



Phillips Lytle LLP

VIA CM/ECF

December 13, 2017

Hon. Christian F. Hummel
United States Magistrate Judge
United States District Court
Northern District of New York
United States Courthouse
445 Broadway
Albany, NY 12207

Re: Securities and Exchange Commission vs. McGinn, Smith & Co., Inc., et al.
Case No. 1:10-cv-00457-GLS-CFH
Motion for an Order Disallowing Duplicate Paper Claims

Dear Judge Hummel:

On September 21, 2017, we filed on ECF the Motion of William J. Brown, as Receiver, for an Order Disallowing Duplicative Paper Claims (Docket No. 937) (the "Motion"). The Motion's return date was November 16, 2017. The Court has yet to rule on the Motion.

Attached to the Motion as Exhibit A was a schedule of Claim Numbers for which investors had filed duplicate paper claims and which duplicate paper claims the Motion sought to expunge.

On November 9, 2017, we filed on ECF the Receiver's Statement in Furtherance of Receiver's Motion for an Order Disallowing Duplicative Claims (Docket No. 937) (Docket No. 957), attaching a proposed form of Order granting the Motion (the "Proposed Order"). Attached to the Proposed Order as Exhibit C was a schedule of Claim Numbers for which investors filed duplicate paper claims and which duplicate paper claims the Proposed Order would expunge.

We realized today that Claim Number 5473 was included on Exhibit A of the Motion but was inadvertently excluded from Exhibit C to the Proposed Order. Accordingly, we

ATTORNEYS AT LAW

WILLIAM J. BROWN, PARTNER DIRECT 716 847 7089 WBROWN@PHILLIPSLYTLE.COM

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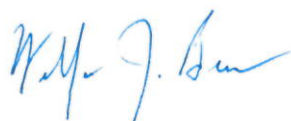
Hon. Christian F. Hummel
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December 13, 2017

attach to this letter a revised proposed form of Order granting the Motion, attaching a revised Exhibit C including Claim Number 5473.

Very truly yours,

Phillips Lytle LLP

By 

William J. Brown

EEEht
Doc #01-3087201.1
Attachment

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff,

vs.

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 U/A 8/04/04, :
LAUREN T. SMITH, and NANCY McGINN, :

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants. and

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

Intervenor.

-----X

**ORDER APPROVING MOTION OF WILLIAM J. BROWN, AS RECEIVER,
FOR AN ORDER DISALLOWING DUPLICATIVE PAPER CLAIMS**

Upon the (i) Motion of William J. Brown, as Receiver, for an Order Disallowing Duplicative Claims (Docket No. 937) and (ii) the Receiver's Statement in Furtherance of Receiver's Motion for an Order Disallowing Duplicate Claims (Docket No. 937) filed November 9, 2017; and notice of the Motion having been given to the Securities and Exchange Commission, each investor listed on Exhibit A to the Motion by first class mail, and all parties who have filed a Notice of Appearance in this action by ECF, and all creditors of the McGinn, Smith entities and other parties in interest via the Receiver's website, which notice is deemed

good and sufficient notice; and the Court having deemed that sufficient cause exists; it is therefore

ORDERED, that the Motion is approved, and it is further

ORDERED, that each of the duplicative paper claims for the claim numbers listed on Exhibit A attached to this Order are confirmed as withdrawn by consent; the Motion is adjourned to a date and time to be fixed by the Court with respect to each of the duplicative paper claims for the claim numbers listed on Exhibit B attached; and, each of the duplicative paper claims for the claim numbers listed on Exhibit C attached are expunged; and the rights of the Receiver to object on any other basis to the claims of all investors or claimants is expressly preserved.

Dated: December ____, 2017

HON. CHRISTIAN F. HUMMEL

Doc #01-3069418.3

Exhibit A

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
4355	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$50,000.00	\$50,000.00
4737	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11	\$57,937.45	\$57,937.45
4744	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$25,000.00	\$25,000.00
4745	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$10,000.00	\$10,000.00
5179	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010	\$50,000.00	\$50,000.00
5180	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$20,000.00	\$20,000.00
5181	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$40,000.00	\$40,000.00
5182	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$50,000.00	\$50,000.00
5383	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010	\$40,000.00	\$40,000.00
5384	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$25,000.00	\$25,000.00
5385	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$25,000.00	\$25,000.00
5386	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$50,000.00	\$50,000.00
5499	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$50,000.00	\$50,000.00

Exhibit A

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
5531	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$45,000.00	\$45,000.00
5832	FIRSTLINE TRUST 07 B SENIOR CONTRACT CERTIFICATES 9.50% DUE 10/01/11	\$82,767.79	\$82,767.79
5833	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36	\$115,000.00	\$115,000.00
5834	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36	\$130,000.00	\$130,000.00
5835	McGinn, Smith Firstline Funding, LLC	\$14,000.00	\$14,000.00
6083	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009	\$200,000.00	\$200,000.00
6401	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008	\$25,000.00	\$25,000.00
6599	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010	\$30,000.00	\$30,000.00
6600	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$45,000.00	\$45,000.00
6601	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008	\$106,000.00	\$106,000.00
6602	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$56,000.00	\$56,000.00
6800	FAIN SECURED SENIOR SUBORDINATED NOTES	\$20,000.00	\$20,000.00
490574.1			

