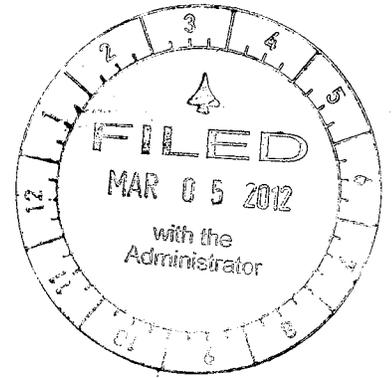


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



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

**DEPARTMENT'S REPLY TO SUPPLEMENTAL RESPONSE OF NORMAN FRAGER
TO DEPARTMENT'S MOTION FOR SUMMARY DECISION AGAINST NORMAN
FRAGER, AND OBJECTION TO MOTION TO DISMISS**

The Oklahoma Department of Securities (“Department”) submits this reply and objection to the *Supplemental Response of Norman Frager to Motion by Oklahoma Department of Securities for Summary Decision against Norman Frager* [“Supplement”] and *Motion to Dismiss All Allegations of May 2009 Net Capital Violations* [“Motion to Dismiss”], filed on February 27, 2012.

As way of background, the Department filed its *Motion for Summary Decision Against Respondent Norman Frager and Brief in Support* (“Motion for Summary Decision”) on November 1, 2011. With the Department’s consent, Frager was granted until November 30, 2011, to file a response to the Motion for Summary Decision. On December 1, 2011, Frager filed his response to the Motion for Summary Decision. Frager’s response did not create a genuine issue over any material fact. Presumably realizing the deficiency of Frager’s response to the Motion for Summary Decision, Frager’s counsel filed, and later withdrew, a meritless motion for sanctions against the Department that was clearly another attempt at responding to the

Motion for Summary Decision. Now, Frager has filed his Supplement that is based on information that was available to Frager prior to the deadline for the filing of his initial response to the Motion for Summary Decision. Based on the Supplement, Frager also filed, with the Supplement, a meritless motion to dismiss “all allegations relating to net capital violations involving Norman Frager and Geary Securities in May 2009.”

As set forth below, Frager’s Supplement should be stricken because it was filed out of time and is based on information that was available to Frager prior to the November 30th deadline for his response to the Motion for Summary Decision. The evidentiary materials attached to Frager’s Supplement (the audio recordings discussed below) are not acceptable evidentiary material and should also be stricken. Even if Frager’s Supplement and the evidentiary materials attached thereto are considered in connection with the Motion for Summary Decision, summary decision against Frager should be granted because there is no genuine issue as to any material fact. Further, Frager’s Motion to Dismiss is frivolous and should be denied.

I. FRAGER’S SUPPLEMENT SHOULD BE STRICKEN

Frager claims that his Supplement is based on new information: audio recordings of three telephone calls¹ between counsel and examiners of the Department and counsel and staff of Pershing, LLC (“Pershing Recordings”). Transcripts of the Pershing Recordings are attached hereto as Exhibits A, B and C. Throughout his Supplement, Frager implies that the Department wrongfully withheld the Pershing Recordings and the information contained therein from Frager. What Frager overlooks is that in this administrative proceeding, the Department does not have any obligation to turn over any evidence to Respondents except upon a written request for production of documents under 660:2-9-3(b)(2) of the Rules of the Oklahoma Securities

¹ Two of the telephone calls were not recorded in full.

Commission and the Administrator of the Department of Securities (“Rules”), or pursuant to a scheduling order requiring exhibits to be exchanged before a hearing on the merits. Frager has never submitted a written document request to the Department pursuant to 660:2-9-3(b)(2) nor have the parties exchanged exhibits pursuant to a scheduling order.

