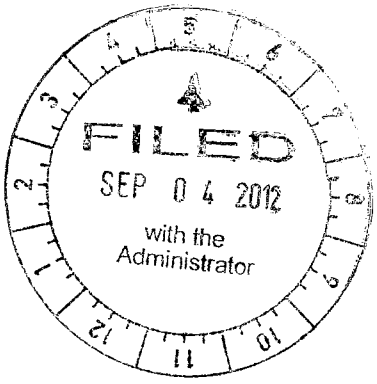
STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



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

RESPONSE OF RESPONDENT, NORMAN FRAGER, TO THE DEPARTMENT'S MOTION TO AMEND ITS FINAL WITNESS LIST

COMES NOW the Respondent, Norman Frager ("Frager"), and respectfully submits his Response to the Motion of the Oklahoma Department of Securities (the "Department") to amend its final witness list. For his response, Frager would show as follows:

A. The Department Should Not be Allowed to Amend its Final Witness List at this Late Date.

To date, the Department has failed to list any witness from Pershing, LLC ("Pershing") in its Final Witness List. Now, nearly three months after the discovery cutoff, and on the eve of the hearing on the merits, the Department asks the Hearing Officer to allow it to amend its Final Witness List to include Edward Banian, Vice President of Operations with Pershing.[1] The Department's purported reason for including Mr. Banian is that James Roth, the Pershing employee listed in Frager's Final Witness List, was unable to answer questions on certain issues raised by the Department during his deposition on July 26, 2012. In other words, the Department wants to add Mr. Banian because it was unable to obtain favorable testimony from Mr. Roth. This is clearly an insufficient basis to allow the inclusion of a new witness at the last minute.

[1] Mr. Banian is a margin department head in Pershing's California office. Frager is unsure as to why the Department believes that Mr. Banian will provide the testimony relevant to this matter as Mr. Banian cannot provide any input as to whether Pershing made any loan to Geary Securities, Inc. as he is not a member of the credit committee and his only responsibility is with regards to compliance with Regulation T of the Federal Reserve Board.

The instant enforcement action has been pending since September 22, 2010. Despite years of litigation, the Department has never once sought to add a Pershing witness to its witness list until now. Indeed, until the Department conducted the deposition of James Roth on July 26, 2012 (only after he was listed as a witness by Frager), the Department never even saw fit to issue a subpoena to Pershing to obtain documents relevant to this action or to depose any of the number of individuals at Pershing whom the Department was aware had information pertinent to this proceeding. Instead, the Department appears to have intended to ride Frager's coat tails and simply use Frager's Pershing witness (Mr. Roth) to support its case. Now that the Department has apparently determined that Mr. Roth's testimony is not helpful to its case, it wants relief from its failure to act timely.

The Department asserts that the inclusion of Mr. Banian should be allowed because it has only recently confirmed that Mr. Banian may have the information they seek. The truth is, however, that the Department was aware of Mr. Banian, and the fact that he may have relevant information, as early as June of 2010. *See* Transcript of Joan Schwartz Audio, attached hereto as Exhibit "A." Pershing was willing to allow the Department to interview Mr. Banian at that time and the Department has had every opportunity since then to formally depose him in this case. Despite this fact, the Department has done absolutely nothing to determine Mr. Banian's knowledge or insure that they had a witness from Pershing who could provide testimony on the issues involved in this case. The Department's failure to act, and act timely, is insufficient to allow for a last minute amendment to its Final Witness List.

B. The Inclusion of Mr. Banian on the Department's Final Witness List will Unfairly Prejudice Frager.

If the Hearing Officer should allow the Department to amend its Final Witness List, at this late stage, it will unfairly prejudice Frager. While no hearing date has been set, Frager

believes that this matter will be set in October of this year.[2] Accordingly, even if the Hearing Officer were willing to reopen discovery to allow Frager to depose Mr. Banian, such would have to be completed in the short amount of time remaining before the likely hearing date—a time in which Frager and his counsel should not be forced to conduct last minute discovery but, instead, be preparing for the hearing. Indeed, it's entirely possible that Mr. Banian might not be available for deposition during this truncated time frame, resulting in a need to continue the hearing even further. Accordingly, it is clear that Mr. Banian's inclusion would prejudice Frager.

It is also ironic that the Department now seeks to add a Pershing witness when, on May 24, 2012, the Department sought to prevent Frager from doing the exact same thing. At that time, the Department complained that listing such a witness "two weeks before the deadline for completion of discovery" would be prejudicial. Now, even though discovery closed nearly three months ago, the Department attempts to argue that Frager will suffer no prejudice as a result of Mr. Banian's inclusion. Such an argument is contrary to the Department's own position on this same issue only months before.

C. The Department Should Not be allowed to Call Mr. Banian as a Rebuttal Witness.

The Department should also not be allowed to use Mr. Banian as a "rebuttal witness." It is clear from a review of Oklahoma law that utilizing Mr. Banian as a rebuttal witness is improper. In passing on what is properly considered rebuttal evidence, the Oklahoma Supreme Court has stated as follows:

> The question is, then, what constitutes rebutting evidence? The most satisfactory definition of rebutting evidence that we have been able to find is ... 'that evidence which has become relevant or important only as an effect of some evidence introduced by the other side.' The function of rebutting evidence is to explain or

[2] Frager has been attempting to confirm the availability of all parties and witnesses for October dates but has, thus far, not heard from one individual. Accordingly, Frager has been unable to finally confirm that October will work for all parties involved but anticipates that the hearing will be able to be conducted in October.

> repel the evidence given by the adverse party. It is the duty of the plaintiff to present all of his evidence to make out his case in chief before resting, and it is not permissible to permit the plaintiff to introduce a portion of his evidence in chief and then to wait to see what the evidence on the part of the defendant is before introducing the rest of his evidence. The defendant has a right to require the plaintiff to introduce all of his evidence in chief before he should be required to introduce evidence in his defense.

Aggressive Carriers, Inc. v. Tri-State Motor Transit Co., 914 P.2d 1011, 1013-14 (Okla. Ct. App. 1997) (quoting the Oklahoma Supreme Court in *Poppy v. Duggan*, 235 P. 165 (Okla. 1925)). Utilizing this definition, the Oklahoma Court of Appeals has refused to allow a witness to testify for rebuttal purposes when there were no "evidentiary surprises" at trial. *Id.* at 1014. Accordingly, the Oklahoma Court of Appeals in *Aggressive Carriers* determined that rebuttal evidence is not properly used for items that should be presented in the Plaintiff's case in chief.

In the present case, it is undoubted that the Department intends to use Mr. Banian's testimony to prove its underlying case. Furthermore, the fact that the Department anticipates using Mr. Banian in advance of the hearing on the merits indicates that his use will not be to address any evidentiary surprises at the hearing. Accordingly, Mr. Banian is not a proper rebuttal witness.

