STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102

In the Matter of: Geary Securities, Inc., fka Capital West Securities, Inc.; Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents. ODS File No. 09-141

(1) RESPONSE OF RESPONDENT, NORMAN FRAGER, TO THE DEPARTMENT'S MOTION FOR RECONSIDERATION ON MOTION FOR SUMMARY DECISION AND (2) NORMAN FRAGER'S CROSS MOTION FOR SUMMARY DECISION

COMES NOW the Respondent, Norman Frager ("Frager"), and respectfully submits (1) his response to the Motion for Reconsideration on Motion for Summary Decision (the "Motion to Reconsider") of the Oklahoma Department of Securities (the "Department") and (2) his Cross Motion for Summary Decision. In support hereof, Frager presents the following for consideration by the Hearing Officer.

INTRODUCTION

The Department filed a motion for Summary Decision against Respondent Norman Frager on November 1, 2011, which the Hearing Officer denied by Order dated May 16, 2012. On May 31, 2012, the Department filed its Motion to Reconsider, citing certain newly discovered information. This new information does absolutely nothing to sway the case in the Department's favor.

The new information on which the Department relies consists of the membership agreement between the Financial Industry Regulatory Authority ("FINRA"), a self-regulatory organization, and Geary Securities, Inc. ("Geary") and certain amendments made by Geary to its Written Supervisory Procedures at the request of FINRA. The only matter at issue is the level of

net capital required to be maintained by Geary pursuant to SEC Rule 15c3-1 (the "Net Capital Rule"), a rule issued by the U.S. Securities and Exchange Commission and which is self-executing. Any requirements related to Geary's membership agreement with FINRA are completely separate and have no bearing on the calculation of net capital under the Net Capital Rule. Accordingly, the membership agreement between Geary and FINRA (to which the Department is not a party), any amendments thereto and any changes to the Written Supervisory Procedures of Geary requested by FINRA in July 2010 as part of its oversight of Geary have no bearing on whether Geary was in compliance with the Net Capital Rule in February 2010. Accordingly, these "new" pieces of evidence should be ignored.

Regardless, the Department contends that, during the month of February, 2010, Geary was subject to a $250,000 net capital requirement pursuant to the Net Capital Rule. Furthermore, the Department argues that, during that month, Geary's net capital fell below this $250,000 requirement. Accordingly, the Department's position is that Frager, as a registered Financial and Operations Principals of Geary, had a duty to terminate Geary's' operations during the period in which it was out of net capital compliance. The Department's position, however, is without merit.

Contrary to the Department's assertions, Geary was not subject to a $250,000 net capital requirement during February of 2010. Instead, as will be shown below, because Geary promptly transmitted customer funds to its clearing broker, it was subject to a $100,000 net capital requirement. The Department's own records show that, during the month of February, 2010, Geary's net capital never fell below the $100,000 mark. Accordingly, as no net capital violation occurred, Frager was under no duty to terminate Geary's activities and the Department's claims must fail. For these reasons, the Department's Motion to Reconsider should be denied and summary decision awarded to Frager.

RESPONSE TO THE DEPARTMENT'S UNDISPUTED MATERIAL FACTS

1. Frager disputes Material Fact No. 1. While checks were made payable to Geary during the month of February 2010, those checks were never deposited into the account of Geary and, instead, were deposited directly with Geary's clearing broker, Pershing, LLC ("Pershing") by virtue of an electronic deposit system. Accordingly, Geary promptly transmitted customer funds to its clearing broker and, pursuant to SEC Rules 15c3-1(a)(2)(ii) and 15c3-3(k)(2)(i) was subject to a $100,000 net capital requirement. *See* Affidavit of Samuel Luque, Jr., attached hereto as Exhibit "A" at ¶¶ 41, 42; Affidavit of Norman Frager, attached hereto as Exhibit "B" at ¶ 7.

2. Frager does not dispute that the written supervisory policies in effect in February 2010 contemplated checks being made payable to Geary. However, Frager disputes that these policies have any relevance as to whether a violation of SEC Rule 15c3-1 occurred. *See* Exhibit "A" at ¶¶ 36-40; Exhibit "B" at ¶ 10.

3. Frager does not dispute that the Department's Exhibit "B" contains the quoted language. However, Frager disputes that the policies from which the quoted language were taken have any relevance as to whether a violation of SEC Rule 15c3-1 occurred. *See* Exhibit "A" at ¶¶ 36-40; Exhibit "B" at ¶ 10.

4. Frager disputes the Department's Material Fact No. 4. While there were no written policies in place dealing with this situation, the procedure that was utilized by Geary involved using an electronic deposit system to directly deposit any checks written payable to Geary directly into the accounts of its clearing firm, Pershing, such that Geary never held or received customer funds for the purposes of SEC Rules 15c3-1(a)(2)(ii) and 15c3-3(k)(2)(i)

because it promptly transmitted such customer funds to Pershing. *See* Exhibit "A" at ¶¶ 41, 42; Exhibit "B" at ¶ 4.

5. Frager does not dispute that he wrote a letter to Susan Barbazon-Wallace requesting a reduction in the net capital requirement contained in Geary's membership agreement with FINRA. However, Frager does dispute that the net capital requirement contained in the membership agreement with FINRA has any bearing on whether a violation of SEC Rule 15c3-1 occurred. *See* Exhibit "A" at ¶¶ 29-35; Exhibit "B" at ¶ 10.

6. Frager does not dispute that his July 13, 2010, letter contained the quoted passage. However, Frager does dispute that the net capital requirement contained in the membership agreement with FINRA has any bearing on whether a violation of SEC Rule 15c3-1 occurred. *See* Exhibit "A" at ¶¶ 29-35; Exhibit "B" at ¶ 10.

