

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

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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Case No. 1:10-CV-457
(AMN/CFH)

**STATUS REPORT OF THE SECURITIES AND EXCHANGE COMMISSION
REGARDING THE SUBMISSION OF FINAL JUDGMENTS
FOR THE SEVEN RECEIVERSHIP DEFENDANTS**

Plaintiff Securities and Exchange Commission (“SEC”) respectfully submits this Status Report to update the Court on the status of proposed final judgments for the seven receivership defendants (“Receivership Defendants”).¹ The SEC’s Status Report dated May 2, 2024 (ECF No. 1257) stated that “the SEC expects to submit to the Court a proposed final judgment for the

¹ The Receivership Defendants are 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; and Third Albany Income Notes, LLC.

Receivership Defendants by August 30, 2024.” The SEC now expects to submit the proposed final judgment by October 25, 2024.² In addition, we understand that the Receiver, William J. Brown, is completing various administrative, legal, tax and financial tasks, and a final Receiver’s Report is expected to be submitted by year-end 2024.

Dated: August 29, 2024

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

/s/ David Stoelting

By _____
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² Until final judgments are entered, preliminary injunctions entered on consent remain in place as to the Receivership Defendants. (Dkt. No. 96.) In that connection, the SEC respectfully notifies the Court of the Supreme Court’s decision in *Starbucks Corp. v. McKinney*, 144 S. Ct. 1570 (2024), which applied a four-part test for preliminary injunctions sought by a different government agency, including (1) a likelihood of success on the merits; (2) irreparable harm absent the injunction; (3) that the balance of equities tips in the plaintiff’s favor; and (4) that the injunction sought is in the public interest. *Starbucks*, 144 S. Ct. at 1576. Here, the only still-pending preliminary injunctive relief was entered on consent of the Receiver and should remain in place pending final judgments against the Receivership Defendants.