D. If the Hearing Officer Grants the Department Leave to Amend its Witness List, Frager Should be Granted Leave to Depose Mr. Banian and Amend his Own Witness List as Necessary.

Should the Hearing Officer grant the Department's request over Frager's objection, at a minimum Frager should be granted sufficient time to depose Mr. Banian without prejudicing his preparation for the hearing. Furthermore, should it be determined, following Mr. Banian's deposition, that others at Pershing are more informed as to the matters at issue in this case or that any such individuals have additional information relevant to the matters before the Hearing

Officer, Frager should be given leave to conduct their depositions and, if needed, to amend his Final Witness List to include such individuals.

CONCLUSION

For all of the foregoing reasons, Frager requests that the hearing officer deny the Department's request to add Mr. Banian to its witness list and that the Department be prohibited from calling Mr. Banian as a witness at the hearing on the merits. Should the Hearing Officer decide to allow the Department to amend its Final Witness List over Frager's objection, Frager would ask that he be given sufficient time to depose Mr. Banian, that he be allowed to depose any additional Pershing witnesses who have additional information relevant to the matters before the Hearing Officer, and that he be allowed to add such individuals to his Final Witness List as needed.

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 September 4th, 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

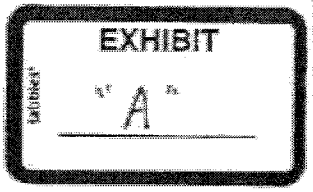
OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, OK 73102

06/25/10 JOAN SCHWATZ AUDIO

WORD FOR WORD REPORTING, LLC
100 NORTH BROADWAY, SUITE 3250
OKLAHOMA CITY, OK 73102
(405) 232-9673

REPORTED BY: JODI D'VOREE HORVATH, CSR, RPR

EXHIBIT
"A"



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(Transcription of provided audio:)

JOAN SCHWATZ: – condition.

MS. BONNELL: Right.

JOAN SCHWATZ: I think, frankly, just to give you two seconds of my personal opinion – and it is my personal opinion, but I think it is a pretty decent one based on a lot of time and energy spent here looking at transactions, asking questions to principals over at CapWest/Geary, talking amongst our staff, Jim Ross. I know you want to speak to Ed Banion. Other people like Rich Claus (phonetic), who is in our credit risk area, who were involved in conversations that we offered both – Rich up on the phone and in person to the FDIC for them to come here and share the information they had, as well as educate the FDIC agents, who were very nice and patient with us, but not, frankly, the most knowledgeable on this particular area, obviously, given that this is the FDIC and maybe not the FCC, but...

MS. BONNELL: Right.

JOAN SCHWATZ: We did not lend them any money. I think that, frankly, there was a misunderstanding on the part of the principal there about what impact putting those securities in their proprietary account at one point in time would have on their – on their actual capital requirements.

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MS. BONNELL: Right.

JOAN SCHWATZ: And so I think there was a request for financing which was met with "no" from our perspective. I think they reached out to Jim as the relationship manager. The way that things work at Pershing is that there is a relationship management team that is assigned to each of our introducing firms, so that they have two things. The benefit of someone having, you know, the ability to answer a lot of questions upfront for them because they are very knowledgeable about our systems and the way things work and where to get information.

But then also they have the (inaudible) liaison to work with them from back office areas like credit risk for margin lending and things like that. So Jim's role would have been (inaudible) to people at Geary's/CapWest who were asking for things and may not be getting them. He made them look to Marion with a different person or a better person here at Pershing or just reiterate the request.

MS. BONNELL: Okay. So Jim was on the relationship management team?

JOAN SCHWATZ: Right. And so Rich Claus, who is the second person in – I guess in the hierarchy of our credit risk department, would be the decision maker on

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who gets extensions of credit and who doesn't. And Ed Banion is in the Margin Department out on the west coast which was assigned to – sort of geographically for CapWest, given their location in the country. And he did get requests for – I want to use the word marginal, but I am just going to say extension of credit because I'm not 100 percent sure that it was technically a margin loan. I would have to go back and re-read the e-mail.

MS. BONNELL: And who was it that received the extension of credit?

JOAN SCHWATZ: Nobody – someone got a request. We did not extend them any credit.

MS. BONNELL: Okay.

JOAN SCHWATZ: So I believe something came through Ed Banion and Ed brought it to Rich's attention.

MS. BONNELL: Okay.

JOAN SCHWATZ: I don't know if that was before or after because I would have to go back and refresh my recollection, before or after he said, no, this is our policy, we don't lend against private label CMO's.

MS. BONNELL: And do you know exactly which entity it is that requested the extension of credit?

JOAN SCHWATZ: It was CapWest.

MS. BONNELL: On behalf of itself or on behalf

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of a customer?

JOAN SCHWATZ: No, on behalf of itself. I think there may have been an individual request for it. Which customer are you referring to? Are you referring to Dr. McKean?

MS. BONNELL: Yes.

JOAN SCHWATZ: Yeah. I think – I would have to go back and pull out the folder, but there was a separate request – hang on, because I have a big binder here.

MS. BONNELL: Okay.

JOAN SCHWATZ: And Sam and I just wanted to jump on the phone with you this morning, so we can certainly go through this, but there may have been a separate request for Dr. McKean for the financing in his – if I am remembering correctly, there may have been a separate request, but I would have to go back and check. Hang on.

UNKNOWN SPEAKER: I think it was only for the –

JOAN SCHWATZ: So here is Karen Coker to Ed Banion saying that we need a margin debit of 11 million – and I think she means loan. $11,182,383.91 on the above account of CMO's.

MS. BONNELL: Is that in an e-mail?

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JOAN SCHWATZ: Yeah. I have a hard copy, but we can get you all of the e-mails. I was going to say we can get you if you send –

MS. BONNELL: Don't we actually have it already? Do you know the date of it?

JOAN SCHWATZ: Yes. It was from Karen Coker to Ed Banion. Now, Ed forwarded it to me – I am looking to see the exact date on the e-mail. Yeah, six – June 2nd, 2009, 1:04 p.m. Now, I forwarded it – I got it forwarded to me from Ed Banion on January 13th of this year.

MS. BONNELL: Okay.

JOAN SCHWATZ: So I would have sent it around that date.

MS. BONNELL: Okay. So –

UNKNOWN SPEAKER: I have it.

MS. BONNELL: If we don't – I am just going to look after we hang up.

JOAN SCHWATZ: I think we have some – I think I have –

UNKNOWN SPEAKER: I definitely have a copy of that.

JOAN SCHWATZ: Yeah. And we sent them – I think I forwarded them directly to the FDIC, which I would be happy to, I was just going to say, to you as

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well.

MS. BONNELL: Okay. That would be great.

UNKNOWN SPEAKER: I will do that, Terra, when I get back –

MS. BONNELL: Thank you. Like I said, actually, we should have it, but I certainly don't think we've seen this e-mail because I think that would help explain some of our questions. So, okay, so Karen Coker did send an e-mail to Ed Banion on June 2nd asking for $11 million –

JOAN SCHWATZ: You know what? Just bear with me one second because in the back of this binder are the e-mail – we put these binders together for when the FDIC came on site.