7. Frager does not dispute that on July 27, 2010, Althea Roberts notified Pershing of a change in the net capital requirement contained within Geary's membership agreement with FINRA. However, Frager does dispute that the net capital requirement contained in the membership agreement with FINRA has any bearing on whether a violation of SEC Rule 15c3-1 occurred. *See* Exhibit "A" at ¶¶ 29-35; Exhibit "B" at ¶ 10.

8. Frager does not dispute that the July 27, 2010, letter contains the quoted passage. However, Frager does dispute that the net capital requirement contained in the membership agreement with FINRA has any bearing on whether a violation of SEC Rule 15c3-1 occurred. Frager further disputes that any requirement contained in the membership agreement mandating that all customer checks be made payable to Pershing, and not Geary, has any effect on whether a violation of SEC Rule 15c3-1 occurred. *See* Exhibit "A" at ¶¶ 29-40; Exhibit "B" at ¶ 10.

9. Frager does not dispute that Ms. Roberts sent a letter to Donald J. DeBlanc or that the letter contained the quoted passage. However, as already noted, Frager disputes that any net capital requirement contained within the membership agreement, or any requirement regarding to whom customer checks should made payable, has any bearing on whether a violation of SEC Rule 15c3-1 occurred. *See* Exhibit "A" at ¶¶ 29-40; Exhibit "B" at ¶ 10.

10. Frager does not dispute that he filed a notice with FINRA on February 10, 2010. However, Frager disputes that this notice was to inform FINRA that Geary was below the net capital it was required to maintain pursuant to SEC Rule 15c3-1. Instead, this notice was intended to notify FINRA that the firm was below the net capital requirement contained in its membership agreement with FINRA. Accordingly, it has no relevance as to a determination under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at¶ 10, 13.

11. Frager does not dispute that the referenced notice stated a net capital requirement of $250,000. However, as noted above, the referenced notice related to the net capital requirement contained within Geary's membership agreement with FINRA, not the net capital provided for under SEC Rule 15c3-1. Accordingly, the cited notice is not relevant to a determination of net capital under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at¶ 10, 13.

12. Frager does not dispute that he filed a notice with FINRA on February 12, 2010. However, Frager disputes that this notice was to inform FINRA that Geary was below the net capital it was required to maintain pursuant to SEC Rule 15c3-1. Instead, this notice was intended to notify FINRA that the firm was below the net capital requirement contained in its membership agreement with FINRA. Accordingly, it has no relevance as to a determination under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at¶ 10, 13.

13. Frager does not dispute that the referenced notice stated a net capital requirement of $250,000. However, as noted above, the referenced notice related to the net capital requirement contained within Geary's membership agreement with FINRA, not the net capital provided for under SEC Rule 15c3-1. Accordingly, the cited notice is not relevant to a determination of net capital under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at¶ 10, 13.

14. Frager does not dispute that he filed a notice with FINRA on February 26, 2010. However, Frager disputes that this notice was to inform FINRA that Geary was below the net capital it was required to maintain pursuant to SEC Rule 15c3-1. Instead, this notice was intended to notify FINRA that the firm was below the net capital requirement contained in its membership agreement with FINRA. Accordingly, it has no relevance as to a determination under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at¶ 10, 13.

15. Frager does not dispute that the referenced notice stated a net capital requirement of $250,000. However, as noted above, the referenced notice related to the net capital requirement contained within Geary's membership agreement with FINRA, not the net capital provided for under SEC Rule 15c3-1. Accordingly, the cited notice is not relevant to a determination of net capital under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at¶ 10, 13.

16. Frager does not dispute that he filed an "early warning" notice with FINRA on February 12, 2010. However, Frager disputes that this notice was to inform FINRA that Geary was below 120% of the net capital it was required to maintain pursuant to SEC Rule 15c3-1. Instead, this notice was intended to notify FINRA that the firm was below 120% of the net capital requirement contained in its membership agreement with FINRA. Accordingly, it has no

relevance as to a determination under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at ¶ 10, 13.

17. Frager does not dispute that the referenced notice stated a net capital requirement of $250,000. However, as noted above, the referenced notice related to the net capital requirement contained within Geary's membership agreement with FINRA, not the net capital provided for under SEC Rule 15c3-1. Accordingly, the cited notice is not relevant to a determination of net capital under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at¶ 10, 13.

18. Frager does not dispute that he filed an "early warning" notice with FINRA on February 26, 2010. However, Frager disputes that this notice was to inform FINRA that Geary was below 120% of the net capital it was required to maintain pursuant to SEC Rule 15c3-1. Instead, this notice was intended to notify FINRA that the firm was below 120% of the net capital requirement contained in its membership agreement with FINRA. Accordingly, it has no relevance as to a determination under SEC Rule 15c3-1. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at ¶ 10, 13.

19. Frager does not dispute that the referenced notice stated a net capital requirement of $250,000. However, as noted above, the referenced notice related to the net capital requirement contained within Geary's membership agreement with FINRA, not the net capital provided for under SEC Rule 15c3-1. Accordingly, the cited notice is not relevant to a determination of net capital under SEC Rule 15c3-I. *See* Exhibit "A" at ¶¶ 36-40; *See* Exhibit "B" at¶ 10, 13.

