

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

Respondents.

ODS File No. 09-141

**RESPONDENTS' JOINT REPLY TO DEPARTMENT'S OBJECTION TO
RESPONDENTS' MOTIONS TO BIFURCATE AND STAY
NET CAPITAL CLAIMS**

Respondents, Keith D. Geary, Geary Securities, Inc. (formerly known as Capital West Securities, Inc.), CEMP, LLC (the "Geary Respondents") and Norman Frager (collectively referred to as the "Respondents"), respectfully submit this Joint Reply to the Department's Objection (filed January 3, 2012) to the Respondents' Motions to Bifurcate and Stay Net Capital Claims (the "Objection"). The Department attempts to avoid bifurcation and stay of the Net Capital Claims based on two arguments. As explained below, both of the Department's arguments are misplaced and ineffective, and its position in opposition to the request to bifurcate and stay actually promotes, rather than avoids, delay.

1. The Department first contends that bifurcation would not promote judicial economy because it would still be necessary to conduct two separate hearings that might include some duplicative evidence (not specified by the Department) and possibly some common witnesses (not identified by the Department). See, Objection, p. 2. The Department's contention in this regard is not persuasive.

- a. The Department ignores the fact that the Respondents' Motions seek bifurcation *and a stay of the Net Capital Claims*. The "stay" component of the requested relief is specifically designed to promote judicial economy and the convenience and economy of the parties.
- b. The Department ignores the potential impact that a FINRA adjudication – on the same exact facts and same alleged net capital violations – may have on the Net Capital Claims in this proceeding. As a practical matter, it is certainly possible that a FINRA decision might prompt a resolution of the Net Capital Claims in this action without the need for any hearing. Likewise, even in the absence of a resolution, a FINRA decision may be of interest to the Hearing Officer in this action where he is called on to address and decide identical issues based on the exact same facts.
- c. Rather than acknowledge these potential benefits, the Department insists on pursuing a single, comprehensive hearing that is accompanied by a very real risk of conflicting decisions on identical claims, issues and facts.
- d. Finally, it is noteworthy that the Department admits the obvious fact that bifurcation is particularly convenient and appropriate for Respondent Frager. See, Objection, p. 2.¹

¹ The position taken by the Department in its Objection is inconsistent with the Department's other recent filings. Specifically, the Department filed its Motion for Summary Decision Against Respondent Frager on November 1, 2011 (the "Frager Motion"). The subject matter of the Frager Motion is limited to the Net Capital Claims only. The Frager Motion is directed only to Respondent Frager. The Department, by filing the Frager Motion, essentially agrees and acknowledges the practical fact of bifurcation.

2. The Department's second contention and attempt to avoid bifurcation and stay of the Net Capital Claims is based on the Department's mischaracterization of the FINRA net capital proceeding as "a purely speculative FINRA proceeding." See, Objection, p. 3.

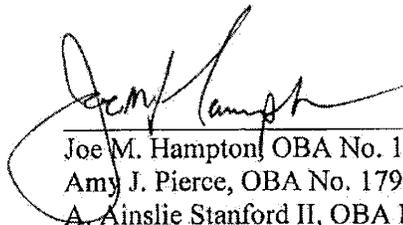
- a. Counsel for Respondent Frager and counsel for the Geary Respondents can assure the Hearing Officer that there is nothing at all "speculative" about FINRA's pursuit of the same alleged net capital violations. Upon completion of its investigation of the net capital issues, FINRA initiated and is following its procedure for taking enforcement action against Frager, Keith Geary and Geary Securities. The FINRA procedure included notifying Frager, Geary and Geary Securities that the decision had been made to pursue an enforcement action and allowing an opportunity to consider and discuss potential resolution of the enforcement issues. The next step in the FINRA procedure is the issuance of a "Well's Notice," followed by a time period for response to such Notice. Frager has already received and responded to a FINRA "Well's Notice." Frager, Geary and Geary Securities fully anticipate and expect FINRA to take the next step in its procedure – formally filing the charges – in the very near future. The question is not "if," but merely "when."
- b. The Department complains that staying the Net Capital Claims in this case will unduly delay a net capital hearing in this case because it may be months before the FINRA net capital action is adjudicated or resolved. See, Objection, p.3. The Department ignores what will happen in the absence of bifurcation; namely, the Net Capital Claims will remain joined with the CEMP Claims and will not go to a

hearing on the merits unless and until the CEMP Claims are ready for hearing. The Department is well aware of the fact that the CEMP Claims **are not remotely ripe and ready for hearing**. For example, as recently as January 4, 2012, the Department was dealt another setback and delay related to the CEMP Claims when the District Court of Oklahoma County delayed hearing and acting on the Department's request for issuance of a commission in connection with the Department's pursuit of Mr. Headington's deposition in Texas.² The new hearing date in the District Court proceeding is April 6, 2012. Even if the Department obtains the relief it seeks from the District Court (which is objected to by Mr. Headington), the Department must still go through a district court proceeding in Texas, which will again be opposed by Mr. Headington and his counsel and may be the subject of multiple appeals. In short, the unresolved discovery issues and discovery remaining to be completed in connection with the CEMP Claims will indefinitely delay scheduling and conducting a hearing on both the CEMP Claims and the Net Capital Claims. In light of this reality, the Department's position in opposition to the request to bifurcate and stay actually promotes, rather than avoids, delay.

² The Department's request to the District Court is related to the Department's request (on November 29, 2011) that the Hearing Officer issue a deposition subpoena for Mr. Headington for January 18, 2012 in Dallas, Texas. The Hearing Officer issued the subpoena as requested; however, the Department has been unable to complete the process through the District Court in Oklahoma County, not to mention the subsequent battle it will face in a Texas court.

WHEREFORE, based on the foregoing Reply and the Motions previously submitted by the Respondents, the Respondents respectfully request that the Hearing Officer enter an Order as follows: (A) bifurcating the two categories of claims and issues contained in the Department's Recommendation for purposes of conducting hearings on the merits on such issues and claims (the "Net Capital Claims" and the "CEMP Claims"); and (B) staying further proceedings on the Net Capital Claims pending issuance of a final decision in a FINRA enforcement proceeding that involves and addresses the identical Net Capital Claims.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on January ^{21st} __, 2012, a copy of the foregoing document was served on the following by e-mail:

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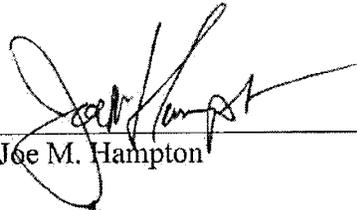
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