MS. BONNELL: Okay.

JOAN SCHWATZ: So bear with me one second because I am refreshing my recollection.

MS. BONNELL: Sure.

JOAN SCHWATZ: Ed basically sent us e-mails that – now, we would have to go into the system to make sure there wasn't something else, but he had a whole bunch right on his desktop. So there is a request – they are all from that June 2nd time frame. So here is a bunch. They kind of go together and we'll forward them to you.

MS. BONNELL: Okay. That would be great.

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JOAN SCHWATZ: Yeah. Let me see if I can find the first one, because that would probably help if we just did them in order. Yeah. See, there is a whole back and forth, so I think it will be hard to do over the phone. I think it would be helpful if we just sent them to you. In the whole back and forth I'm just looking to see if it's – the account number is [redacted]1577. So it may be the customer account. I may have made a mistake. I would have to – let me just see if I can figure what account it is very quickly.

MS. BONNELL: I'm sorry. What was it? [redacted]

JOAN SCHWATZ: [redacted]1577.

MS. BONNELL: Okay. Well, that would not be –

JOAN SCHWATZ: It is actually McKean's account.

MS. BONNELL: Yeah, that is what I said, that wouldn't be –

JOAN SCHWATZ: A firm account. So I take it back.

MS. BONNELL: Okay. And so they are asking for the 11 million on behalf of that account?

JOAN SCHWATZ: Yes. Yeah, I take it back. It wasn't –

UNKNOWN SPEAKER: I thought it was –

JOAN SCHWATZ: No. I think they did have one conversation with Rich Claus, but I am not sure if it is

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the subject of the e-mails. These all relate to the customer.

MS. BONNELL: Okay.

JOAN SCHWATZ: And I think he said this is just not something we would do, but we would have to double check with him.

MS. BONNELL: Okay.

JOAN SCHWATZ: So these all – and I apologize, Terra, that was my not remembering correctly, which is why you would want to pull them out. They are all about that account.

MS. BONNELL: Okay.

JOAN SCHWATZ: Talking about that he has got a lot of money, they are going to have a wire come in, (inaudible) hopeful. I have them all right here. So Sam has them as well. So I will just forward them to you. And it says in here, you will see Ed Banion saying Pershing does not margin private label CMO's. Reasons have to do with volatility, liquidity, lack of consistent pricing associated with these products.

MS. BONNELL: Okay.

JOAN SCHWATZ: I can't say for 20 years we have had that policy, but certainly I think it is, you know, around the '08 time frame when things really changed in the market.

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MS. BONNELL: Right.

JOAN SCHWATZ: You will see some other Pershing employees' e-mails are copied on here. Some work out with Ed, like Victor Rodriguez, and some work here with Richard Cleary in our credit risk department. Like Sal Iriano (phonetic) is in here. And basically they are just saying, you know, can you doublecheck and we doublecheck and they say no again.

MS. BONNELL: So in light of the fact that – in light of the fact that those e-mails have to do with Mr. McKean's account, are you still able to say that Capital West made the request on behalf of –

JOAN SCHWATZ: I have to go back and double check.

MS. BONNELL: Okay.

JOAN SCHWATZ: I'm sorry. Yeah, that was my misspeaking. I apologize. Yeah, I think they did, too, and we talked about this a lot. But these e-mails just relate to the request for that one account. And that is the Ed Banion (inaudible.)

MS. BONNELL: And let me ask you if you know anything about the – apparently, where our breakdown was is that someone had told us that it wasn't – anyway, someone had told us about (inaudible) the Pershing extending credit to Capital West for these

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securities. We had never heard that before and then I said something to (inaudible) about it and she said absolutely not we did not (inaudible).

So apparently, where the break down was is the way that the account cycled or everything was sweeped and – at Pershing so that firms may have gone to UMB on an account, and then other funds came in from the McKean account to pay for those and so a few days lapsed, that you don't (inaudible) credit.

JOAN SCHWATZ: Okay. I am not sure I am following you, but –

MS. BONNELL: Okay.

JOAN SCHWATZ: Let's say if someone buys securities, they don't have to pay for them on trade days. They have –

MS. BONNELL: Right.

JOAN SCHWATZ: They have trade day plus three.

UNKNOWN SPEAKER: And that is not an extension of credit.

JOAN SCHWATZ: That is exactly how it works for everybody.

MS. BONNELL: It is just settled?

JOAN SCHWATZ: Right. I don't know what you mean by – they brought a wire in. And it is possible – Reg T gives you five days to pay. So we would have

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to go back – the original securities that we're talking about in McKean's account –

MS. BONNELL: Right.

JOAN SCHWATZ: – come into the firm's proprietary account first.

MS. BONNELL: Right. I am aware of that.

JOAN SCHWATZ: And I think what happens there is they then realize – and this is my personal opinion, because no one from there has admitted this, but they have eluded to it that there is now a capital requirement for them.

MS. BONNELL: Okay. Yeah, let me speak with you, frankly, please, if I may, but –

JOAN SCHWATZ: Absolutely.

MS. BONNELL: – if you can keep this confidential, I would appreciate it.

JOAN SCHWATZ: Yeah, sure.

MS. BONNELL: Okay. Because I think maybe if I could give you a little information, maybe we could –

JOAN SCHWATZ: We're happy to be helpful and we are happy to keep it confidential.

MS. BONNELL: Okay. Thank you. So what Capital West – our belief is like your belief that they intend to actually buy those into the – their proprietary (inaudible) account?

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JOAN SCHWATZ: They told us that they were going to re-remit them with another broker dealer.

MS. BONNELL: Right. Okay. So then it is our impression that, once they got into the account – and we have plenty of evidence supporting that – but once they got into the account, then they – I guess, their chief financial officer realized, no, no, no, you can't do this, it's a net capital problem.

JOAN SCHWATZ: Right. I think Norm Frager, we spoke to him, too. We asked to speak to a lot of people. He basically is the one who eluded to the fact that he wasn't aware that they were being brought in. And he is a long-time veteran in the business and very knowledgeable. So I think – this is my personal opinion – I think he realized what was going on and was like, no, you need to – you are going to have to put up. Now, capital for that, we don't have that. And so now they need to go somewhere else.

MS. BONNELL: Okay. But you formed that conclusion as well. Okay. And that was based on your conversation with Norm?

JOAN SCHWATZ: Yes. And a lot of us were on the phone with him. We were interviewing them to understand the set of transitions better because, frankly, they don't totally make sense to us.

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MS. BONNELL: And was Jim -- well, not Jim. Do you remember when that conversation was?

JOAN SCHWATZ: We had numerous conversations. I would have to look at my notes, but once we -- this is what happened. We sent this closer in time to when this happened.