20. Frager does not dispute the Department's Material Fact No. 20.

21. Frager disputes the Department's Material Fact No. 21 as the Department has not proffered sufficient evidence to support the same. The Department relies on the affidavit of Carol Gruis to state the content of the worksheets referenced in Material Fact No. 20. Ms. Gruis' statements are clearly hearsay and may not be considered as evidence of what was contained in the worksheets. *See Ellidge v. Staring*, 939 P.2d 1163, 1165-66 (Okla. Ct. App. 1996) (hearsay contained in affidavit may not be considered for summary judgment purposes).

ADDITIONAL UNDISPUTED FACTS

1. Even if a firm's membership agreement with FINRA contains a net capital requirement of $250,000, the firm may voluntarily limit its activities so as to comply with a lesser net capital standard so long as it complies with SEC Rule 15c3-1. *See* Exhibit "A" at ¶ 30; Exhibit "B" at ¶ 10.

2. During the month of February, 2010, while checks were made payable to Geary, none of those checks were deposited into Geary's accounts. *See* Exhibit "B" at ¶ 7.

3. Instead, all of the checks that were made payable to Geary were promptly deposited directly into the account of Pershing, its clearing broker, by means of an electronic deposit system in compliance with SEC Rule 15c3-3(k)(2)(i). *See* Exhibit "B" at ¶ 7.

4. By using this electronic deposit system, Geary never "received or held" customer funds for the purposes of the Net Capital Rule because it promptly transmitted such customer funds to Pershing. *See* Exhibit "A" at ¶ 41; Exhibit "B" at ¶ 7.

5. Accordingly, Geary was subject to a $100,000 net capital requirement under SEC Rules 15c3-1(a)(2)(ii) and 15c3-3(k)(2)(i). *See* Exhibit "A" at ¶ 41; Exhibit "B" at ¶ 7.

6. At no point during the month of February, 2010, did Geary's net capital fall below $100,000. *See* Exhibit "B" at ¶ 14. *See also* Exhibit "3" to the Affidavit of Carol Gruis, included in the Department's Motion to Reconsider, and attached hereto as Exhibit "C."

ARGUMENT AND AUTHORITY

A. STANDARD OF DECISION.

As stated in the Department's initial Motion for Summary Decision, the Hearing Officer's authority to order summary decision is akin to a state or federal court's authority to enter summary judgment. Summary Judgment is proper when the record before the Court shows there is no substantial controversy as to any material fact. *See* 12 Okla. Stat. § 2056; *Kating v. City of Pryor*, 977 P.2d 1142, 1144 (Okla. Civ. App. 1998). All inferences drawn from the undisputed facts must be drawn in favor of the non-moving party. *Id.* However, the mere contention that facts do or might exist so as to create a question of fact is insufficient to defeat a motion for summary judgment. *Id.*

In the present case, the affidavits of Samuel Luque, Jr., and Norman Frager affirmatively establish that during the month of February, 2010, Geary was in compliance with its net capital requirements pursuant to SEC Rule 15c3-1. More particularly, during that month, Geary neither held nor received customer funds for the purposes of the rule as it promptly transmitted all funds directly to its clearing broker, Pershing. As a result, Geary was subject to a net capital requirement of $100,000. The Department's own evidence clearly shows that Geary never fell below $100,000 of net capital and, accordingly, no violation of SEC Rule 15c3-1 occurred during February, 2010. For these reasons, the Department's Motion for Reconsideration should be denied and summary decision should be awarded to Frager.

B. During the Month of February 2010, Geary Neither Held Nor Received Customer Funds and, as a Result, Was Subject to a $100,000 Net Capital Requirement.

A broker dealer's net capital requirement is governed by SEC Rule 15c3-1. Pursuant to that rule, a broker dealer is required to maintain a certain level of net capital dependent upon the activities that the broker dealer undertakes. Subsection (a)(2)(i) of 15c3-1 provides that a broker dealer is subject to a $250,000 net capital requirement if "it carries customer or broker or dealer accounts and receives or holds funds or securities for those persons." However, subsection (a)(2)(ii) of 15c3-1 states that a $100,000 net capital requirement applies if a broker dealer is exempt from the provisions of Rule 15c3-3 "pursuant to paragraph (k)(2)(i) thereof." In turn, 15c3-3(k)(2)(i) states that a broker dealer is exempt from 15c3-3 if:

> carries no margin accounts, ***promptly transmits all customer funds*** and delivers all securities received in connection with his activities as a broker or dealer, does not otherwise hold funds or securities for, or owe money or securities to, customers and effectuates all financial transactions between the broker or dealer and his customers through one or more bank accounts, each to be designated as "Special Account for the Exclusive Benefit of Customers of (name of the broker or dealer)"

(emphasis added). Accordingly, among other requirements,[1] if a broker dealer promptly transmits all customer funds to its clearing broker, it is subject to a $100,000 net capital requirement.

It is undisputed that, at all relevant times during February of 2010, Geary maintained net capital that was above $100,000. *See* Exhibit "B" at ¶ 14; Exhibit "C." The sole dispute is over the effect of the fact that certain customers wrote checks that were "payable" to Geary. The Department contends that Geary was subject to subsection (a)(2)'s $250,000 requirement because these checks were payable to Geary. As will be shown below, however, regardless of to

[1] The Department has not contended that Geary has not met any of the other requirements of 15c3-3(k)(2)(i) and, accordingly, the only issue that will be addressed is the prompt transmittal of customer funds.

whom these checks were made payable, because Geary promptly transmitted all customer funds to Pershing, it was, instead subject to a $100,000 net capital requirement.

