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HELEN FOX CHANDELLIER (1927-1976)

March 17, 2016

Via ECF

Honorable Gary L. Sharpe  
United States District Court Northern District of New York  
James T. Foley Courthouse  
445 Broadway  
Albany, New York 12207

Re: S.E.C. v. McGinn, Smith & Co. Inc., et al., 1:10-CV-457 (GLS/CFH)


Dear Judge Sharpe:

Claimants Stan and Eva Rabinovich (“Claimants”) respectfully request that the Court consider this letter in response to the reply memoranda filed by the Receiver and the Securities and Exchange Commission (“SEC”), which present new arguments and misconstrue Claimants’ Response to the Receiver’s proposed plan of distribution (*see* Docket 868) as intending to delay distribution to creditors. Claimants have no intention of holding up a long-awaited distribution to creditors.

Contrary to the arguments of the Receiver and the SEC, Claimants did *not* request that any distribution await *a full adjudication* of the Receiver’s as-of-yet unasserted objections to allegedly “disputed” claims. In fact, the word “adjudicate” was never used by Claimants. Rather, Claimants argued that if the Receiver intends to exclude certain investors from an interim distribution, the Receiver must, consistent with due process, *notify* this Court and those investors of the specific grounds for why their claims are “disputed.” *See, e.g., SEC v. Credit Bancorp, Ltd.*, 99 Civ. 11395 (RWS), 2000 U.S. Dist. LEXIS 17171, \*149-50 (S.D.N.Y. Nov. 29, 2000) (holding in the context of a “partial distribution,” that “if there are individuals whom the SEC has already identified as potential candidates for exclusion, it shall so notify the Court forthwith.”).

Claimants appreciate the Court’s attention to these matters.

Respectfully submitted,

  
James Henry Glavin IV  
Bar Number: 518250  
Attorney for Stan and Eva Rabinovich

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

v.

Case No. 1:10-CV-457 (GLS/CFH)

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, GEOFFREY R. SMITH,  
Individually and as Trustee of the David L. and Lynn  
A. Smith Irrevocable Trust UIA 8/04/04,  
LAUREN T. SMITH, and NANCY McGINN,

*Defendants,*

LYNN A. SMITH and  
NANCY McGINN,

*Relief Defendants,*

GEOFFREY R. SMITH, Trustee of the David L. and  
Lynn A. Smith Irrevocable Trust UIA 8/04/04,

*Intervenor*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Letter to the Court responding to the reply memoranda of the Receiver and SEC, dated March 17, 2016, was electronically served upon the registered participants to this action as follows:

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Dated: March 17, 2016

s James Henry Glavin IV  
James Henry Glavin IV