MS. BONNELL: Right.

JOAN SCHWATZ: Then we sort of decided that it was a one time thing that we would let it go and then we revisited it towards the end of the year. Now, I have some notes -- I am just thumbing through a file about speaking to Norm on the 20th of January of this year. We could go through -- I don't think that is the exact conversation. We have had a number of conversations where we let them know what our concerns were and we had follow-up. So I would say, you know, December, January, February time frame.

MS. BONNELL: Well, the time period that we're interested in is actually -- it goes --

JOAN SCHWATZ: It is when we spoke to him. That doesn't mean that is when it happened.

MS. BONNELL: Okay. Well, let me go back. The original private label CMOs (inaudible) account, that was May 28th?

JOAN SCHWATZ: Yeah, May of '08. That is what

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I'm saying. We looked at this closer in time to that time. So we looked at it, let's say last year around that time.

MS. BONNELL: Right.

JOAN SCHWATZ: And then we sort of did an internal review and concluded that, you know, we would -- we would keep an eye out, but there wasn't anything further that would happen. And a second transaction was attempted by Geary Securities as part of another re-remis.

MS. BONNELL: Okay.

JOAN SCHWATZ: And that is what sort of set off a whole nother review. But that second transaction, that CEMP II transaction was --

MS. BONNELL: September?

JOAN SCHWATZ: I was going to say it was like third quarter, end of third quarter of last year. And then we started looking at it basically the beginning of the fourth quarter last year, and then it just kind of took us through the end of the year and beginning of the following year.

MS. BONNELL: So for the CEMP II did they seek your -- you know, did they open communications with you before they tried it again or did they just try it again?

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JOAN SCHWATZ: Well, it was a little bit different because they knew that they were going to not -- they were, I think, more knowledgeable about not being able to bring them in the inventory account, but we had another issue that came out of it because they were looking -- we want everything to be free delivered directly to whoever was holding the assets for the dealer. There really was no need for them to come on Pershing's platform at all.

MS. BONNELL: Okay.

JOAN SCHWATZ: And if I remember -- and this is off the top of my head, but there was one account that was delivering in a position and we wound up having an issue with that. And then, because there are other downstream implications, we put that account on restriction and they didn't pay for it. Basically the idea that they were delivering the positions (inaudible) to whoever was closing the CEMP transaction. None of that was happening on Pershings' books and records. So the idea was to have them deliver it there. But something stopped here from another customer account, not the (inaudible) Geary. But then that causes -- you know, you need to pay for it. There is regulatory requirements. You don't need to pay on day one, but by (inaudible) three you need to pay.

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MS. BONNELL: Right.

JOAN SCHWATZ: So this account became restricted and we made it clear that none of these activities could be passing through Pershing's books.

MS. BONNELL: Okay.

JOAN SCHWATZ: And then subsequently, as we continued our review, we decided that, you know, we just weren't -- this is primarily where their business is looking, this is not where we are going.

MS. BONNELL: Is that -- the conversation that you had where they tried to -- that you wanted them to redeliver it to whoever to hold it and then they said they tried to bring one in to the proprietary account again, do you remember if that bond -- like who the seller was on the bond itself?

JOAN SCHWATZ: We can piece that together. I don't remember off the top of my head.

MS. BONNELL: I am wondering if it is a bond that they purchased from Mesirow Financial?

JOAN SCHWATZ: Yeah, that is it. It was Mesirow. Thank you.

MS. BONNELL: Okay.

JOAN SCHWATZ: That helps. Yeah, it was Mesirow because I remember that, because we don't normally have accounts from Mesirow in our books.

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MS. BONNELL: Okay. So the problem there was that you guys basically told them, no, you can't bring it in without paying for it?

JOAN SCHWATZ: Well, the rules are such that you have to pay for things once they are –

MS. BONNELL: Right. Right. I get it. I am just –

JOAN SCHWATZ: Yeah, yeah. No, I just want to make it clear. I mean, this isn't like just an internal policy.

MS. BONNELL: Right, right. Absolutely.

JOAN SCHWATZ: Yeah. That was my only point I am making.

MS. BONNELL: Okay.

JOAN SCHWATZ: So some things are internal policies like we don't margin against private label CMO's. There is no regulation that says that. It's just our own credit decision. So we don't want to be in a position where – you know, with margin, that someone would have to sell something and you wouldn't be able to sell it. That could expose us to risk.

MS. BONNELL: So –

JOAN SCHWATZ: Yeah, it absolutely was the Mesirow position, now that you mention it.

MS. BONNELL: Okay. So did they – did they –

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even though they knew that these private label CMO's were not marginable, like how did they try to get around the fact that they knew that they weren't marginable, but they didn't have the money to pay for it? Like did they ask for any other sort of credit extension or –

JOAN SCHWATZ: No, not – I don't think on that one. I think they knew – I think they just screwed up on the timing because that deal wound up getting postponed several times, Term, and then it actually, I don't think ever closed.

Part of the problem, if I am remembering as we are talking was, they – in order – they had a problem with the buyer because one of the banks that wanted to buy it – and it is one of these like Bank of Union – there is Washita Bank. There is a whole bunch that are related to, not just Joseph McKean, but the other guy, Chad Headington. I would have – I am doing this off of my memory, but we could probably piece, Humpty-Dumpty together again.

MS. BONNELL: Sure. That is okay. I don't –

JOAN SCHWATZ: Yes. But what happened was they couldn't get the timing right and one of the banks that was going to be the purchaser of the Part A, you know –

MS. BONNELL: Right.

JOAN SCHWATZ: – was going to need to get some,

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I guess, guidance from, I think it was the FDIC, but it could have been another government authority to say that they could put these on their books and records and not be violating the ratio.

And so until that – well, I know what. They were waiting for the Federal Home Loan Bank of Topeka to give them guidance on whether or not they would value these assets as, you know, A, B, C, or D, E, F. And depending on that guidance, would determine whether or not that bank could take these assets on, because then that would throw their other ratios off for the FDIC.

MS. BONNELL: Okay.

JOAN SCHWATZ: So that – I don't think that second deal ever closed. And so they – like there were several stops and starts, but there was absolutely no request for margin on that because it was not even an issue anymore. They knew from last time it wasn't going to happen.

MS. BONNELL: Right. Okay. So let's go back for a minute to my other question about where I – you were telling me it was trade, but in three days to pay for it.

JOAN SCHWATZ: Right.

MS. BONNELL: Okay. So what we're trying to figure out is the – it was clearly the intent of

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Capital West to buy these private label CMO's in May, 2000 – May 28th, 2009, from Frontier State Bank. That was their original – do you believe that to be their original intent?

JOAN SCHWATZ: And we had interviews with people, Mr. Geary himself in the very beginning, who said that was their plan. Their plan, though, was not to leave them in their proprietary account, but rather to move them the same day or the next day over to an account for the IBD that was going to be helping them with the re-remic.

MS. BONNELL: Okay. What is IBD?