Exhibit B

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
4451	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$50,000.00	\$50,000.00
4778	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$47,000.00	\$47,000.00
4814	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$10,000.00	\$10,000.00
4815	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36	\$10,000.00	\$10,000.00
4834	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$525,000.00	\$525,000.00
4835	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009	\$250,000.00	\$250,000.00
4863	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009	\$165,000.00	\$165,000.00
4876	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE TDMVER 18	\$100,000.00	\$100,000.00
4879	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$25,000.00	\$25,000.00
4880	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10	\$20,000.00	\$20,000.00
4881	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$10,000.00	\$10,000.00
4889	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$25,000.00	\$25,000.00
4890	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10	\$20,000.00	\$20,000.00

Exhibit B

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
4891	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$10,000.00	\$10,000.00
5444	TDM Cable Funding LLC	\$50,000.00	\$50,000.00
5546	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36	\$50,000.00	\$50,000.00
5547	FAIN SECURED SENIOR SUBORDINATED NOTES	\$100,000.00	\$100,000.00
5548	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008	\$55,000.00	\$55,000.00
5549	TAIN SECURED SENIOR NOTES	\$9,093.29	\$9,093.29
5550	TAIN SECURED SENIOR NOTES	\$4,546.64	\$4,546.64
5551	TAIN SECURED SENIOR NOTES	\$113,666.07	\$113,666.07
5554	FIIN SECURED SENIOR NOTES	\$9,093.29	\$9,093.29
5555	FIIN SECURED SENIOR NOTES	\$150,039.22	\$150,039.22
5556	FAIN SECURED SENIOR NOTES	\$25,758.70	\$25,758.70
5557	FAIN SECURED SENIOR NOTES	\$27,598.61	\$27,598.61
5558	FAIN SECURED SENIOR SUBORDINATED NOTES	\$125,000.00	\$125,000.00
5559	TAIN SECURED SENIOR NOTES	\$45,466.43	\$45,466.43
5560	TAIN SECURED SENIOR NOTES	\$54,559.72	\$54,559.72
5561	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36	\$100,000.00	\$100,000.00
5563	FIRSTLINE TRUST 07 9.25% SENIOR CONTRACT CERTIFICATES DUE 09/01/10	\$55,302.25	\$55,302.25
5694	TDMM Cable Funding LLC	\$100,000.00	\$100,000.00
5702	TDMM BENCHMARK TRUST 09 12%	\$25,000.00	\$25,000.00

Exhibit B

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
5781	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008	\$75,000.00	\$75,000.00
5782	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008	\$125,000.00	\$125,000.00
5783	McGinn, Smith Capital Holdings Corp.	\$50,000.00	\$50,000.00
5784	McGinn, Smith Transaction Funding Corp.	\$25,000.00	\$25,000.00
5785	McGinn, Smith Transaction Funding Corp.	\$75,000.00	\$75,000.00
5945	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$700,000.00	\$700,000.00
6122	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$15,000.00	\$15,000.00
6125	Cruise Charter Ventures, LLC	\$100,000.00	\$100,000.00
6126	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008	\$200,000.00	\$200,000.00
6131	McGinn, Smith Firstline Funding, LLC	\$300,000.00	\$300,000.00
6132	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$75,000.00	\$75,000.00
6134	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$20,000.00	\$20,000.00
6312	TDMM BENCHMARK TRUST 09 12%	\$150,000.00	\$150,000.00
6325	TAIN SECURED JUNIOR NOTES DUE 12/15/2009	\$25,000.00	\$25,000.00
6331	FIIN 10.25% SECURED JUNIOR NOTES DUE 12/15/2008	\$30,000.00	\$30,000.00

Exhibit B

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
6336	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10	\$20,000.00	\$20,000.00
6337	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$14,000.00	\$14,000.00
6346	TDM CABLE TRUST 06 10% CONTRACT CERTIFICATES DUE 11/15/10	\$20,000.00	\$20,000.00
6347	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$20,000.00	\$20,000.00
6473	McGinn, Smith Transaction Funding Corp.	\$25,000.00	\$25,000.00
6474	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$25,000.00	\$25,000.00
6475	TDM LUXURY CRUISE TRUST 07 CONTRACT CERTIFICATES 10% DUE 9/1/11	\$23,125.00	\$23,125.00
6477	McGinn, Smith Firstline Funding, LLC	\$10,000.00	\$10,000.00
6494	FIRSTLINE TRUST 07 B JUNIOR CONTRACT CERTIFICATES 11% DUE 10/01/12	\$19,839.23	\$19,839.23
6495	FORTRESS TRUST 08	\$19,911.10	\$19,911.10
6496	McGinn, Smith Transaction Funding Corp.	\$25,000.00	\$25,000.00
6499	McGinn, Smith Firstline Funding, LLC	\$300,000.00	\$300,000.00
6500	McGinn, Smith Funding, LLC	\$20,000.00	\$20,000.00
6501	TDMM BENCHMARK TRUST 09 10%	\$85,000.00	\$85,000.00
6502	TDMM BENCHMARK TRUST 09 11%	\$145,000.00	\$145,000.00