The Department bases its argument solely on the fact that there were customers of Geary who wrote checks where the "pay to" line of the check referenced Geary Securities, Inc. Interestingly, at no point has the Department ever proffered any evidence that any of these checks were ever deposited into any account of Geary. In fact, the Department's own Director of Licensing and Examination (upon whose affidavit the Department's Motion to Reconsider principally relies) admitted that she never even checked to see if those checks were deposited into Geary's accounts. *See* Deposition of Carol Gruis, attached hereto as Exhibit "D" at p. 30. Had the Department reviewed the account records it would have seen that ***at no point during February, 2010, were any checks from Geary's Customers deposited into Geary's Accounts.*** *See* Exhibit "B" at ¶ 7. Instead, Geary utilized an electronic deposit system whereby these checks, even though they may have been written as payable to Geary, were deposited directly into the account of Geary's clearing broker, Pershing. *See Id.*

The Department myopically focuses on 15c3-1(a)(2)(i) while ignoring subsection (ii) which immediately follows. Pursuant to subsection (ii), if Geary is exempt from 15c3-3 by virtue of promptly transmitting customer funds, it is subject to a $100,000 net capital requirement. The affidavit of Samuel Luque, Jr., who has over forty years of securities industry and regulatory experience, as well as extensive experience with SEC Rule 15c3-1, clearly establishes that, by utilizing the electronic deposit system, Geary never received or held customer funds for the purposes of the Net Capital Rule. More specifically, Mr. Luque's affidavit states as follows:

> 41. A firm that deposits checks directly to the clearing broker through the Electronic Deposit System, in which the credit appears in the customer's account

at the clearing broker on the date of check receipt, has not received or held funds or securities for that customer.

42. Whether or not a customer check is made out to the introducing broker, to determine if there is a net capital violation under the Net Capital Rule, the funds would have to be deposited into the account of the introducing broker, and an immediate electronic deposit into the customer's account at the clearing broker does not constitute holding customer funds for purposes of Rule 15c3-1.

See Exhibit "A" at ¶¶ 41-42. Furthermore, Frager's affidavit unequivocally states that, from 2007 onward, Geary "immediately scanned and electronically deposited into the account of the clearing/carrying broker" all checks it received. *See* Exhibit "B" at ¶ 7. Accordingly, as all of the checks given to Geary by its customers were promptly transmitted to its clearing broker by virtue of the electronic deposit system, Geary was only subject to a $100,000 net capital requirement pursuant to 15c3-1(a)(2)(ii).

For these reasons, the Department's Motion to Reconsider should be denied and summary decision should be awarded in Geary's favor.

C. The Fact that Geary's Membership Agreement with FINRA May have Listed a $250,000 Net Capital Requirement, or That Geary's Internal Policies May have Allowed Checks to be Written Payable to the Firm, is Irrelevant to a Determination under 15c3-1.

In an effort to shore up the weaknesses in its argument, the Department spends a large portion of its brief addressing two points: (1) that Geary's membership agreement with FINRA contained a $250,000 net capital requirement and (2) that Geary's policies and procedures in effect in February, 2010, allowed for customers to write checks payable to Geary. However, both of these arguments lack any relevance to the primary question: what was Geary's net capital requirement under Rule 15c3-1? Accordingly, as will be shown below, these arguments are irrelevant.

The Department focuses on Geary's membership agreement with FINRA, noting that it contained a $250,000 net capital requirement in February, 2010, and that it wasn't until several months later that the membership agreement was amended to lower the net capital requirement to $100,000. However, as not only Frager and Mr. Luque, but the Department's own expert, David Paulukaitis, have stated, the net capital requirement contained in SEC Rule 15c3-1 is self-executing and the net capital requirement contained in a firm's membership agreement with FINRA is wholly unrelated and has no bearing on 15c3-1's requirements. *See* Exhibit "A" at ¶¶ 29-35; Exhibit "B" at ¶¶ 10-12; Deposition of David Paulukaitis at p. 94, attached hereto as Exhibit "E." Accordingly, the fact that Geary's membership agreement with FINRA may have contained a $250,000 net capital requirement in February, 2010, has absolutely no effect on Geary's minimum net capital pursuant to SEC Rule 15c3-1. For this reason, the Department's arguments in this regard should be ignored.

Similarly, the Department argues that certain notices sent by Frager on behalf of Geary to FINRA reflect Geary's Net Capital as being $250,000, not $100,000. These notices were sent by Frager to FINRA to inform FINRA of matters related to Geary's compliance with the net capital requirement contained in its membership agreement, ***not Geary's compliance with the net capital requirement pursuant to SEC Rule 15c3-1***. *See* Exhibit "B" at ¶ 13. Had Frager intended for the notices to relate to SEC Rule 15c3-1 compliance, the notices would have been sent to the SEC, not just FINRA. *Id.* For these reasons, the notices cited by the Department have no bearing on Geary's net capital requirements under 15c3-1.

Finally, the Department argues that Geary had no policies in place in February, 2010, to prevent customers from making their checks payable to Geary. However, this argument is simply unavailing. First, as already noted above, the fact that checks may have been written

payable to Geary is not determinative of whether Geary was subject to a $250,000 net capital requirement. Instead, what is determinative is whether Geary promptly transmitted those funds to Pershing under 15c3-3(k)(2)(i). As already shown, the checks in February, 2010, were promptly transmitted to Pershing by virtue of the electronic deposit system and, accordingly, Geary was subject to a $100,000 net capital requirement. *See* Exhibit "A" at ¶¶ 41-42; Exhibit "B' at ¶ 7. Perhaps more importantly, however, SEC Rule 15c3-1 contains no provision requiring that a firm have certain policies in place to prevent customer checks from being written in their name.[2] Accordingly, whether or not such policies were in place has absolutely no bearing on Geary's net capital requirement and should be discounted.