JOAN SCHWATZ: I am sorry. I apologize. We're a clearing firm, so everybody that is another broker dealer introduces to us, so we call them introducing –

MS. BONNELL: Oh, I gotcha.

JOAN SCHWATZ: So I apologize.

MS. BONNELL: Okay.

JOAN SCHWATZ: For moving the assets. So basically what Geary told us is, yeah, I wanted to buy these from Frontier State Bank, but I know I did not have the cash to pay for them, so the theory was I was going to buy them, and then move them that day, the next day, basically journal them out to this other broker dealer, Braver Stern, who was involved with a re-remic

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transaction.

And re-remic is basically just, you know, the rewrapping of some of these securities. And of course, I'm sure you've had an opportunity to hear from Mr. Geary, his whole theory about marrying them with treasury trips and better reading, you know, good at revenue off what we will be good assets.

But long story short, the plan that we initially heard was that they did not intend to keep them here. I think what sort of keyed us off from a — from a sort of a cause for concern was that they come into the prop account and then they wind up in a customer account, and then we find out that this customer is the sole shareholder of the bank.

MS. BONNELL: Right.

JOAN SCHWATZ: And that he has a personal relationship with the principal at the IBD. And so to us it appears as though potentially someone is trying to make a transaction that, you know, would not be obvious to an outside viewer. You would have to follow a trail.

MS. BONNELL: Right. Okay. So he — it was Mr. Geary himself that stated that he had just — he was planning — you know, he brought them into the account and was planning (inaudible) to Braver Stern?

JOAN SCHWATZ: Yeah, that was definitely a

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conversation we had with him, you know, sometime in December of '09.

MS. BONNELL: But once he brought them into the proprietary account, he would still have to pay the seller of those private label CMOs, wouldn't he?

JOAN SCHWATZ: Yeah, accept if he — I mean, theoretically, I guess his theory was he would buy them on Monday. He transferred them Monday and when he got the money from Braver Stern he would, I guess, be able to pay the seller. I don't know. We didn't — I mean, that is — we never really got a great answer because —

MS. BONNELL: Right.

JOAN SCHWATZ: — yeah, you have to pay for what you buy.

MS. BONNELL: Okay.

JOAN SCHWATZ: So I guess, you know, what happens then is they put it in this customer account and now they are looking for like margin financing.

MS. BONNELL: Do you think that — okay. Let's say — let's say that these were margin eligible. If he — how long would — he would have just been able to keep them on margin until the equity exceeded — until there was a margin loan, right? Or how long would he have been able to keep these on margin, I guess is my question.

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JOAN SCHWATZ: It is hard to say with these. I mean, theoretically, yes, you are able to keep something on margin as long as you maintain our requirement.

MS. BONNELL: Right.

JOAN SCHWATZ: You know, 50 percent equity. I couldn't — you know, it is just hard. That is in a vacuum. With these that is the whole problem —

MS. BONNELL: Right.

JOAN SCHWATZ: — IBM where you can say it is worth 50 bucks a share.

MS. BONNELL: So it is the normal — the normal margin rules would have applied if he would have been able to buy these on margin. So I guess what I'm wondering is, if he did not know that they weren't marginable and he brought them in with the idea of, oh, I will be able to margin these, then he would have been able to keep them in that account until the time that it then met the margin requirement and there was a margin loan.

JOAN SCHWATZ: He could still bring in cash, though.

MS. BONNELL: Right, right. Okay.

JOAN SCHWATZ: The worst is like he would just have to cover that percentage. We could sell the

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security to generate cash or he could bring in new cash. So I don't think that there would be like an expiration on the margin like it's 30 days, 60 days, 90 days.

MS. BONNELL: Right. Okay.

JOAN SCHWATZ: I mean, in a vacuum it is just — with these that is why it is so hard — that is why we don't margin them. So, yeah, in stock, let's just say.

MS. BONNELL: Okay.

JOAN SCHWATZ: You can have margin for as long as we are willing to lend you. I mean, if something else happened that caused us to be concerned about your credit worthiness, we have the right to call off the margin loan.

MS. BONNELL: Right.

JOAN SCHWATZ: But short of that happening, it is, you know, as long as the balance is maintained.

MS. BONNELL: But I guess — right. I understand all of that. What I was — I did not communicate it very well, but I do understand it, actually.

JOAN SCHWATZ: No, that's okay.

MS. BONNELL: But basically what I was thinking is, is that if he didn't know that they were not marginable, then he would have been buying himself time. He could have bought them on a margin and — you know,

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if he didn't realize they weren't marginable, he may have been able to buy some time for coming up with money for it.

JOAN SCHWATZ: Yeah, I guess theoretically. I mean, I don't think we went into that much detail with him because we were more concerned about like, well, you know, why they wound up in a customer account. That was really our focus.

MS. BONNELL: Right.

JOAN SCHWATZ: I mean, how did you mark it off and how did you price this thing and like why isn't there a profit or why – I forget what the numbers were right now, but we were looking for what made this an arm's length transaction and not something that was pre-arranged because it just didn't look right to us.

MS. BONNELL: Okay. And there – the reason I'm going down that line is because I know that he did not have money at Braver Stern to pay for them. Like there wasn't – he had no money to pay for them. They were going to be able to pay for them through Braver Stern basically.

JOAN SCHWATZ: Okay. And that – and we wouldn't have known that.

MS. BONNELL: Right.

JOAN SCHWATZ: But he sort of said that it was

just not – Braver said that it just wasn't going to happen because, frankly, I think they knew they were going to take a capitalist charge. It is a very significant amount of money you would have to come up with for the $40 million in securities.

MS. BONNELL: Do you think that it is feasible that he knew that these were not marginable?

JOAN SCHWATZ: It would be hard for me to guess. I will tell you this. This is just my Joan Schwatz opinion.

MS. BONNELL: Right. Well, and I am just giving you my opinion, Terra Bonnell's opinion.

JOAN SCHWATZ: Yeah. I think had he consulted better with Norm Frager, he would have known. I think he was sort of out there. He does the CEMP transaction thing. He has a separate business that was affiliated with Geary Securities, the broker dealer. And I think he sort of did his own thing without really checking with Norm, who does not sit on site, and Norm was really pissed when Norm realized that they were in the proprietary account.

MS. BONNELL: Right.

JOAN SCHWATZ: So I think that it is possible, because Geary does not really understand the broker dealer world and those rules, he may not have understood

whether or not it was marginable and was (inaudible) because he kept saying, well, this is a customer that has, you know, hundreds of millions of dollars and they have this much in the account. We only need it for two weeks. I think he is used to like a bank system of borrowing and lending and a credit assessment and not the securities rule.

MS. BONNELL: Right.

JOAN SCHWATZ: So I certainly think it is possible he did not understand the marginal requirements. And he certainly wouldn't have known what our firm policy was unless he asked about the, you know, private label CMOs.