The Geary Respondents, not Frager, requested documents from the Department pursuant to 660:2-9-3(b)(2). The Pershing Recordings were responsive to one of the Geary Respondents’ document requests. The Department disclosed the existence of the recordings in its written response to the Geary Respondents’ request but withheld the recordings in good faith on the basis of the work product doctrine.² The Geary Respondent’s filed a motion to compel the production of the recordings, among other things, on March 28, 2011. *See Geary Respondents’ (1) Motion for Preclusion Order and Order Striking Witnesses and Allegations, and (2) Alternative Motion to Compel Production of Responsive Documents Wrongfully Withheld by the Department.* The parties had a hearing on the Geary Respondent’s motion on May 6, 2011. After an *in camera* review of the recordings, the Hearing Officer ruled on October 27, 2011, that the recordings were not work product and stated that the recordings would be delivered directly to the Geary Respondents. *See Ruling on the Department’s Objections to The Geary Respondents’ Discovery Requests*, pp. 8-10. As with all filings in this proceeding, Respondent Frager was provided a copy of the October 27th Order.

Frager has known about the Pershing Recordings since at least the time the Geary Respondents filed their motion to compel. Frager was notified that the Pershing Recordings were determined to be discoverable as of October 27th. Yet, Frager never requested a copy of the

² Frager’s use of the “understanding” of counsel for the Department as factual evidence for his objection to the Department’s Motion for Summary Decision and his Motion to Dismiss is inappropriate. *See Supplement*, ¶ 15.

audio recordings from the Department. Frager had over thirty days before the November 30th deadline for the filing of his response to the Motion for Summary Decision in which he could have requested and listened³ to the Pershing Audio Recordings. Frager's Supplement should be stricken because it is filed out of time.

II. THERE IS NO GENUINE ISSUE AS TO MATERIAL FACT THAT GEARY SECURITIES WAS LIABLE FOR THE PL-CMOS IN ITS PROPRIETARY ACCOUNT DURING THE TIME PERIOD MAY 28, 2009 THROUGH JUNE 1, 2009

Even if Frager's Supplement is considered in connection with the Motion for Summary Judgment, Frager has failed to demonstrate a genuine issue as to any material fact.

A. Pershing Recordings Do Not Contain Totality of Pershing Information

The Pershing Recordings relate to telephone calls on October 12, 2009, June 25, 2010, and July 6, 2010, in which the Department sought information from Pershing. The June and July telephone calls were not recorded in full. In each of the recordings, Pershing agrees to follow-up with additional information to the Department. *See, e.g.*, Ex. A, 31:10-15; Ex. B, 47:6-20; Ex. C, 6:2-7:25. In the July 6th telephone call, one of the Pershing representatives again agrees to do additional investigation into the relevant transactions. *See* Ex. C, 6:2-7:25.

After additional investigation, Pershing provided the Department with the documents attached as Exhibit 1 ("Pershing Document") to the Affidavit of Carol Gruis, on July 22, 2010.⁴ *See* Ex. D. In an unrecorded telephone conversation, Pershing explained the Pershing Document to the Department. As is evident from the document itself, the Pershing Document tracks one of

³ Any argument that Frager needed additional time to have the Pershing Recordings transcribed should not be considered in light of the fact that transcripts were not attached to the Supplement.

⁴ The Department produced the Pershing Document to the Geary Respondents in response to a discovery request.

the relevant PL-CMOs from Frontier State Bank's account at United Missouri Bank to Geary Securities' MBS/CMO Account at Pershing, and ultimately to the account of Joseph D. McKean Jr. at Pershing, and the corresponding accounting entries. The stated description of Item 3 on page 2 of the Pershing Document is, "Frontier Bank Sells 13,040,000 to Geary Securities MBS/CMO Account vs \$8,453,516.81 with trade date of 5/28/09 and same day settlement." The stated description of Item 5 on page 2 of the Pershing Document is, "Geary Securities sells 13,040,000 to Joseph D McKean Jr vs \$8,409,716.20 on 6/1/2009, which is later corrected to 5/28/2009."