CONCLUSION

As clearly demonstrated, Geary was subject to a $100,000 net capital requirement during February of 2010. While checks may have been written payable to Geary during this time, Geary never "received" those checks for the purposes of SEC Rule 15c3-1 because those checks were directly deposited into the accounts of its clearing broker, Pershing. Furthermore, the Department's arguments with regard to the net capital requirement contained in Geary's membership agreement with FINRA, as well as the arguments related to Geary's procedures in place during February, 2010, are simply irrelevant to a determination of Geary's net capital requirement and should be disregarded. For these reasons, the Department's Motion to must be denied and summary decision should be awarded in favor of Frager.

[2] To the extent FINRA rules or interpretations may contain such a requirement, such interpretations are not determinative of whether any violation of SEC Rules occurred. If there exists any problem with Geary's compliance with FINRA interpretations, the Department has no standing to assert the same.

Respectfully Submitted,

Susan E. Bryant, OBA #5842
Bryant Law, a Professional Corporation
62 Bayview Street, Second Floor
Camden, Maine 04843
Telephone: 207-230-0066
E-mail: sbryant@bryantlawgroup.com

Donald A. Pape, OBA #6883
Melvin R. McVay, Jr., OBA #6096
Jason M. Kreth, OBA #21260
Phillips Murrah PC
13th Floor, Corporate Tower
101 N. Robinson
Oklahoma City, OK 73102
Telephone: 405-235-4100
E-mail: don@dapape.com
mrmcvay@phillipsmurrah.com
jmkreth@phillipsmurrah.com

Attorneys for Respondent Norman Frager

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2012, a copy of the foregoing document was served on the following via electronic mail:

Hearing Officer:

Mr. Bruce R. Kohl
201 Camino del Norte
Santa Fe, NM 87501
e-mail: bruce.koh109@gmail.com

Oklahoma Department of Securities

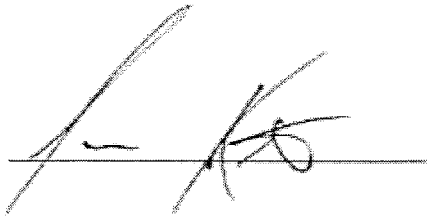
Brenda London, e-mail: blondon@securities.ok.gov

OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, OK 73102

Attorneys for Oklahoma Department of Securities:

Melanie Hall, Director of Enforcement, e-mail: mhall@securities.ok.gov
Terra Shamas Bonnell, Enforcement Attorney, e-mail: tbonnell@securities.ok.gov

OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, OK 73102



STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102

In the Matter of:

Geary Securities, Inc., fka Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents. **File No. 09-141**

AFFIDAVIT OF SAMUEL LUQUE, JR.

Samuel Luque, Jr., being of lawful age and being duly sworn, deposes and states as follows:

1. I am currently a securities industry consultant with over 40 years of securities industry and regulatory experience.

2. In my current work as a consultant, I provide a variety of consulting services to broker-dealers, legal professionals and other financial organizations.

3. I am currently registered as a General Securities Representative, General Securities Principal and a Financial and Operations Principal (*FinOP*).

4. During my years as a consultant, I have served as the FinOP for registered broker-dealers that are members of the Financial Industry Regulatory Authority (*FINRA*), which is the successor to the National Association of Securities Dealers, Inc. (*NASD*).

5. From 1984 to 2001, I was employed by the NASD, where I started as an Assistant Director of Compliance before being promoted to Associate Director of Financial Responsibility/Compliance, which position I held from 1986 until my retirement in 2001.

6. My experience at the NASD included 17 years during which I conducted financial examinations of broker-dealers and 17 years during which I trained NASD examiners to conduct such examinations.

7. Before my employment at the NASD, I spent seven (7) years working for the U.S. Securities and Exchange Commission (*SEC*) in various capacities including Securities Compliance Examiner; Senior Compliance Examiner; and Securities Examination Specialist, Division of Market Regulation.

8. After leaving the SEC and before joining the NASD, I co-founded the consulting firm Rubin, Luque, Inc. where I provided compliance and financial regulatory consulting services to broker-dealers.

EXHIBIT
A

9. My opinions are based on a review of various documents provided to me by counsel and my broad experience as a securities industry regulator, a FinOP for registered broker-dealers and a compliance consultant.

10. In any given transaction in securities, there are two sides to the transaction – the tender of the securities by the seller and the tender of payment by the buyer.

11. The "trade date" of any given transaction is the date on which the trade is presented for execution.

12. The "settlement date" is the date on which both of the following should have been completed:

    a. the purchaser has made payment to the seller and has received the securities from the seller; and

    b. the seller has delivered the securities and has received the payment from the purchaser.

13. Once settlement and clearance occur, under the net capital rule, the transaction is reported as having been completed as of the trade date.

14. The Depository Trust Company facilitates trading and settlement by providing a system for electronic recording of transactions.

15. Under current securities laws, settlement generally occurs three days following the trade date, but can take longer under certain conditions.

16. Introducing brokers must use clearing brokers to execute transactions in securities by settling transactions submitted by the introducing brokers.

17. When a trade is presented to a clearing broker by an introducing broker, or when payment is advanced by a customer (account with credit balances), the clearing broker must reflect the other side of the transaction (the securities or cash) in an account on its books, i.e. the books and records of the clearing broker.

18. Under such circumstances, the allocation of the securities or cash to an account does not indicate that the transaction has in fact settled or that the securities or cash belongs to the account holder and the transaction and allocation will be revised on the settlement date to reflect the actuality of the transaction.

