes after the deadline. We also, frankly, underestimated how long it would take to electronically file the 300 exhibits, which had to be filed in small batches, many of which were rejected and had to be refiled because of size limits.

We again apologize to the Court for not meeting its deadline and to the Court and opposing counsel and their clients for any inconvenience caused by our delayed filing. However, we respectfully request that the Court deny opposing counsels' request that the Court not consider the SEC's motion for summary judgment. They have not been prejudiced in any substantive way by the delay. The filing was completed on ECF, and thus service on counsel was complete, yesterday evening. Pro se defendant Nancy McGinn received copies of all moving papers by email yesterday evening and a disc containing all exhibits is being overnighted to her today, with courtesy copies to all counsel.

In addition, we submit that summary judgment is the most efficient way to resolve this matter for all concerned and is the most efficient use of judicial resources. Finally, as the Court may be aware, this case has been heavily litigated with scores of motions filed with the Court. This is the first time in the over four year history of this case that the SEC has missed a deadline, and while we deeply regret that we missed this Court's deadline, the opposing parties have not been prejudiced in any substantive way.

The Honorable Gary L. Sharpe

July 9, 2014

Page 2

Accordingly, we respectfully request that the Court consider our summary judgment motion and we assure the Court that we will take every step necessary to make sure this does not happen again.

Respectfully submitted,



Kevin P. McGrath

cc All counsel (by e-mail and ECF)

Nancy McGinn (by email)