The information provided in the Pershing Document is consistent with the account statements for the Geary Securities MBS/CMO Account as of May 31, 2009, the relevant trade tickets, the testimony of the person who entered the trades at Keith Geary's direction, and the testimony of Keith Geary. *See* Motion for Summary Decision, Appendix, Items 4, 6 (28:12-33:23, 52:9-53:5, Exs. 1-5), and 9 (59:4-60:10, 64:13-65:3, 67:10-22, 71:1-75:5). The information provided in the Pershing Document is also consistent with the MBS/CMO Account's Settlement Date Inventory Recap report for May 29, 2009, before it was altered by Frager. *See* Ex. E (also included in Motion for Summary Decision, Appendix, Item 10, Ex. 5). Most importantly, the information provided in the Pershing Document is consistent with the following undisputed facts: (1) Geary Securities paid interest to Pershing to "carry" the PL-CMOs from May 28, 2009, to June 1, 2009, and (2) Frager recorded the accrued interest on the PL-CMOs for that time period as an asset of Geary Securities. *See* Motion for Summary Decision, ¶¶ 33, 37 and Appendix, Item 10 (Ex. 5, ODS 09-141/CW 2587, 2597, 2603, 2610).

B. Pershing Recordings Are Not Acceptable Evidence and Should be Stricken

Under 660:2-9-6(b) of the Rules, the admissibility of evidence is governed by Section 310 of the Administrative Procedures Act. Okla. Stat. tit. 75, §§ 250.1 through 323 (2012). Section 310 allows an agency to exclude incompetent evidence. Okla. Stat. tit. 75, § 310. The Pershing Recordings are unreliable and incompetent.

The Pershing Recordings represent a work in progress in Pershing's efforts to answer the Department's inquiries. In each of the recordings, a Pershing representative references the fact that he or she does not have all of the necessary information immediately available. *See, e.g.*, Ex. A, 20:22-25; Ex. B, 41:2-10; Ex. C, 6:2-5. In each of the Pershing Recordings, a Pershing representative agrees to gather additional information regarding the accounts and transactions being reviewed. *See, e.g.*, Ex. A, 31:10-15; Ex. B, 47:6-20; Ex. C, 6:2-7:25. The June and July Pershing Recordings contain only part of conversations between unidentified persons in which it is difficult to determine exactly what account, transaction and time period is being discussed. In none of the Pershing Recordings are any of the participants under oath. Neither the Department nor any respondent identified a Pershing representative as a witness on its final witness list. The Pershing Recordings are not acceptable evidentiary materials for purposes of motions for summary judgments pursuant to Rule 13 of the Rules for District Courts of Oklahoma. *See* Okla. Dist. Ct. R. 13(c). The Pershing Recordings should not be considered for purposes of the Motion for Summary Decision or at any hearing on the merits.

C. Frager Has Not Demonstrated a Genuine Issue Over Fact That Geary Securities Was Liable for the PL-CMOs in its Proprietary Account During the Time Period May 28, 2009, through June 1, 2009

Frager attempts to use the Pershing Recordings to dispute ¶¶ 15 and 22 of the Motion for Summary Decision, and ¶¶ 16-19 and 23-51 as a result. Yet, Frager is unsuccessful.

Paragraph 15 of the Motion for Summary Decision states:

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. 59:6-9; Goodman Dep. 34:22-35:1; Capital West Securities Inc. MBS/CMO Account, Brokerage Account Statement at 10-11, May 1, 2009-May 31, 2009.

Paragraph 22 of the Motion for Summary Decision states:

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. ¶ 13. (Emphasis added.)

