

REVISED LIST OF EXHIBITS TO PLAINTIFF'S STATEMENTS OF MATERIAL FACTS**December 1, 2014**

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4/1/2006	Coventry Carelink Bridge Loan Notes	369	741-7
	Criminal Trial Testimony of Jay Kaplowitz	370	741-8
1/25/2008	Email from Deb Adkins to David Smith	371	741-9



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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December 1, 2014

BY ECF

The Honorable Gary L. Sharpe
United States District 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 Sharpe:

I write regarding the Court's Text Order dated November 24, 2014 (Dkt. 804) requiring the SEC to edit its *List of Exhibits to Plaintiff's Statement of Material Facts* filed July 8, 2014 (Dkt. 711-1) (the "7.8.14 Exhibit List") and "provide parallel citations to the exact docket number, and, where relevant, attachment number, that corresponds to each exhibit."

We apologize for the inconvenience caused by our filing of summary judgment exhibits and we appreciate the opportunity to correct the situation.

In accordance with the Court's Order, attached is a revised Exhibit List that includes a column matching each exhibit with its corresponding docket entry and attachment number. In addition, we have included a CD with copies of all Appendix Exhibits on the revised Exhibit List.

In the course of revising the 7.8.14 Exhibit List, we noticed two inadvertent discrepancies.

First, four exhibits were filed on ECF but not included on the 7.8.14 Exhibit List. These exhibits – 59, 62, 299 and 353 – have been added to the revised Exhibit List.

Second, five exhibits – 156, 212, 323, 337 and 358 – that were on the 7.8.14 Exhibit List were not filed on ECF. As a result, we are withdrawing these five exhibits. As explained below, the withdrawal of these five exhibits does not impact the substance of the SEC's Statement of Material Facts (SMF) (Dkt. 711):

- Exhibit 156, cited in SMF ¶ 248, is a letter dated Sept. 10, 2009 regarding the Firstline bankruptcy, which David Smith admitted (*see* Dkt. 785 at 66-67);
- Exhibit 323, cited in SMF ¶¶ 102, shows the ownership structure of Newton Advisers, which D. Smith also admitted (Dkt. 785 at 29-30);
- Exhibit 337, cited in SMF ¶¶ 423 and 425, relates to certain transfers to D. Smith. These transfers are also evidenced in Exhibit 1 at 42-43, 112, 122 (Palen Exhibits 7, 26) (Dkt. 712); and

The Honorable Gary L. Sharpe

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- Exhibits 212 and 358 were not cited in the SMF.

Respectfully submitted,

/s

David Stoelting

Attachments:

- Revised List of Exhibits to Plaintiff's Statement of Material Facts
- CD containing Appendix Exhibits 1-371 (without 156, 212, 323, 337, 358)

cc (w/enclosures): James Featherstonhaugh, Esq. (by email and UPS)
E. Stewart Jones, Esq. (by email and UPS)
William Dreyer, Esq. (by email and UPS)
Nancy McGinn, *pro se* (by email and UPS)