

William J. Brown, as Receiver  
of McGinn, Smith & Co., Inc., et al.

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**Via Overnight Courier**

Hon. David N. Hurd  
United States District Court  
Northern District of New York  
Alexander Pirnie Federal Building  
10 Broad Street  
Utica, NY 13501-1233

July 24, 2013

Re: USA vs. Timothy M. McGinn and David L. Smith  
Case No. 1:12-cr-0028-DNH

Dear Judge Hurd:

I am the Receiver in the related civil action entitled *Securities and Exchange Commission vs. McGinn, Smith & Co., Inc., et al.* (Case No. 10-civ-00457). I am writing to Your Honor in connection with the August 7, 2013 sentencings of Messrs. McGinn and Smith.

While I am not privy to the Presentence Investigation Report lodged with the Court or the sentencing memoranda which may be filed by the United States and the defendants, I would like to inform the Court as to the following:

1. Throughout the SEC's civil action and this criminal action, I have, upon request, provided all parties including the defendants and their counsel with financial information when requested. Some of that information required significant data analysis by my controller, and a recent July 2013 request by counsel for one of the defendants took approximately 2½ business days to assemble, complete, and deliver. At the outset of the civil action, the defendants were provided with a set of electronic financial records including balance sheets and income statements and multiple tax returns for the various involved entities. I am satisfied that the parties have had an opportunity to obtain information that was reasonably available from the Receivership estate.

2. The total loss to investors vastly exceeds the amount proven at the criminal trial because not all of the McGinn Smith investments were part of the criminal indictment.

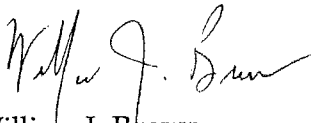
3. At this time, the Receiver's accounts contain a total of \$14,136,833, including \$3,478,470 relating to assets frozen by the District Court which are purportedly owned or controlled by Lynn Smith or the Smith Trust. As to the later amount, there may need to be further proceedings in the District Court before a final resolution of entitlement to those assets for the benefit of investors is determined. There are near-term prospects for the collection of approximately an additional \$9 million, but

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the collection of those amounts remains subject to a number of conditions including financing contingencies by the parties which would pay those amounts to the estate. Beyond that, there are some additional amounts which may be realized but which are difficult to estimate.

The harm to the over 800 investors has been substantial. I have spoken with many of them. There are a significant number of investors who are retired or near retirement, and the losses they have sustained are crippling to their personal financial situation.

Very truly yours,



William J. Brown  
Receiver

EEEht  
Doc #01-2684506.1

cc (via e-mail):

William Dreyer, Esq.  
E. Stewart Jones, Jr., Esq.  
Elizabeth Coombe, Esq.  
Wayne Myers, Esq.

William J. Brown, as Receiver  
of McGinn, Smith & Co., Inc., *et al.*

COPY

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August 2, 2013

**Via Overnight Courier**  
Hon. David N. Hurd  
United States District Court  
Northern District of New York  
Alexander Pirnie Federal Building  
10 Broad Street  
Utica, NY 13501-1233

Re: USA vs. Timothy M. McGinn and David L. Smith  
Case No. 1:12-cr-0028-DNH

Dear Judge Hurd:

In my capacity as Receiver, I am writing in response to the two Sentencing Memoranda unsealed yesterday which were previously filed by Messrs. McGinn and Smith, the defendants in this criminal action at Docket Nos. 196 and 198.

The Sentencing Memoranda suggest that the defendants did not receive the financial and other information requested from the Receiver. Nothing could be further from the truth. More importantly, the defendants did not alert the Receiver as to any problems they might have had with the provided information. The dates and subject matter of the more significant material requested and provided to the defendants and their respective counsel by the Receiver include the following:

1. May 2010 - A complete set of Quicken and QuickBook electronic records for the Receivership Entities as of March 2010 were delivered by the Receiver to Mr. Smith and his counsel as requested.
2. September 24, 2012 - An extensive data request dated September 24, 2012 was received from the Dreyer law firm. In response, on October 23, 2012, a tracking schedule was prepared listing the Bates stamped balance sheets, income statements, and tax returns the Receiver provided in response. See Excel spreadsheet attached as Exhibit A.
3. December 14, 2012 - The Receiver was requested to provide certain M&T Bank account statements which, because of their age, had to be retrieved from M&T

Bank archives and were provided to the Dreyer law firm on December 26, 2012, having been obtained from M&T Bank.