19. Correcting trades indicated on account statements to reflect subsequent activity - "as-of" trades, "cancel and corrections," or "cancel and rebills" - are a routine part of brokerage accounting and are not attempts to conceal a perceived deficiency.

20. The fact that payment is made on the trade date and the fact that the securities appear in an account in the name of the introducing broker on the trade date do not mean that the transaction has settled or that the purchaser has paid for the trade; rather it simply

indicates that the first side of the transaction has been completed and the transaction is pending until a purchaser submits payment for the transaction.

21. If there is a significant amount of time between the date the clearing broker remits payment for a transaction and the date the clearing broker receives payment from the purchaser, the clearing broker will charge the introducing broker costs for advancing the payment.

22. Both sides of the trade are locked into the records of the Depository Trust Company, and the transaction needs to be settled or cancelled by both sides. If the purchaser fails to pay for the securities, the clearing broker will sell the securities in the market and charge any loss and costs incurred to the introducing firm.

23. If a person attempts to purchase a security but never pays for it, even if the person intended to purchase the security, that transaction never settles and the securities are never transferred to the person.

24. I have reviewed the documents presented to me involving the sale by Frontier Bank of Private Label Collateralized Mortgage Obligations (*PL-CMOs*) in late May 2009. I have reviewed Pershing account statements of Geary Securities, Inc.; Joseph McKean and The Eagle Sky Foundation, Inc. (collectively, the *McKean Accounts*); and those documents are consistent with a transaction between Frontier Bank and the McKean Accounts.

25. I have not seen any documentation supporting the payment by Geary Securities, Inc. for the PL-CMOs by Geary Securities, Inc. – the firm did not have sufficient capital in its accounts to make the payment, there is no documentation of funds transferred into or out of the Geary Securities, Inc. accounts to pay for the PL-CMOs and there are no loan documents indicating that Pershing or any other party loaned the funds to Geary Securities, Inc. to settle the transaction.

26. In addition, I reviewed the McKean accounts and the Geary Securities, Inc. account and the payment received by Geary Securities, Inc. is consistent with a profit being earned on the transaction, but not consistent with the purchase of securities by the McKean accounts from Geary Securities, Inc.

27. I have reviewed the annotation on the account statements made by Norman Frager in connection with preparing the May 31, 2009 FOCUS report and that annotation is consistent with the settlement of a transaction after the end of the month into a customer account.

28. Based on my review, there is no documentation supporting any borrowing of funds to purchase the PL-CMOs by Geary Securities, Inc.; accordingly, they were never purchased by Geary Securities, Inc. and the position on the books of Pershing was properly ignored in the calculation of net capital.

29. The membership agreement is an agreement between the Financial Industry Regulatory Authority (FINRA) as successor to the National Association of Securities Dealers, Inc. (NASD) and the broker, in this case Geary Securities, Inc.

30. The membership agreement represents the highest level of business activity that a firm is authorized to conduct under its FINRA/NASD license; however, a firm can voluntarily limit its activities by complying with a lesser standard so that the firm is not required to maintain the level of net capital stated in its membership agreement; provided it complies with the requirements of SEC Rule 15c3-1 (the *Net Capital Rule*).

31. A firm can, but is not required to request an amendment to its membership agreement to rely on a lower net capital requirement, if the firm limits its activities to those allowed for the lesser level under Rule 15c3-1.

32. The Net Capital Rule governs net capital requirements for all broker-dealers registered with the SEC and is the sole basis for determining when a firm has a net capital violation.

33. At any given time, the amount of net capital stated in a firm's membership agreement may be different than the amount of net capital actually required under Rule 15c3-1.

34. To determine if a firm has violated the net capital rule, there must be a finding first of the amount of net capital required based on the business conducted by the firm at the time of the alleged net capital violation under the rule and not under the membership agreement and secondly there must be a finding that the firm conducted a securities business when the net capital was below the minimum level required by the rule based on that type of business (again, not the level in the membership agreement).

35. To have a net capital violation, the firm must have actually conducted a securities business during the time its net capital was less than that required under Rule 15c3-1, irrespective of the amount required in its Membership Agreement.

36. A firm adopts policies and procedures to establish a system reasonably designed to prevent violations of the statutes and rules applicable to its business.

37. A firm can adopt procedures that are more stringent than the statutes or rules applicable to a firm.

38. If a firm violates the procedures, but not the rule, the firm does not have a regulatory violation, but only a failure to follow its own procedures.

39. Conversely, the non-existence of procedures does not mean that the firm has violated the rule that the procedures are intended to address, but only that it possibly did not have adequate procedures in place.

40. The policies and procedures are irrelevant in determining if there is a net capital violation – what determines the violation is the activity of the firm on the date for which the capital violation is alleged.

41. A firm that deposits checks directly to the clearing broker through the Electronic Deposit System, in which the credit appears in the customer's account at the clearing broker on the date of check receipt, has not received or held funds or securities for that customer.

42. Whether or not a customer check is made out to the introducing broker, to determine if there is a net capital violation under the Net Capital Rule, the funds would have to be deposited into the account of the introducing broker, and an immediate electronic deposit into the customer's account at the clearing broker does not constitute holding customer funds for purposes of Rule 15c3-1.

43. The reporting obligations under Rule 17a-11 require reporting if the net capital falls below that required under Rule 15c3-1, not the amount required under the FINRA membership agreement.

By: _____
Samuel Luque, Jr.

Subscribed and Sworn to before me this 13th day of July 2012.

By: _____
Notary Public

ERIN R. HAJDU
Notary Public - State of Florida
My Comm. Expires Oct 24, 2014
Commission # EE 21015
Bonded Through National Notary Assn.

