

LAW OFFICES OF

**TIMOTHY J. O'CONNOR**

MEMBER OF BAR IN  
NEW YORK AND FLORIDA

29 WARDS LANE  
ALBANY, NEW YORK 12204

TEL 518-426-7700  
FAX 518-426-7770

[TJO@TJOLAW.COM](mailto:TJO@TJOLAW.COM)

October 3, 2011

Hon. David R. Homer  
James T. Foley U.S. Courthouse  
445 Broadway, Albany, NY 12207-2974

*Re: SEC v. McGinn, Smith, et al*  
*Case No. 1:10-cv-00457-GLS/DRH*

Dear Judge Homer:

I am encouraged by that particular letter of David Stoelting of the Securities and Exchange Commission, which was posted on the ECF list serve in the above-referenced case last Friday, September 30<sup>th</sup>. I represent the below-named individuals who have claims pending against McGinn, Smith and/or Messrs. McGinn and Smith in the following pending matters before the Office of Dispute Resolution of the Financial Industry Regulatory Authority (FINRA):

FINRA Case No. 09-00008  
DeLuca and Alaskey v. McGinn, Smith & Co., Inc., et al

FINRA Case No. 09-03284  
Thomas V. Kenney, Jr., as Executor of the Estate of Jayne Regan Harris  
v. McGinn, Smith & Co., Inc, et al

FINRA Dispute Resolution Arbitration No. 08-03127  
Bernard Malmud v. McGinn, Smith & Company, Inc., et al

FINRA Dispute Resolution Arbitration No. 09-05163  
Mary T. McDowell, et al v. McGinn, Smith & Co., Inc., et al

FINRA Case No. 09-05307  
Kevin J. Sullivan v. McGinn, Smith & Company, Inc., et al

FINRA Dispute Resolution Arbitration No. 09-06051  
Anna Finley a/k/a Anna Weiss v. McGinn, Smith & Company, Inc., et. al.

FINRA Arbitration No. 09-05765  
Marilyn C. DeSimony, et al v. McGinn, Smith & Company, Inc., et al

October 3, 2011

Page 2

FINRA Dispute Resolution Arbitration No. 09-06840  
Deborah J. Taylor v. McGinn, Smith & Company, Inc., et al.

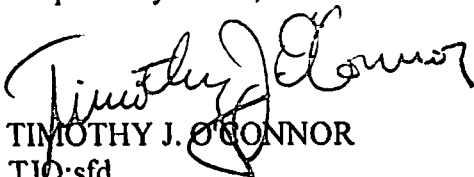
The matters have been effectively stayed since April 20, 2010, with the appointment of William Brown as Receiver.

More than 17 months has passed since the appointment of the Receiver. I do appreciate that the Receiver has been busy marshalling assets for the respective private placement entities, though it is my understanding that at the end of the day, in a best case scenario, the victimized investors here may well see less than five cents on the dollar after the payment of fees and costs relating to the Receivership.

The allegations in the underlying Complaint filed by the Securities and Exchange Commission can be reasonably interpreted to include allegations of conversion and unauthorized transactions which, in my opinion, clearly make these claims ripe for the commencement of proceedings with the Securities Investor Protection Corporation (SIPC). Notably, SIPC maintains facilities and funding designed to compensate victims such as my clients as a result of their victimization. In this regard, I would suggest that consideration be given to lifting the stay, to the extent that the same is applicable to permit the SEC to pursue these aforementioned SIPC-related proceedings.

As the SEC is the only entity which, in the first instance, can initiate such proceedings with the Securities Investor Protection Corporation, I would look forward to the scheduling of a conference or the initiation of a dialogue to discuss the initiation of SIPC-venued proceedings to benefit my clients. Many of my clients have lost the lion's share of their retirement nest eggs to these illiquid and predominantly almost worthless, purported private placement investments sold to them by McGinn, Smith.

Respectfully Yours,



TIMOTHY J. O'CONNOR  
TJO:sfd

Cc: [wbrown@phillipslytle.com](mailto:wbrown@phillipslytle.com)  
William J. Brown, Esq.  
Phillips, Lytle LLP  
3400 HSBC Center  
Buffalo, NY 14203-2887

[stoeltingd@sec.gov](mailto:stoeltingd@sec.gov)  
David P. Stoelting, Esq.  
U.S. Securities & Exchange Commission  
3 World Financial Center  
New York, NY 10281-1022

October 3, 2011

Page 3

[marlierh@sec.gov](mailto:marlierh@sec.gov)

Haimavathi V. Marlier, Esq.  
U.S. Securities & Exchange Commission  
3 World Financial Center  
New York, NY 10281-1022

[kaufmanja@sec.gov](mailto:kaufmanja@sec.gov)

Jack Kaufman, Esq.  
U.S. Securities & Exchange Commission  
3 World Financial Center  
New York, NY 10281-1022

[newvillej@sec.gov](mailto:newvillej@sec.gov)

Joshua M. Newville, Esq.  
U.S. Securities & Exchange Commission  
3 World Financial Center  
New York, NY 10281-1022

[mcgrathk@sec.gov](mailto:mcgrathk@sec.gov)

Kevin P. McGrath, Esq.  
U.S. Securities & Exchange Commission  
3 World Financial Center  
New York, NY 10281-1022

[mehrabanl@sec.gov](mailto:mehrabanl@sec.gov)

Lara S. Mehraban, Esq.  
U.S. Securities & Exchange Commission  
3 World Financial Center  
New York, NY 10281-1022

[bhill@dreyerboyajian.com](mailto:bhill@dreyerboyajian.com)

Benjamin W. Hill, Esq.  
Dreyer, Boyajian Law Firm  
75 Columbia Street  
Albany, NY 12210

[wdreyer@dreyerboyajian.com](mailto:wdreyer@dreyerboyajian.com)

William J. Dreyer, Esq.  
Dreyer, Boyajian Law Firm  
75 Columbia Street  
Albany, NY 12210

October 3, 2011  
Page 4

[bessetca@esjlaw.com](mailto:bessetca@esjlaw.com)

E. Stewart Jones, Jr., Esq.  
Office of E. Stewart Jones, Jr.  
28 Second Street  
Jones Building  
Troy, NY 12180

[jdf@fwc-law.com](mailto:jdf@fwc-law.com)

James D. Featherstonhaugh, Esq.  
Featherstonhaugh, Wiley Law Firm  
99 Pine Street, Suit 207  
Albany, NY 12207

[Fred.knopf@wilsonelser.com](mailto:Fred.knopf@wilsonelser.com)

Fred N. Knopf, Esq.  
Wilson, Elser Law Firm  
3 Gannett Drive  
White Plains, NY 10604-3407