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**Via ECF**

June 10, 2015

The Honorable Gary L. Sharpe  
United States District Judge  
United State District Court  
Northern District of New York  
United State Courthouse  
Albany, New York 12207

Re: **SEC v. McGinn, Smith & Co., Inc, et al.**  
**10-cv-457 (GLS)(CFH)**

We join in the request of the SEC for a telephonic or in-person hearing in connection with the entry of the proposed final judgment.


We respectfully disagree with the SEC's characterization of our position as it relates to the final judgments. The disagreement with the SEC is based on different interpretations of the Court's ruling in the MDO. (Dkt. 816). It is our position and understanding that the Court clearly determined that the assets in the stock account were considered to be jointly owned by David Smith and Lynn Smith. (Dkt. 816 at pp.33, 35, 37 and 39).

It is our further understanding that the Court ruled that David Smith had "a beneficial interest" in the monies comprising the Smith Trust. (Dkt. 816 at p.43). However, we are not aware with any rule of law that allows the entirety of jointly held assets available to satisfy a judgment and/or disgorgement order entered only against one of the joint owners. Furthermore, we do not believe that that was the ruling of the Court. Rather, it is our understanding that the Court's ruling simply authorizes David Smith's interests in those assets may be applied to satisfy the disgorgement order.

Finally, all parties are in agreement that it is in their best interest to have the final judgments entered.

Respectfully yours,

**Featherstonhaugh, Wiley & Clyne, LLP**



Jonathan S. McCardle

JSM:cc

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