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102

In the Matter of:

Geary Securities, Inc., fka Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents. File No. 09-141

AFFIDAVIT OF NORMAN FRAGER

I, Norman Frager, being of lawful age and being duly sworn, depose and state as follows:

1. From 1995 through 2011, I was registered through the Financial Industry Regulatory Authority (*FINRA*) as a Limited Principal - Financial and Operations (*FinOP*) of Geary Securities, Inc. and its predecessor, Capital West Securities, Inc. (hereinafter, collectively, *Geary Securities* or the *Firm*)

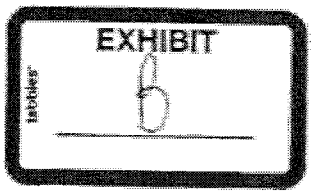
2. I have personal knowledge of the information set forth in this Affidavit.

3. I gave testimony through a deposition taken by the Oklahoma Department of Securities (*Department*) on May 13, 2010 during which I discussed the net capital requirements of Geary Securities stating accurately that the Firm was required to maintain net capital in compliance with Rule 15c3-1 (*Net Capital Rule*) promulgated by the U.S. Securities and Exchange Commission (*SEC*) under the Securities Exchange Act of 1934 (*Exchange Act*) and that the Firm was subject to a membership agreement (*Membership Agreement*) with FINRA outlining the net capital requirements and obligations imposed on the Firm by FINRA.

4. The Membership Agreement originally executed by the Firm in 1995 provided for a $100,000 net capital requirement, following the execution of which the Firm set up a special reserve account as authorized by subsection (k)(2) of Rule 15c3-3 (*Customer Protection Rule*) issued by the SEC under the Exchange Act, allowing the Firm to accept customer checks in the future should such an account be needed.

5. Subsequently, in response to customer demand, the Firm sought authorization from the National Association of Securities Dealers, Inc. (*NASD*, one of the entities that was merged to create FINRA) to accept customer checks made payable to the Firm.

6. In February 1998, FINRA delivered an amended Membership Agreement to the Firm providing for a $250,000 net capital requirement that allowed the Firm to accept customer checks made payable to the Firm.



7. Irrespective of the change in net capital, no customer checks were ever deposited into the Firm's account - from inception until 2007, all customer checks were deposited into a local Oklahoma City account owned by the Firm's clearing/carrying firm and, from 2007 forward, all checks were immediately scanned and electronically deposited into the account of the clearing/carrying broker and credited immediately to the customer irrespective of whether the checks were made out to the firm or the clearing broker.

8. The back office operations of the Firm during all of 2009 and 2010 were under the supervision of Althea Roberts, also a registered FinOP, who was responsible for back office operations and who, to my knowledge, attempted to have all customers make checks payable to the clearing broker.

9. During its entire existence, the Firm continued to maintain the special account required by the Customer Protection Rule; however, at no time were any customer funds ever deposited into that account or any other accounts owned by Geary Securities.

10. The Net Capital Rule is distinct from the Firm's Membership Agreement and is self-executing, which means that the Firm will not be in violation of the Net Capital Rule irrespective of its Membership Agreement if the Firm complies with the requirements of the Net Capital Rule.

11. FINRA interpretations and guidance do not overwrite the clear terms of the Net Capital Rule, but give guidance to brokerage firms with respect to FINRA's interpretation of the Net Capital Rule.

12. To my knowledge, the Department was never a party to the Firm's Membership Agreement.

13. Although the Firm was not below net capital under the Net Capital Rule in February 2010 and therefore the Firm was not required to file notices with the SEC under SEC Rule 17a-11, I believed that I was required to make filings with FINRA to notify FINRA that the Firm was below the net capital agreed to in its Membership Agreement and therefore I made several such filings.

14. Because the Firm's net capital, as computed daily, never fell below the $100,000 and because the Firm was promptly forwarding (by electronic deposit) customer checks (regardless to whom made payable) to Pershing, I believed then and I believe now that Geary Securities was in full compliance with the Net Capital Rule and there was absolutely no reason for the Firm to discontinue doing business or to file a series of notices with the SEC under Rule 17a-11.

By: _____
Norman Prager

Subscribed and Sworn to before me this 31st day of July 2012.

By: Erika E Zimmerman
Notary Public

ERIKA E. ZIMMERMAN
My Commission Expires
February 1, 2015
St. Charles County
Commission #12393029

GEARY SECURITIES' DAILY NET CAPITAL COMPUTATIONS

INCLUDES DATES CHECKS WERE RECEIVED MADE PAYABLE
TO GEARY SECURITIES OR CAPITAL WEST SECURITIES

February 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 $254,190[1] Checks received[2]	2 $159,658 Checks received	3 $118,727 Checks received	4 $130,850 Checks received	5 $212,368 Checks received	6
7	8 $246,097 Checks received	9 $231,973 Checks received	10 $185,615 Checks received Filed Notice[3]	11 $267,757	12 $215,022 Checks received Filed Notice	13
14	15 Holiday	16 $221,236 Checks received	17 $225,210 Checks received	18 $225,213 Checks received	19 $240,947 Checks received	20
21	22 $293,379 Checks received	23 $241,706 Checks received	24 $204,578 Checks received	25 $219,267 Checks received	26 $968,261 Checks received Filed Notice	27
28						

Notes:

[1]These figures represent Geary Securities' daily net capital computations.

[2]These notations indicate Geary Securities received checks made payable to Geary Securities or Capital West Securities.

[3]Geary Securities filed notice pursuant to Rule 17a-11(b)(1), disclosing that the firm's net capital declined below the minimum amount required under Rule 15c3-1.