MS. BONNELL: Right. Okay. So let's say that – okay. So he buys them basically into the inventory account and he realizes that he can't hold them there, so he then states then that he transferred – or they are sold to Dr. McKean and Eagle Sky Foundation.

JOAN SCHWATZ: Yeah.

MS. BONNELL: So then – okay. At that point –

JOAN SCHWATZ: And I would say sold, but transferred might make me comfortable because I can't remember.

MS. BONNELL: Well, they were – the reason I'm using the word sell is because they were actually trade

tickets.

JOAN SCHWATZ: I know it says sell, I know it says buy, but our position was, just to share with you honestly, where was the money that he paid them?

MS. BONNELL: Well, that is what I was getting at.

JOAN SCHWATZ: I don't think he ever gives them. So sell, to me, just – you know, we're just talking here and I would have to go back and read my notes, but so if I sell you – so let's say I bring in my personal account and I sell it to you, Terra, then theoretically maybe I bought them from Sam. So theoretically, I would give Sam the dollar for what I bought her. I would then become the owner, and then I would give you the dollar – I am sorry. And then I would sell them to you, so you would give me the dollar.

MS. BONNELL: Right.

JOAN SCHWATZ: And theoretically, I should be making something when I sell it to you from what I paid for it. So maybe you're giving me a dollar and a quarter.

MS. BONNELL: But if they were just – okay. Let's say –

JOAN SCHWATZ: I don't know that he ever gave me – I don't know that he ever gave Frontier State Bank

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the money.

MS. BONNELL: Right. Right. Okay.

JOAN SCHWATZ: It looks like he -- that potentially the money came from McKean that ultimately went to pay Frontier State Bank.

MS. BONNELL: Okay. Regardless of the money --

JOAN SCHWATZ: Right.

MS. BONNELL: -- if he -- let's say if he were transferring them, wouldn't there have been a way to journal those securities without doing a trade ticket? Like I'm just asking without looking at the flow of funds, just in general.

JOAN SCHWATZ: Okay. Could he have done a transfer without --

MS. BONNELL: Doing the trade ticket.

JOAN SCHWATZ: I am not sure that would have worked from that prop account because usually prop accounts are supposed to be -- I guess it could have been a journal. I would have to go back and look. It could have been a journal without it being a sale ticket. But you know what, to me, that is more -- I would have to look at the price because I remember we focused on the price. I don't know if you have it in front of you. Was it a one payment cap price? I think it was.

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UNKNOWN SPEAKER: I think it was, yeah.

MS. BONNELL: Yeah, I don't have it in front of me, but I imagine --

JOAN SCHWATZ: I think it was, but I am looking at Tim because I can't remember exactly, but it could have been --

UNKNOWN SPEAKER: There wasn't too much of a difference.

JOAN SCHWATZ: But sometimes, you know, to be honest on that, I don't think we would have focused on that. It is just maybe a routine of how someone does it or preference or someone does not realize you can just journal it.

MS. BONNELL: Okay. So regardless, you would consider it a transfer because there wasn't a (inaudible) funds?

UNKNOWN SPEAKER: It did raise an eyebrow.

(Multiple people started talking at the same time making it inaudible.)

JOAN SCHWATZ: When you sell it you should -- yeah, if I sell it to you, I should get a dollar and a quarter. Why else would I be buying if I am not going to make any money?

So the other thing is sometimes firm accounts are like allocation accounts. So let's take it out of

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this setting, but in a big account setting I buy a block of stock and I'm allocating it to all of the accounts that, you know, want ten shares of something and I bought 100 shares, I got a better price. Those are transfers.

You know, I am just trying to be honest about answering the ticket. I think we were just focused on the price and I don't think we focused on that it was a sales ticket versus a -- like a journal. But it could be significant. I just don't think we necessary -- I would have to go back and look again.

MS. BONNELL: Okay. I mean, I understand.

JOAN SCHWATZ: I think we were really focused on the price because it went to the whole, hey, this looks hinky to us like the guy -- you know, we look at the transaction to begin with, because it comes up through this credit thing where we've got this proprietary account. We don't usually get a lot of proprietary accounts holding $40 million of assets that they don't realize that they have to pay for, that they don't want to pay for or they can't pay for and then they wind up in a customer account. We were just concerned from that effect like did the firm do right by the customer. And then we looked at who the customer is and it is McKean and then we go, well, where did these securities come

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from. Oh, they came from the bank. And someone looks up the bank and realizes McKean is the owner of the bank. So we are like --

MS. BONNELL: Right.

JOAN SCHWATZ: -- what is going on?

MS. BONNELL: Exactly.

JOAN SCHWATZ: Yeah. So we are like, were they trying to get around something, then we find out that they are under review at the bank. So you know, I think, to be honest just remembering, but as we're talking refreshing my own recollection, the price is what was really key to us. Now, later I think there is a cancel "as of", though.

MS. BONNELL: I am sorry. Later there is a what?

JOAN SCHWATZ: There is a cancellation many months later for a cancel of the original transaction.

MS. BONNELL: Right. Back in November?

JOAN SCHWATZ: Yeah. And that is really -- because that changes the settlement date. A cancel "as of" is a way for a firm to go, oh, we made a mistake and you know. So they cancel the trade and what we call us of is they do it again, as of a certain date. But people do that legitimately for every security transaction. It is like a T account. You have to have

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a debit and a credit.

MS. BONNELL: Right.

JOAN SCHWATZ: So as of and cancels aren't necessarily suspicious in and of themselves. I am going to tell you from a very skeptical point of view, having done this all my life, cancels and as of's can be places where people try to hide things. So when we realized later -- and someone, I think, maybe even asked us about it, one of the regulators.

MS. BONNELL: Right.

JOAN SCHWATZ: We went back and looked. It is this trade again, but they are changing the settlement date. And the reason we thought that was important is the settlement date becomes the key because that is when the money is due day.

MS. BONNELL: Right.

JOAN SCHWATZ: So that was suspicious to us, too.

MS. BONNELL: Okay. So I think (inaudible) says they changed it -- it was like November of 2009?

JOAN SCHWATZ: Yeah.

MS. BONNELL: And it was from --

JOAN SCHWATZ: Like --

MS. BONNELL: The settlement date was June 1st and they changed it to May 28th?

JOAN SCHWATZ: I think it was the other way. I would have to go back and look, but I think the point was they were trying to buy themselves more time to have to come in with the money.

MS. BONNELL: Okay.

JOAN SCHWATZ: I think that was it.

MS. BONNELL: Okay.

JOAN SCHWATZ: But we can go back and check because I wouldn't swear right now, having not looked at it in many months.

MS. BONNELL: Right. Well -- let's see, it's okay. I think I have it.

JOAN SCHWATZ: And we definitely do, but I -- you know, I can go back and look. Let me just -- I am just trying to --

MS. BONNELL: Actually, I have it right here.

