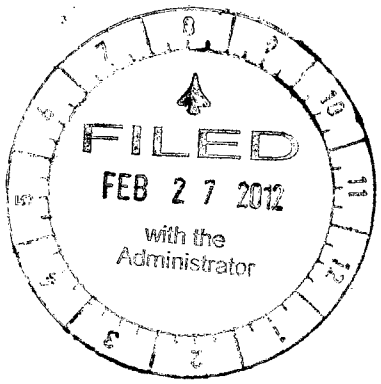

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102

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**

SUPPLEMENTAL RESPONSE OF NORMAN FRAGER TO MOTION BY OKLAHOMA DEPARTMENT OF SECURITIES FOR SUMMARY DECISION AGAINST NORMAN FRAGER
AND
MOTION TO DISMISS ALLALLEGATIONS OF MAY 2009 NET CAPITAL VIOLATIONS

Respondent Norman Frager hereby submits this Supplemental Response to the Motion (***ODS-Frager Motion***) for Summary Decision filed by the Oklahoma Department of Securities (***Department***) against Respondent Frager on November 1, 2011 under Section 660:2-9-3(d) of the Oklahoma Rules.[1] This Supplemental Response provides new information that has only recently been provided to and transcribed for Respondent Norman Frager and which directly controverts Statements of Fact on which the Enforcement Division Recommendation and the ODS-Frager Motion are based. Furthermore, based on the new information, Respondent Frager hereby submits this Motion for Summary Decision requesting the hearing officer to dismiss all charges by the Oklahoma Department of Securities based on alleged net capital violations by Geary Securities, Inc and Norman Frager in May and June 2009.

SUPPLEMENTAL RESPONSE

1. Respondent Frager hereby submits recordings (***Recordings***) of telephone conversations between staff of the Department and staff of Pershing, LLC (***Pershing***) the

[1] The Administrative 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 (hereinafter, the ***Oklahoma Rules***).

clearing agent for Geary Securities, Inc. (***Geary Securities***), which conversations took place on June 25, 2010, July 6, 2010 and October 12, 2010.

2. Although the Recordings contained exculpatory information for both Respondents Frager and Geary Securities, Inc. (***Geary Securities***), those Recordings were intentionally withheld by the Department and only released after an *in Camera* review and Order by the hearing officer.

3. The hearing officer agreed to deliver the Recordings to Respondents; however, Respondent Frager and his counsel did not receive the Recordings until January 30, 2012 at which time they were reviewed and transcripts made.

4. Participating in all of the telephone calls were either or both Attorney Terra Bonnell and Attorney Melanie Hall of the Oklahoma Department of Securities, who are the attorneys who submitted the initial Recommendation and the Motion for Summary Decision against Norman Frager.

5. In the recorded telephone conversation on June 25, 2010 between Joan Schwartz, in-house counsel for Pershing, and Attorney Bonnell (and possibly Attorney Hall) of the Department, Attorney Schwartz stated unequivocally at the very outset of the conversation that "We didn't lend them [Geary Securities and Dr. McKean] any money."

6. In the June 25, 2010 conversation, Attorney Schwartz also stated that, based on her review of the account, it did not appear that Geary Securities had purchased the Frontier Private Label Collateralized Mortgage Obligations (***PL-CMO's***) and resold them to Dr. McKean's accounts, since no money was credited to the Geary Securities account, but that the

transaction on Pershing's books was consistent with a transfer by Geary Securities to accounts of Dr. McKean with Geary Securities acting solely as intermediary.

7. Attorney Schwartz advised Attorney Bonnell that a sale of securities is not required to settle for 3 to 5 days and that securities in the process of being allocated to a customer account would be held in the Geary Securities account pending settlement and final payment, following which the securities would be transferred to the account of the actual purchaser of the securities.

8. Attorney Schwartz indicated that although the Geary Securities account into which the PL-CMOs were initially placed had been given an account number in the Pershing system that had a code indicating it as a proprietary account, the account in question was not used solely as an inventory account, but appeared to be used as an account in which securities would be held pending payment, settlement and transfer to a customer account and that securities in that account did not indicate ownership.

9. Although we do not have a copy of the SAR referenced in the October 12, 2009 telephone conversation, it would appear that the categorization of the transaction as a purchase by Dr. McKean from Frontier Bank using Geary Securities as an intermediary would be consistent with the information reported by Pershing in the SAR.

10. Attorney Schwartz offered to attest to the fact that no loan was made to Geary Securities or its customer McKean, stating:

> I would be happy to, you know, do sort of a declaration or attestation 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 made any margin loans to this firm for this account.

11. This was evidence supporting Respondent Frager's position that should have been made known to Respondent Frager.

12. In a telephone conversation on July 6, 2010 between Attorney Bonnell and two individuals from Pershing identified as Sam and Jim, Attorney Bonnell was advised that there was no money ever credited to the Geary Securities account for the PL-CMOs.

13. In the July 6, 2010 conversation, Attorney Bonnell was also advised by Sam and Jim that the account in which the PL-CMOs were placed was used as a COD (collection on delivery) account for principal transactions with customers, but which did not necessarily mean that Geary Securities owned the securities placed in the account.