EXHIBIT C

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 N. ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102

In the Matter of: - FILE NO. 09-141

GEARY SECURITIES, INC., f/k/a CAPITAL WEST SECURITIES, INC.; KEITH D. GEARY; NORMAN FRAGER; and CEMP, LLC,

Respondents.

ORAL DEPOSITION OF CAROL GRUIS
TAKEN ON BEHALF OF THE RESPONDENTS
ON JUNE 20, 2012, BEGINNING AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the Department of Securities:

MS. TERRA SHAMAS BONNELL
MS. MELANIE HALL, Deputy Administrator
STATE OF OKLAHOMA, DEPARTMENT OF SECURITIES
120 N. Robinson, Suite 860
Oklahoma City, Oklahoma 73102
405.280.7700
tbonnell@securities.ok.gov
mhall@securities.ok.gov

On behalf of the Respondents:

MR. DONALD A PAPE
MR. JASON M. KRETH
PHILLIPS MURRAH, P.C.
401 West Main, Suite 440
Norman, Oklahoma 73069
405.364.3346
don@dapape.com
jmkreth@phillipsmurrah.com

ALSO APPEARING: Norman Frager

REPORTED BY: Cheryl D. Kendall, CSR, RPR

EXHIBIT
D

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Q. Is that created by a computer or is that something that the firm manually created?
A. It was -- I can tell you how it was presented to us. And it was presented --
Q. Please.
A. -- in like a spreadsheet.
Q. Okay. In an Excel spreadsheet or in a detail? I mean, not in Excel --
A. Well, it actually probably is a Word document copying a page that is a -- like a ledger.
Q. Okay.
A. A ledger. And then attached to that were copies of the checks.
Q. Okay. And it says financial -- you also reviewed financial records, clearing firm records and regulatory filings made. Did you ever review the checking accounts for Geary Securities in that review? In other words, did you see the bank accounts maintained -- that Geary Securities maintains?
A. No.
Q. So, obviously, you didn't determine if customer checks were deposited into Geary Securities checking accounts?
A. Did not.

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Q. When I was -- let me go off the record.
(An off-the-record discussion was had.)
Q. (By Mr. Pape) So you have -- you didn't review any checking account statements at all. Correct?
A. Correct.
Q. Do you know, was the account -- the remote scanning -- what do they call it? I don't even -- do you know what they call that?
A. I don't.
Q. Well, let's, for the purposes of this deposition, call it the remote deposit capture if that's okay?
A. Uh-huh.
Q. Banker kind of thing.
Do you know if the remote deposit capture was depositing the checks in a bank in New York or a bank in Oklahoma or do you have any clues where that goes?
A. I know I looked at the back of the checks, the stamp because they were stamped as well.
Q. Okay.
A. And I believe it was New York, but I -- --
Q. Okay.
A. -- if I remember correctly.

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Q. That's okay. That's close enough. That's more curiosity.
And you said you reviewed the statements from -- that the firm presented you of these accounts of the remote deposit capture documentation or a spreadsheet prepared by the firm?
A. It was a spreadsheet.
Q. Spreadsheet. Okay.
I'm confused too. When you say "net capital", do you mean net capital under the firm's membership agreement or net capital under 15c3-1?
A. Under 15c3-1.
Q. Are there any differences between the two?
A. Well, 15c3-1 will dominate.
Q. It will control?
A. That's the only one that matters.
Q. What's the difference between -- do you understand the term a $250,000 broker and a $100,000 broker?
A. I do.
Q. What are the differences between those two?
A. A two --
Q. I mean, other than one of them is 150 and -- or 250 --
A. A $250,000 broker dealer is one that carries customer accounts and they receive funds from those customers. The $100,000 broker dealer cannot receive. They have to forward funds but they are allowed to transact business in their proprietary account.
Q. Explain that last statement, "transact business in their proprietary account"?
A. If they have an inventory account, they can transact business in that inventory account.
Q. But the inventory account, obviously, is not a customer account?
A. It is not. It's the firm's account.
Q. It's the firm's account?
A. Uh-huh.
Q. So let's back up. And a 250K broker can carry accounts?
A. Yes.
Q. Is there anything additional that they can do?
A. Oh, a multitude of things. They can do everything.
Q. They can do everything?
A. Firm commitment, underwritings, everything, yes.
Q. And a 100K broker is basically limited to

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IN THE MATTER OF:

GEARY SECURITIES, INC., f/k/a CAPITAL WEST SECURITIES, INC.; KEITH D. GEARY; NORMAN FRAGER; and CEMP, LLC,

Respondents.

FILE NO. 90-141

DEPOSITION OF

DAVID B. PAULUKAITIS

9:19 a.m.

July 16, 2012

Mainstay Capital Market Consultants, Inc.

1040 Crown Pointe Parkway, Suite 840

Atlanta, Georgia

Colleen B. Seidl, RPR, CRR, CSR-B-1113

EXHIBIT
E

broker dealers and financial principals, so I don't remember anybody asking me whether a particular security would be subject to a hundred percent haircut or something less than that.

Q. In this case you didn't give us anything that backed up that particular statement. You didn't give us an interpretation or a release; is that correct?

A. Correct.

Q. I think that there was -- and again I apologize, this may be duplication. But we were talking about the membership agreement net capital requirements and the liability of a firm for net capital under 15c3-1, and I believe you stated very clearly that those are two distinct decisions; that a decision, a net capital violation under 15c3-1 does not depend on the membership agreement; is that correct?

A. Correct.

Q. And that a violation of membership agreement is something between the firm and FINRA?

A. Yes. Yes.

MS. BRYANT: I think that's it. Thank you very much.

EXAMINATION