JOAN SCHWATZ: [redacted]

MS. BONNELL: [redacted]

JOAN SCHWATZ: Yeah. I'm just going to look quickly to see if there is something that refreshes my recollection in there because I can't get through the account statements that quickly.

MS. BONNELL: Well, I have the trade tickets on my lap right here. I just have to find --

JOAN SCHWATZ: What Carol was remembering is that they traded -- they changed the trading from the 28th to the -- she was remembering it as going from the later date to the earlier date. I remember it going from the earlier date to the later date because that was trying to buy them more time to have to bring in the money, but I could not at this point swear about it.

MS. BONNELL: Okay. Is Michelle Malvonavo, is she at your firm?

JOAN SCHWATZ: That doesn't sound familiar, but let me see if she is on our system.

MS. BONNELL: I'm sorry. I don't mean to get you off on another track.

JOAN SCHWATZ: Oh, that's fine. Look, you know, I don't know her, but let me see if she is here. Is it M-A-L-V-O-N?

MS. BONNELL: M-A-L-V-O-N-A-V-O.

JOAN SCHWATZ: It looks like we have a Michelle Malvonavo in Marion. So she might be a back office processing person.

MS. BONNELL: Okay. Because for one of these securities what happened is -- okay. There is all these prior trade tickets. Okay. And then on June 28th there

is a ticket, and then for trade date June 1st, 2009 settlement date to June 1st, 2009. And that is just like -- that is like the third trade ticket of all of these, or the second one. But it's not the first one. It's starting in the middle.

JOAN SCHWATZ: Okay.

MS. BONNELL: And then November 12 of 2009.

JOAN SCHWATZ: That is the one we were just talking about, right?

MS. BONNELL: Right. There is a -- the other one is cancelled and this one is trade day May 28th of 2009, settlement date May 28th, 2009. So it went from June 1st to trade to May 28th trade, June 1st settlement, May 28th settlement.

Okay. And but then on the same date, May -- and that one I just spoke of was entered by Capital West (inaudible.) Then on May -- on November 12, 2009 Michelle entered another one and it was trade date May 28th, 2009 for settlement to June 1st, 2009. So it did go from May 28th, 2009 to June 1st, 2009, but for some reason it was entered by Michelle, who I believe to be at Pershing rather than --

JOAN SCHWATZ: And there is a Michelle here.

MS. BONNELL: Yeah.

JOAN SCHWATZ: You know what, I would -- we

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would have to call and ask her.

MS. BONNELL: Yeah, that is a new name.

JOAN SCHWATZ: I will just say this. I mean, where she is on Marion. So you know what it is without knowing the answer is, we have some of our back office processing people down in – Lake Marion is our back-up location. So depending on the function and where they were assigned and to who – like to who they kind of get – like we were saying added the west coast margin, but he is assigned to handle Geary and a number of other broker dealers. She may be their person or she may be someone that it was referred to.

And sometimes from having (inaudible) back office information on cancels and as of's, I'm not sure they – I will be honest. I would have to check if they can go in and even enter something that was that far from the actual trade deal. I think there is some, if my recollection serves me correctly – and I would have to validate this – if you want to do it after the settlement date of a transaction, if you want to cancel and then ad lib it, I think it has to come through us. I am not sure that they can enter it on the system, but I would have to go back and check.

MS. BONNELL: Okay. Well, it is weird, though, because they were able – Karen Coker was able to enter

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one of them on November 12th.

JOAN SCHWATZ: Okay.

MS. BONNELL: And then – but then it is like maybe she – maybe she was – (inaudible.)

JOAN SCHWATZ: I don't – you know, it has come up in another matter, but I am definitely not the expert on all of the rules. So you know, I'm sure you can understand it is sort of a case by case –

MS. BONNELL: Sure, I understand.

JOAN SCHWATZ: You don't really want me telling you –

MS. BONNELL: Well, maybe they – because it went – you know, the settlement date was June 1st as of June 25th. It was June 1st, then she changed it on November 12th to 5/28. And then Michelle changed it back to June 1st. So maybe that was Michelle saying – I mean, maybe there was – maybe Michelle entered it because there is some policy or something that says you can't change the settlement date.

JOAN SCHWATZ: I know that there is some rule around post settlement date, cancelling it as of. I don't know how many days it is, but what we can do is I would certainly be happy to reach out to Michelle and see if she has a recollection.

MS. BONNELL: Okay. I would appreciate that.

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JOAN SCHWATZ: Absolutely. That is the first time we have ever heard her name, to be honest. No one has ever asked us, not any of the people we have spoken to. So to be honest, I don't think we looked at that and called her. But why don't we do this. After we hang up, we'll give her a call and see if she can look at it. And it was November, what day?

MS. BONNELL: November 12th of 2009.

JOAN SCHWATZ: Yeah.

MS. BONNELL: And it is (inaudible), which that is the same execution time as all the others, so I guess the execution time line stayed the same.

JOAN SCHWATZ: We'll definitely give her a call. And I am going to have to pull up those trade tickets, too.

MS. BONNELL: Okay. Is there anything on them that I could tell you that would help you pull them up?

JOAN SCHWATZ: I don't think so. I think we'll be able to look for them. Yeah, I think we must – I know that Sam and myself and one of our colleagues is looking at account statements. If we produce the trade tickets, which I am sure we could have, I don't even think that somebody asked us for them. I am betting you guys got them from –

MS. BONNELL: We did. We got these from Geary

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Securities.

JOAN SCHWATZ: I don't think we ever looked at the tickets, I am just thinking as I talk to you, because, like I said, we were not originally focused on that and then somebody asked us about this November as of and we looked at the account statement. I am going to check with one other person that was working on our team from compliance. His name is Jim Feaglehorn (phonetic.) And we may have copies of the tickets over there.

MS. BONNELL: Okay. Let me tell you at least what securities (inaudible) because I think all of the – because you know there is a whole –

JOAN SCHWATZ: Yeah.

MS. BONNELL: – and I think all of the – I am not sure they are all exactly the same, but the one I'm looking at is (inaudibe) Citi Mortgage?

JOAN SCHWATZ: Is there a QSIP (phonetic) number there?

MS. BONNELL: 189 –

JOAN SCHWATZ: I am sorry. Say that again.

MS. BONNELL: 189 –

JOAN SCHWATZ: Yeah.

MS. BONNELL: – 76GAP1.

JOAN SCHWATZ: That is the best way for us to

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look it up. Thanks. Yeah. No. And I -- that was what was, you know, sometimes confusing is that there is all of these pieces moving. But I know that we did recently, more recently look at this November transaction. So I think Jim had pulled the ticket. Yeah. And then we'll pull them and we'll have a conversation with Michelle.

MS. BONNELL: Thank you, because we really appreciate you helping us out.

JOAN SCHWATZ: Oh, not a all.

UNKNOWN SPEAKER: So I guess when all is said and done, Terra, is there still the need to interview Jim and Ed?

MS. BONNELL: Maybe not.

