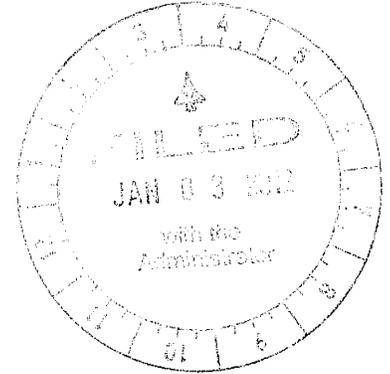


STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

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

Respondents.

File No. 09-141

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

The Oklahoma Department of Securities ("Department") submits the following objection to *Respondents' Motion to Bifurcate and Stay Net Capital Claims* filed by Geary Securities, Inc. ("Geary Securities"), Keith D. Geary ("Geary"), and CEMP LLC ("CEMP") (collectively referred to herein as "Geary Respondents") on December 21, 2011, and *Respondent Frager's Motion to Bifurcate and Stay Proceedings Predicated on Federal Claims* filed by Norman Frager ("Frager") on December 23, 2011 (collectively referred to herein as "Respondents' Motions").<sup>1</sup>

**I. THE DEPARTMENT'S CLAIMS SHOULD NOT BE BIFURCATED**

The Department's claims against Respondents Geary Securities, Geary and Frager include, but are not limited to, violations of the Oklahoma Rules<sup>2</sup> that relate to the net capital position of Geary Securities in May 2009 and February 2010 and the reporting thereof (generally referred to herein as "Net Capital Related Claims"). Through their motions, Respondents seek to

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<sup>1</sup> In filing this response, the Department does not waive its objections to the pre-emption argument made by Respondents in other pleadings.

<sup>2</sup> Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities, Okla. Admin. Code, 660:1-1-1 through 660:25-7-1.

bifurcate the Net Capital Related Claims from the other claims pending in this matter against Respondents.

Bifurcation of the Net Capital Related Claims would not promote judicial economy. If the Net Capital Related Claims are bifurcated, the Hearing Officer, Department's counsel, and Geary Respondents' counsel will have to contend with two separate hearings in which some of the evidence will be duplicative. The transactions that created Geary Securities' net capital violation in May 2009 related to Geary Securities' acquisition of private-label collateralized mortgage obligations for purposes of resecuritization by CEMP. Several witnesses would have to testify at both hearings. Admittedly, it would be convenient for Respondent Frager to bifurcate the Net Capital Related Claims. Yet, his convenience would be at the expense of the Hearing Officer, the Department, several witnesses and, arguably, Respondents Geary Securities and Geary. In light of the fact that Frager was an officer of Geary Securities during the relevant time-period and the relationship between the transactions that created the May 2009 net capital issue and the creation of CEMP, it is not unreasonable or unfair to require Frager to participate in a hearing that includes the other claims. Respondents' motion to bifurcate the Net Capital Related Claims should be denied.

## **II. THE DEPARTMENT SHOULD NOT BE STAYED FROM PROCEEDING ON ITS NET CAPITAL RELATED CLAIMS**

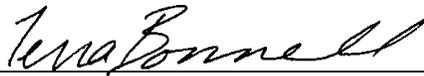
The Geary Respondents and Frager argue that the Department should be stayed from proceeding on its Net Capital Related Claims against Respondents "pending issuance of a final decision in the FINRA net capital proceeding." In support of such argument, Respondents assert that "FINRA is pursuing an enforcement action against Respondent Frager on the identical Net Capital Claims the Department is pursuing in this action." What is unclear from Respondents' Motions is the exact nature of the purported FINRA action to which Respondents refer. To the

Department's knowledge, FINRA has not yet filed a complaint against any of the Respondents but has merely sent a "Wells Notice" to Frager and been in settlement discussions with Geary Securities and Geary. Neither Respondents nor the Department know whether, or when, FINRA will file a complaint against any of the Respondents or what the exact allegations or claims will be.<sup>3</sup> Should FINRA choose to file a complaint against one of the Respondents, it could be many months before the matter is filed and/or adjudicated or resolved. To stay the Department's proceeding pending the resolution of a purely speculative FINRA proceeding is inappropriate. It is especially inappropriate to stay the Department's Net Capital Related Claims against Geary Securities and Geary pending the resolution of a FINRA proceeding that may be initiated solely against Frager.

### CONCLUSION

For the foregoing reasons, Respondents' motions to bifurcate and stay the Department's Net Capital Related Claims should be denied.

Respectfully submitted,



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<sup>3</sup> The Department is not addressing the issues raised in Respondents' Motions relating to whether the Department is pre-empted from making findings contrary to FINRA on identical issues because it is pure speculation as to whether there will be *any* findings by FINRA on identical issues in light of the fact that FINRA has not filed a complaint against any of the Respondents. It is noteworthy, however, that in his motion, Frager relies on Okla. Stat. tit. 12, § 140.2, to argue that "Where an issue is being tried in another forum that has a superior right to try the issue, it is appropriate to stay a proceeding . . ." Contrary to Frager's interpretation, Section 140.2 speaks to staying, transferring or dismissing an action under the doctrine of forum non conveniens – for the convenience of the parties – and does not address the situation in which one forum purportedly has a "superior right" over another.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of January, 2012, a true and correct copy of the above and foregoing was emailed and mailed by first-class mail with postage prepaid thereon, to the following:

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