

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 72004 / April 23, 2014**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3821 / April 23, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15461**

**In the Matter of**

**TIMOTHY M. MCGINN and,**  
**DAVID L. SMITH,**

**Respondents.**

**ORDER MAKING FINDINGS**  
**AND IMPOSING REMEDIAL**  
**SANCTIONS PURSUANT TO SECTION**  
**15(b) OF THE SECURITIES EXCHANGE**  
**ACT OF 1934 AND SECTION 203(f) OF**  
**THE INVESTMENT ADVISERS ACT OF**  
**1940 AS TO DAVID L. SMITH**

**I.**

On September 6, 2013, the Securities and Exchange Commission (“Commission”) instituted public administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against David L. Smith (“Smith” or “Respondent”).

**II.**

In connection with these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission’s jurisdiction over them and the subject matter of these proceedings and to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Smith and Timothy M. McGinn ("McGinn") were the founders and primary owners of McGinn, Smith & Co., Inc. (MS & Co.), a broker-dealer based in Albany, NY. Smith was registered from 1981 through August 2012, and was associated with MS & Co. during that time. McGinn and Smith were also indirect owners of McGinn Smith Advisors, LLC, which was registered with the Commission as an investment adviser from January 2006 to April 2009.

2. On February 6, 2013, following a four-week trial in *United States v. David L. Smith and Timothy M. McGinn*, 12-cr-0028 (N.D.N.Y.) (DNH), a jury in the United States District Court for the Northern District of New York found McGinn and Smith guilty on multiple counts charged in the Superseding Indictment, including conspiracy to commit mail and wire fraud, mail fraud, wire fraud, securities fraud and filing a false tax return. On August 13, 2013, the Court entered judgments against McGinn and Smith. Smith was sentenced to a prison term of 120 months, and ordered to pay a fine of \$50,000 and restitution of \$5,989,726.

3. The counts of the Superseding Indictment to which Smith was found guilty alleged, among other things, that through various securities offerings from 2006 through 2009 he devised schemes to defraud investors, made misrepresentations and omissions in private placement memoranda, and misused investor funds.

### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Smith's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Smith be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served

as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Jill M. Peterson  
Assistant Secretary