JOAN SCHWATZ: See, I was thinking that we --

MS. BONNELL: Joan, were you or Sam, were you guys present on the conversation with -- between Jim and Keith Geary?

JOAN SCHWATZ: NO, not back in -- back in May of '09, no.

MS. BONNELL: All right.

JOAN SCHWATZ: No. I was going to say we were present for things where we asked Geary questions where there were subsequent conversations where Jim was present, but they were after that time.

MS. BONNELL: Okay.

JOAN SCHWATZ: But no one -- I think it was like him calling Jim. And I think Jim's recollection was he didn't really deal with him. He just kind of sent him to Claus or Ed and said, you need to deal with them. You know, I don't override their policy. I've let them know you want them to look at it.

MS. BONNELL: Okay. Well, I tell you what, I will -- how about I doublecheck here and decide how we want to proceed with that.

JOAN SCHWATZ: That is fair. And I would just offer this, too. I mean, we -- I would be happy to, you know, do sort of a declaration or accusation, or whatever you want to call it, and we could provide some documentary support for the statements that might be helpful about the fact that we, you know, never meet any margins, loans to this firm for this account, whatever we specifically want to get down to, and that it has been our position that we don't, you know, provide margin.

MS. BONNELL: Okay. That actually might be a really good way to proceed.

JOAN SCHWATZ: Yeah. I mean, it is up to -- I understand that you have other needs, but I guess what I am offering is, if we can accommodate -- I will say

this. Ed is really good at what he does. He is not a good witness.

MS. BONNELL: Okay.

JOAN SCHWATZ: He is really, really nice, but he is probably one of the worst people I have had to prepare and that you will ever -- I mean, if you are going to put him on the stand, it is not going to go well.

MS. BONNELL: Okay.

JOAN SCHWATZ: And he is not a guilty guy by like a million miles. He is like the most honest, hard working guy. He has been here for like 30 years. He was like sick for days at the FDIC call and it went really poorly. You can ask. And then I sort of jumped in and started asking questions.

And in fairness, you know, the agent is an agent for the bank-related things, you know. It is over the phone. He's out in L.A. So I said to her, like I know that you are frustrated, but he wasn't trying to be difficult. And then he comes -- they came out in person, the supervisor and the agent, and, you know, Ed was better in person, but I guess I am just thinking of myself. You know, between the two of us as a witness choice I would go with me instead of him or just about anyone else. And lawyers are the worst witnesses, I

think, so... I think we were able to get the information out, but it is like a difficult go of it.

MS. BONNELL: Okay.

JOAN SCHWATZ: So you know, Claus is a better witness, frankly. Not that I am offering up any one of our people. And we're happy to have you on the phone with whomever you want, so please don't mistake what I am saying as being, you know, in any way trying to be difficult because we will get Ed on the phone and we'll have him walk you through the e-mails. If we need to get Michelle Malvonavo on the phone, we'll get her on the phone. We're certainly not going to give you a hard time with that.

I am just trying to think -- you know, some of this is road well traveled and, you know, Sam and I have been present for conversations and can attest to them. I would certainly be happy to do it from my perspective, if you think counsel would be helpful.

MS. BONNELL: Okay. That is great.

JOAN SCHWATZ: But it's just a consideration in your strategy.

MS. BONNELL: Thank you. I appreciate that. Now, Jim Ross, is he in Illinois?

JOAN SCHWATZ: He is in -- yeah. He is located in our Illinois office, yes.

MS. BONNELL: Okay.

JOAN SCHWATZ: Ed is down in Los Angeles. Richard Clara is here in Jersey City, and Michelle is in Lake Marion.

MS. BONNELL: Okay.

JOAN SCHWATZ: So it is covered, I think, in all corners of the country.

MS. BONNELL: Okay. Well, if I had more time on this matter, I think I would need to visit with everyone to get a little travel in, but, unfortunately, I don't think we have that time.

JOAN SCHWATZ: Well, the other thing I can -- we had Ed come to New York -- to New Jersey at our expense.

MS. BONNELL: Okay.

JOAN SCHWATZ: And so if we needed to, we would be happy to make ourselves available in one location.

MS. BONNELL: Okay.

JOAN SCHWATZ: Preferably here in Jersey City, so if you need to travel, you could travel one place and we could make everyone available to you whether in person, on video conference or over the phone.

UNKNOWN SPEAKER: I don't want to go to Florida in the summer.

JOAN SCHWATZ: Yeah, no offense.

MS. BONNELL: Well, especially now that you

can't visit the beaches, right?

JOAN SCHWATZ: Right.

UNKNOWN SPEAKER: Exactly.

JOAN SCHWATZ: And it is pretty hot here. I don't know what it is like by you, but...

MS. BONNELL: No, it is. Okay. Well, I guess right now if you will just figure something out on Michelle and then, you know, send me those e-mails between Karen Coker to Ed.

JOAN SCHWATZ: Right. So there is a whole -- I think there is nine e-mails that Ed gave us that we gave the FDIC. Sam is just going to forward them all to you. There is some duplications.

MS. BONNELL: Okay. No problem.

JOAN SCHWATZ: But we'll just send them to you. What -- Sam and I are going to hang up and call Michelle Malvonavo.

MS. BONNELL: Okay.

JOAN SCHWATZ: And try and get a sense of if she remembers anything. We don't tape anybody, so we wouldn't even have like a phone record of a conversation.

MS. BONNELL: Okay.

JOAN SCHWATZ: We can see if she has got any e-mails, and if she doesn't have them, we can go back

and see if we've got anything archived.

MS. BONNELL: Okay. That would be great.

JOAN SCHWATZ: All right. And then we're going to hold off for now, Terra, on the Jim Ross and Ed Banion interviews and you're going to let me know how you want to proceed?

MS. BONNELL: Yeah. And I am going to actually let you know probably this afternoon.

UNKNOWN SPEAKER: Okay. Great. And Terra, just in case Sam is not around, I'll give you my number as a backup. But Sam is a great first contact. It is 201-413-2538. And Sam and I talk about five million times a day.

MS. BONNELL: Okay. Great.

JOAN SCHWATZ: Just in case if you need, you know, one of us I would offer her as a backup. And then --

SAM: If I'm not there, it's because I'm in here.

MS. BONNELL: Okay. I gotcha. I understand. Okay. Well, thank you both so much.

JOAN SCHWATZ: All right. We appreciate it. Thanks.

MS. BONNELL: Bye.

(End of audio.)

CERTIFICATE

STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

I, Jodi D'voree Horvath, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the foregoing transcript consisting of 49 pages transcribed from the provided audio tapes is true and correct to the best of my ability based on the condition of the audio tapes.

I am not an attorney for or a relative of any party.

IN WITNESS WHEREOF, I have hereunto set my hand and stamp this 1st day of March, 2012.

Jodi Horvath, CSR, RPR
License # 1410

My Commission Expires:
December 31, 2012