

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 1112/December 18, 2013

ADMINISTRATIVE PROCEEDING

File No. 3-15461

In the Matter of

TIMOTHY M. MCGINN and
DAVID L. SMITH

:
:
:

PREHEARING ORDER AND
STAY ORDER

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings on September 6, 2013, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. The proceeding is a follow-on proceeding based on United States v. McGinn, No. 1:12-cr-00028 (N.D.N.Y. Aug. 13, 2013), in which each Respondent was found guilty of securities, mail, and wire fraud and other offenses. A prehearing conference was held today. All parties appeared.

The Division of Enforcement (Division) and David L. Smith (Smith) jointly moved for a Stay Pending Commission Consideration of Offer of Settlement pursuant to 17 C.F.R. § 201.161(c)(2), stating that Smith has executed an Offer of Settlement that will resolve the proceeding as to him. Accordingly, the proceeding will be stayed as to Smith, contingent upon compliance with 17 C.F.R. § 201.161(c)(2).

Timothy M. McGinn (McGinn) intends to execute an Offer of Settlement. However, if that does not occur, the Division was granted leave to file a Motion for Summary Disposition pursuant to 17 C.F.R. § 201.250. The due dates for the Division's Motion for Summary Disposition and McGinn's opposition will be January 31 and February 10, 2014, respectively.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge