



Michael L. Koenig
Tel. (518) 689-1414
Fax (518) 689-1499
koenigm@gtlaw.com

June 30, 2010

VIA ELECTRONIC FILING

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

Re: *Securities and Exchange Commission v. McGinn, Smith & Co., Inc., et al.*,
10-CV-457 (GLS)(DRH)

Dear Judge Homer:

We represent Defendants Timothy McGinn and David Smith in the above-referenced proceeding. We enclose for the Court's consideration a proposed Consent Order extending Timothy McGinn's and David Smith's time to answer the Complaint. The Securities & Exchange Commission has consented to this proposed Order, conditioned upon Defendant Timothy McGinn's and David Smith's agreement that they will file an Answer, as opposed to a motion to dismiss. Messrs. Smith and McGinn hereby agree to that condition.

We appreciate the Court's consideration in this matter.

Respectfully submitted,

GREENBERG TRAUIG, LLP

A handwritten signature in black ink, appearing to read "Michael L. Koenig".

Michael L. Koenig
(Bar Roll No.: 507425)

MLK/nak

cc: David Stoelting (via ECF)
James Featherstonhaugh (via ECF)
William Brown (via ECF)
Jill A. Dunn (via ECF)

ALB 1,345,231v1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

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.

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**Case No. 1:10-CV-457
(GLS)(DRH)**

CONSENT ORDER

IT IS ORDERED that the time for defendants David Smith and Timothy McGinn to answer the Complaint is extended to July 30, 2010.

SO ORDERED:

Dated: _____, 2010

UNITED STATES MAGISTRATE JUDGE