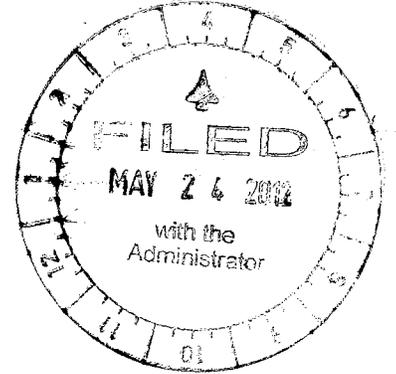


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

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

Respondents.

File No. 09-141

**DEPARTMENT'S MOTION TO STRIKE THE WITNESS LIST OF NORMAN FRAGER
AND MOTION IN LIMINE TO EXCLUDE TESTIMONY OF DEPARTMENT'S
COUNSEL AND A PERSHING REPRESENTATIVE**

The Oklahoma Department of Securities ("Department") moves for an order striking the *Witness List of Norman Frager*, filed on May 24, 2012 ("Frager's Second Final Witness List"), and prohibiting Respondent Frager from presenting Melanie Hall, Terra Bonnell, and a representative of Pershing, LLC ("Pershing"), as witnesses at hearing.

Respondent Frager filed Frager's Second Final Witness List out of time. Pursuant to the *Agreed Amended Scheduling Order* filed in this matter on February 14, 2011, Respondent Frager's final witness list was due on April 5, 2011. Accordingly, Respondent Frager filed *Respondents' Joint Final List of Witnesses Subject to and without Waiving Joint Application for Modification of Scheduling Order*, on April 5, 2011 ("Frager's First Final Witness List"). On May 24, 2012, over a year after the deadline for filing a final witness list and approximately two weeks before the June 11, 2012 deadline

for completion of discovery, Respondent Frager filed Frager's Second Final Witness List that lists four new individual witnesses and three new categories of witnesses.¹

The four new individual witnesses listed on Frager's Second Final Witness List are Melanie Hall, Terra Bonnell, Carol Gruis, and "An unknown representative of Pershing, LLC to be named following deposition." To date, Respondent Frager has not requested a subpoena for the deposition of a Pershing representative and has not notified the Department of such a deposition.

As of this date there are, approximately, only two weeks before the deadline for completion of discovery. Next week includes the Memorial Day holiday and a hearing on this motion and other issues to be raised by counsel for Respondent Frager. During the following week, the depositions of David Paulukaitis and Samuel Luque, Jr., are scheduled in Atlanta, Georgia, and Sarasota, Florida, respectively. As a result, there is no time to depose a Pershing representative.

The Department's allegations against Respondent Frager have been known since the filing of the *Enforcement Division Recommendation* in September 2010. The Department's allegations against Respondent Frager were reiterated in the Department's Motion for Summary Decision against Respondent Frager, filed on November 1, 2011. It is simply unjust and prejudicial to the Department for Respondent Frager to wait until there is no time left for discovery to file a new witness list that includes, for the first time, a witness who, although not identified by name, presumably lives out of state.

¹ The three new categories of witnesses are: 1) "All witnesses needed to rebut the testimony of a witness or a document or exhibit identified on the Department's final witness lists or exhibit lists or offered at hearing by the Department" 2) "Any additional witnesses identified during further discovery" and 3) "All witnesses necessary to authenticate any exhibits."

Carol Gruis, Melanie Hall, and Terra Bonnell are identified on Frager's Second Final Witness List to testify "regarding telephone conversations between the Department and representatives from Pershing regarding whether or not Pershing ever entered into a loan with Geary Securities for the purchase of the securities at issue in the Department's Recommendation." Carol Gruis, the Department's Director of Licensing and Examinations, is listed on the Department's final witness list. Melanie Hall and Terra Bonnell are the only attorneys who represent the Department in this administrative matter. Respondent Frager has no legitimate purpose for calling counsel for the Department as witnesses at the hearing. In addition to Carol Gruis, there are representatives of Geary Securities listed on the Department's final witness list and Frager's First Final Witness List who can testify regarding "whether or not Pershing ever entered into a loan with Geary Securities for the purchase of the securities at issue."

For the foregoing reasons, the Department requests that the Hearing Officer enter an order striking Frager's Second Final Witness List and prohibiting Respondent Frager from presenting Melanie Hall, Terra Bonnell, and a representative of Pershing as witnesses at hearing.

Respectfully,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing motion was emailed and mailed, with postage prepaid, this 24th day of May, 2012, to:

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