Exhibit B

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
6503	TDMM BENCHMARK TRUST 09 9%	\$70,000.00	\$70,000.00
6504	TDMM Cable Funding LLC	\$30,200.01	\$30,200.01
490576.1			

REVISED Exhibit C

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
4101	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009	\$25,000.00	\$25,000.00
4102	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009	\$50,000.00	\$50,000.00
4103	FIIN SECURED SENIOR NOTES	\$31,826.50	\$31,826.50
4104	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009	\$50,000.00	\$50,000.00
4105	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008	\$50,000.00	\$50,000.00
4147	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$25,000.00	\$25,000.00
4148	FEIN 10.25% SECURED JUNIOR NOTES DUE 01/30/2009	\$100,000.00	\$100,000.00
4909	FIRSTLINE TRUST 07 9.25% SENIOR CONTRACT CERTIFICATES DUE 09/01/10	\$22,120.90	\$22,120.90
4910	TDMM CABLE SR TRUST 09 9%	\$19,483.15	\$19,483.15
4970	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008	\$5,000.00	\$5,000.00
4971	FIIN SECURED SENIOR SUBORDINATED NOTES DUE 12/15/2008	\$20,000.00	\$20,000.00
4972	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009	\$10,000.00	\$10,000.00
5254	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36	\$10,000.00	\$10,000.00

REVISED Exhibit C

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
5355	McGinn, Smith Firstline Funding, LLC	\$25,000.00	\$25,000.00
5471	McGinn, Smith Transaction Funding Corp.	\$250,000.00	\$250,000.00
5472	TDM CABLE TRUST 06 9.25% 48 MONTHS CONTRACT CERTIFICATES 11/15/10	\$25,000.00	\$25,000.00
5473	TDM VERIFIER TRUST 08 CONTRACT CERTIFICATE 36	\$25,000.00	\$25,000.00
6467	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009	\$10,000.00	\$10,000.00
6468	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009	\$50,000.00	\$50,000.00
6480	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009	\$10,000.00	\$10,000.00
6481	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009	\$50,000.00	\$50,000.00
6484	FAIN SECURED SENIOR SUBORDINATED NOTES	\$15,000.00	\$15,000.00
6485	FAIN SECURED SENIOR SUBORDINATED NOTES	\$70,000.00	\$70,000.00
6486	FEIN SECURED SENIOR SUBORDINATED NOTES DUE 01/30/2009	\$10,000.00	\$10,000.00

REVISED Exhibit C

Claim Number	Description of Investment or Nature of Claim	Amount of Claim on Receiver's Website	Paper Claim Amount
6490	TAIN SECURED SENIOR SUBORDINATED NOTES 7.75% DUE 12/15/2009	\$20,000.00	\$20,000.00
6813	FAIN 10.25% SECURED JUNIOR NOTES DUE 11/15/2010	\$25,000.00	\$25,000.00
490572.2			

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

Plaintiff,

vs.

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 U/A 8/04/04, :
LAUREN T. SMITH, and NANCY McGINN, :

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants. and

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

Intervenor.
-----X

CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on December 13, 2017, a proposed Order attaching Revised Exhibit C ("Proposed Order") relating to the Receiver's Statement in Furtherance of Receiver's Motion for an Order Disallowing Duplicative Claims (Docket No. 937) (Docket No. 957) with filed with the Court via the Court's CM/ECF system and was caused to be served by e-mail upon all parties who receive electronic notice in this case, and by First Class Mail to the parties indicated below:

- **William J. Brown** wbrown@phillipslytle.com, khatch@phillipslytle.com
- **Certain McGinn Smith Investors** apark@weirpartners.com
- **Elizabeth C. Coombe** elizabeth.c.coombe@usdoj.gov, paul.condon@usdoj.gov, CaseView.ECF@usdoj.gov, kelly.ciccarelli@usdoj.gov
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- **Bonnie R. Golub** bgolub@weirpartners.com

- **Erin K. Higgins** EHiggins@ckrpf.com
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- **Walter Weir** wwair@weirpartners.com, smorris@weirpartners.com
- **Bryan M. Westhoff** bryan.westhoff@kayescholer.com
- **Benjamin Zelsermyer** bzlaw@optonline.net, steincav@aol.com

And, I hereby certify that on December 13, 2017, I mailed, via first class mail using the United States Postal Service, a copy of the Proposed Order to the individuals listed below:

Nancy McGinn
426-8th Avenue
Troy, NY 12182

Thomas J Urbelis
Urbelis & Fieldsteel, LLP
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Boston, MA 02110-1727

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Greenberg Traurig, LLP
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Brad M. Gallagher, Esq.
Barclay Damon
80 State Street
Albany, NY 12207

Dated: December 13, 2017

/s/ Karen M. Ludlow
Karen M. Ludlow