

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

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January 20, 2015

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:

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) pending before Judge Sharpe in the United States District Court for the Northern District of New York

I am writing with respect to the Government's Motion to Clarify the Restitution Orders (Docket No. 264) because of certain statements involving the Receiver and the Receivership contained therein.

As of January 16, 2015, there is \$21,828,429 held in the Receiver's accounts of which \$5,016,315 is claimed by the Smiths or the Smith Trust which is subject to resolution by Judge Sharpe. The SEC and the Receiver believe that the entire \$21,828,429 plus additional amounts still being collected by the Receiver should be distributed to victims. The total class of McGinn Smith victims is much larger than the group of McGinn Smith victims under the charges contained in the Government's indictment.

The Government's Motion mentions on page 3 that no monies have been distributed to victims. While that statement is correct, the reason is because the Internal Revenue Service and the Tax Division of the Department of Justice have failed to complete a review of the several hundred federal tax returns filed by the Receiver despite the efforts of the Receiver and the SEC to have the IRS do so in order to avoid any potential liability to the Receiver or the estate under 11 U.S.C. § 3713. See Motion of William J. Brown, as Receiver (in the civil action), for an Order (I) Approving a Procedure for the

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Administration of Claims of Governmental Units; Etc. (Docket No. 658) filed December 30, 2013. While the Tax Division has stated it would assert a defense of governmental immunity if the Receiver pursued his motion, the last communication from the Tax Division stated the returns are under review with an expected completion date of December 2014. No subsequent communication has been received from the IRS or the Tax Division.

Very truly yours,



William J. Brown
Receiver

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Doc #01-2832818.1

cc (via e-mail):

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