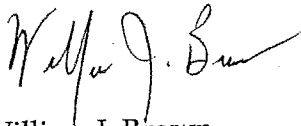
4. December 27, 2012 - Certain additional M&T Bank statements were requested by the Dreyer law firm and were provided to the Dreyer law firm by the Receiver.
5. March 21, 2013 - The Dreyer and Jones law firms requested the amount of cash in the Receiver's accounts and the amount of total investor claims. In response to the amount of the total investor claims question, the Receiver offered to provide to E. Stewart Jones, Jr., Esq. access to the Receiver's posted electronic claims website as well as Excel spreadsheets which make up that website subject only to an agreement that it remain confidential. As Receiver, I wanted to make sure that the names and addresses of investors would not be publicly released. That offer was not followed up or at any time accepted by Messrs. Jones or Dreyer. On March 22, 2013, I provided to Messrs. Dreyer and Jones the amount of total funds on hand broken out between Receivership Estates and monies under my control as a result of Orders relating to Mrs. Smith and the Smith Trust.
6. April 1, 2013 - The Dreyer law firm requested information on collections remaining on non-Smith assets such as performing contracts or other business related sales. On April 15, 2013, I sent to Messrs. Jones and Dreyer an unaudited chart outlining total Receivership cash flow for the period April 21, 2010 to March 31, 2013 and an estimate of likely additional recoveries in the Receivership estates for the benefit of investors.
7. July 5, 2013 - The Dreyer law firm made an additional information request. The request sought, among other things, "all payments received for each of the Trusts between October 2009 to present", "a total of all principal payments made for each of the Trusts as of April 2010", and "all asset sales for the Trusts and MSTF". On July 12, 2013, an Excel spreadsheet containing the requested data was provided to the Dreyer law firm.

The Receiver and his staff have analyzed all known investor claims. There are approximately \$124,123,595 in investor claims, some of which will be subject to objection on various grounds. If the objections are sustained, net claims appear to be in the range of \$100,506,405 subject to final Court approval. The Receiver currently has \$14,136,833 in his accounts. At the present time, it appears that additional collections will most likely be in the range of \$9 million to \$10 million,

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but the amounts are subject to negotiations and various contingencies. The Receiver intends to file a plan of distribution on or before August 16, 2013, which will provide for an interim distribution (subject to Court approval) given the various legal issues which remain including the adjudication of Lynn Smith and Smith Trust rights as well as the David L. Smith motion to pay taxes from monies held in the Receivership Estate.

Very truly yours,



William J. Brown  
Receiver

EEEht  
Doc #01-2687667.2

cc (via e-mail):

William Dreyer, Esq.  
E. Stewart Jones, Jr., Esq.  
Elizabeth Coombe, Esq.  
Wayne Myers, Esq.

# *Exhibit A*

| Mc Ginn Smith & Co. et al<br>Document Tracking Schedule for September 24, 2012 Dreyer Boys/Jen LLP Document Request | Balance Sheets |            | Income Statements         |                    | Tax Returns |      |
|---|----------------|------------|---------------------------|--------------------|-------------|------|
|   | 3/31/2010      | 12/31/2010 | 4/1/2010 to<br>12/31/2010 | Jan to Dec<br>2011 | 2009        | 2010 |
|   | Entity         | 12/31/2011 | 8/31/2012                 | Jan to Aug<br>2012 | 2010        | 2011 |
| 1 McGinn, Smith Transaction Funding Corp  | X              | X          | X                         | X                  | X           | X    |
| 2 McGinn, Smith Holdings, LLC   | X              | X          | X                         | X                  |             |      |
| 3 McGinn, Smith Funding, LLC  | X              | X          | X                         | X                  |             |      |
| 4 MR Cranberry, LLC   | X              | X          | X                         | X                  | X           | X    |
| 5 NEI Capital LLC   | X              | X          | X                         | X                  |             |      |
| 6 TDM Cable Funding, LLC  | X              | X          | X                         | X                  |             |      |
| 7 TDMM Cable Funding LLC  | X              | X          | X                         | X                  | X           | X    |
| 8 FirstLine SR, Trust 07  | X              | X          | X                         | X                  | X           | X    |
| 9 FirstLine SR, Trust 07 Series B   | X              | X          | X                         | X                  | X           | X    |
| 10 FirstLine Trust 07   | X              | X          | X                         | X                  | X           | X    |
| 11 FirstLine Trust 07 Series B  | X              | X          | X                         | X                  | X           | X    |
| 12 Fortress Trust 08  | X              | X          | X                         | X                  | X           | X    |
| 13 Integrated Excellence Jr, Trust 08   | X              | X          | X                         | X                  | X           | X    |
| 14 Integrated Excellence Sr, Trust 08   | X              | X          | X                         | X                  | X           | X    |
| 15 TDM Cable Trust 06   | X              | X          | X                         | X                  |             |      |
| 16 TDM Luxury Cruise Trust 07   | X              | X          | X                         | X                  | X           | X    |
| 17 TDM Verifier Trust 07  | X              | X          | X                         | X                  | X           | X    |
| 18 TDM Verifier Trust 07R   | X              | X          | X                         | X                  | X           | X    |
| 19 TDM Verifier Trust 08  | X              | X          | X                         | X                  | X           | X    |
| 20 TDM Verifier Trust 09  | X              | X          | X                         | X                  | X           | X    |
| 21 TDMM Benchmark Trust 09  | X              | X          | X                         | X                  | X           | X    |
| 22 TDMM Cable Sr, Trust 09  | X              | X          | X                         | X                  | X           | X    |
| 23 TDMM Cable Jr, Trust 09  | X              | X          | X                         | X                  | X           | X    |