14. Jim and Sam repeatedly advised Attorney Bonnell that the PL-CMO transaction was a "flat" transaction (neither showing nor requiring payments in or out of the account for the securities), which is consistent with a COD account and consistent with an agency transaction.

15. In the July 6, 2010 conversation, Attorney Bonnell stated that she understood the concept of a COD account, which meant that Attorney Bonnell understood that the account held securities pending settlement and therefore holding securities in that account did not mean that the firm owned those securities.

16. Pershing staff in all three recorded conversations confirmed that: Pershing never lent any money to Geary Securities, the PL-CMOs were never owned by Geary Securities, the transactions did not close/settle until the ultimate purchase by Dr. McKean's accounts and the transaction with Dr. McKean was a direct purchase by his accounts from Frontier Bank with Geary Securities acting solely as an intermediary (Agency Look-Alike Transaction).

17. It is clear from the telephone conversations, that no consideration ever passed from Geary Securities to Frontier to purchase the PL-CMOs.

18. It is also clear from the telephone conversations, that irrespective of the parties' initial intent or irrespective of notations on trade tickets, the transaction that was ultimately effected was the one documented on the books of Pershing.

19. The ODS-Frager Motion filed by attorneys Bonnell and Hall includes the following Statement of Fact on page 4:

> 15. Geary Securities purchased the Frontier PL-CMOs in a proprietary account designated as the Firm's MBS/CMO inventory account (MBS/CMO Account). Geary Dep. 59:69; Goodman Dep. 34:22-35:15; Capital West Securities Inc. MBS/CMO Account, Brokerage Account Statement at 10-11, May 1, 2009 – May 31, 2009.

20. The above Statement of Fact is not supported by the references included with the statement and is known to be false based on the telephone conversations between Pershing, the holder of the account, and the Department attorneys who filed the Motion.

21. Statements of Fact numbered 16 through 19, are all predicated on Statement of Fact #15 and therefore all of those facts so predicated are without foundation and therefore also false.

22. The ODS-Frager Motion is also based on the following fact stated on page 5:

> 22. Geary Securities was obligated to remit payment to its clearing firm, Pershing LLC (Pershing), in connection with the purchase of the Frontier PL-CMOs. Paulukaitis Aff. ¶ 11. Geary Securities could not pay for those securities. Geary Respondents' Answer ¶ 37; Frager Dep. 61:5-10; Hintze Dep. 37:14-21. Geary Securities effectively borrowed the funds necessary to do so from Pershing. Hintze Dep. 37:14-21; Paulukaitis Aff. ¶ 13. The Firm was required to record a liability in the amount of the borrowed funds.

Paulukaitis Aff.

23. That Statement of Fact is false based on the several conversations between staff of the Department and staff of Pershing, in which Pershing staff stated unequivocally that the account was not required to have cash credited to it or paid out of it; that Pershing never lent money to Geary Securities to purchase the securities and that the transaction was effected as a sale from Frontier Bank to the McKean accounts with Geary Securities acting as intermediary.

24. Statements of Fact numbered 23 through 51 are all predicated on Statements of Fact #15 and #22 and therefore all of the facts so predicated are without foundation and therefore also false.

25. In support of his Response to the Motion for Summary Decision, Respondent Frager submits the evidence in the attached recorded conversations, indicating that Geary Securities never purchased the PL-CMOs; Geary Securities never paid for the PL-CMOs with monies lent by Pershing; that therefore, Geary Securities never had a net capital violation in May 2009; and consequently, all allegations against Respondent Frager and Geary Securities based on those allegations are not supported by any facts.

26. Respondent Frager was not aware that the Department knew the Statements of Fact contained in the ODS-Frager Motion were false until Respondent Frager received the attached recordings.

27. This Supplemental Response is timely and should be considered by the hearing officer since Respondent Frager had not been given a copy of the recordings of the telephone conversations until January 2012, which recordings were at all times within the control of the Department, and furthermore, counsel to Respondent Frager had attempted but been unable to contact Attorney Schwartz to ask about the transactions.

Based on the above, we hereby request that the hearing officer deny the Department's Motion for Summary Decision.

MOTION TO DISMISS ALL ALLEGATIONS OF MAY 2009 NET CAPITAL VIOLATIONS

28. We hereby incorporate statements 1 through 24 above.

29. Based on the above, Geary Securities never borrowed money from Pershing and therefore never purchased the PL-CMOs in May 2009.

30. Because Geary Securities did not purchase the PL-CMOs, the reporting of net capital as submitted by Respondent Frager was correct as filed.

Accordingly, we hereby request that the hearing officer issue an order dismissing all allegations relating to net capital violations involving Norman Frager and Geary Securities in May 2009.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2012, a copy of the foregoing document was served on the following via electronic mail:

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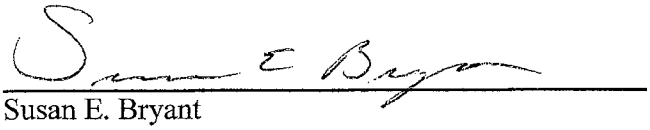

Susan E. Bryant