

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.

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**RESPONSE OF RECEIVER TO MOTION OF
STEPHEN FOWLER TO FILE UNDER SEAL**

William J. Brown, as Receiver (“Receiver”), by his counsel, Phillips Lytle LLP, for his response to the Stephen Fowler Motion to File Under Seal dated February 12, 2016 (“Sealing Motion”), respectfully states as follows:

1. I am the Receiver of McGinn, Smith & Co. Inc., et al., appointed by the Court in this action pursuant to the Preliminary Injunction Order dated July 26, 2010 (Docket No. 96).

2. Given the limited information the Sealing Motion provided, it cannot be determined whether Mr. Fowler's assertion is meritorious or not with respect to seeking confidentiality.

3. Nevertheless, in order for the Receiver and other interested parties, such as the Securities and Exchange Commission, to evaluate Mr. Fowler's assertions, it is, by definition, necessary to have all of the facts.

4. Mr. Fowler's request, if granted, should be structured so as to provide an unredacted version of all the information to the Receiver, the SEC, and any other party who establishes the need for such information.

WHEREFORE, the Receiver requests the Court either to deny the Sealing Motion, or to grant it pursuant to Proposed Order No. 2 with unredacted versions being made available to, at least, the Receiver and the Securities and Exchange Commission, and for such other relief as is appropriate.

Dated: February 16, 2016

PHILLIPS LYTTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
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Doc #01-2927856.1

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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. :

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CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on February 16, 2016, a true and correct copy of the Response of Receiver to Motion of Stephen Fowler to File Under Seal (“Response”) were caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court’s ECF filing system, as follows:

- **William J. Brown** wbrown@phillipslytle.com, khatch@phillipslytle.com
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- **Benjamin Zelermyer** bzlaw@optonline.net,steincav@aol.com

And, I hereby certify that on February 16, 2016, I mailed, via first class mail using the United States Postal Service, a copy of the Response to the individuals listed below:

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Dated: February 16, 2016

/s/ Karen M. Ludlow
Karen M. Ludlow