Frager's new position seems to be that Geary Securities did not "purchase" the Frontier PL-CMOs in the firm's MBS/CMO inventory account because cash was never delivered into or out of the inventory account for the Frontier PL-CMOs. *See* Supplement. The fact that cash was never delivered into or out of Geary Securities' inventory account for the Frontier PL-CMOs is immaterial. What is material to the determination of whether Geary Securities had a net capital violation on May 28, 2009, through June 1, 2009, are the following facts:

- 1) Geary Securities entered trades to purchase the Frontier PL-CMOs in the MBO/CMO Account on May 28, 2009, for *same-day settlement* (Motion for Summary Decision, ¶¶ 12-13);
- 2) Keith Geary intended for Geary Securities to hold the Frontier PL-CMOs for two to three weeks (Motion for Summary Decision, ¶ 14);
- 3) the Frontier PL-CMOs remained in the MBS/CMO Account on May 31, 2009 (Motion for Summary Decision, ¶ 17); and
- 4) customers of Geary Securities did not purchase the Frontier PL-CMOs until June 1, 2009 (Motion for Summary Decision, ¶ 19).

These facts remain undisputed. These facts establish that Geary Securities was liable to Pershing for the cost of the Frontier PL-CMOs until the customers of Geary Securities purchased the Frontier PL-CMOs on June 1st. If Geary Securities was not liable to Pershing for the cost of the Frontier PL-CMOs, why did Geary Securities pay Pershing interest to “carry” the Frontier PL-CMOs while they were in Geary Securities’ MBS/CMO Account? If Geary Securities did not own the Frontier PL-CMOs from May 28th through June 1st, why did Frager book the accrued interest on those PL-CMOs as an asset of Geary Securities? If someone else owned the Frontier PL-CMOs as Frager is now suggesting, the accrued interest belongs to them.

Frager’s audacity in adopting the position that Geary Securities never “purchased” the Frontier PL-CMOs and that the transaction was “consistent with an agency transaction” further demonstrates Frager’s failure to discharge his duties as the firm’s FINOP by investigating the nature of the transactions.

III. FRAGER’S MOTION TO DISMISS IS FRIVOLOUS

Based on his Supplement, Frager included with his Supplement a motion to dismiss “all allegations relating to net capital violations involving Norman Frager and Geary Securities in May 2009.” Respondent Frager’s counsel has not entered an appearance in this matter on behalf of Geary Securities. Counsel for Geary Securities has not signed or adopted Frager’s Supplement or Motion to Dismiss. As a result, Frager’s Motion to Dismiss should be limited to the allegations relating to Frager in connection with the May 2009 net capital violations.

The purported purpose of Frager’s Supplement was to set forth “new information” that allegedly controverts statements of fact contained in the Department’s Motion for Summary Decision. As set forth above, Frager’s Supplement did not accomplish its purpose. Assuming *arguendo* that Frager demonstrated a genuine issue as to a material fact, the Hearing Officer still

cannot grant Frager's Motion to Dismiss. A genuine issue as to a material fact merely necessitates a hearing on the merits. Frager's Motion to Dismiss is frivolous and should be denied.

CONCLUSION

Frager's Supplement should be stricken because it was filed out of time. The "new information" on which the Supplement is based was available to Frager over thirty (30) days prior to the November 30th deadline for his response to the Motion for Summary Decision. The evidentiary materials attached to the Supplement are unacceptable and should also be stricken. Even if Frager's Supplement, including the evidentiary materials attached thereto, is considered in connection with the Motion for Summary Decision, summary decision against Frager should be granted because there is no genuine issue as to any material fact. Finally, Frager's Motion to Dismiss is frivolous and should be denied.

Wherefore, the Department requests that Frager's Supplement and the Pershing Recordings be stricken from the record and not considered further; Frager's Motion to Dismiss be denied; and the Department's Motion for Summary Decision be granted.

Respectfully,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing DEPARTMENT'S REPLY TO SUPPLEMENTAL RESPONSE OF NORMAN FRAGER TO DEPARTMENT'S MOTION FOR SUMMARY DECISION AGAINST NORMAN FRAGER, AND OBJECTION TO MOTION TO DISMISS was emailed and mailed, with postage prepaid, this 5th day of March, 2012, to:

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EXHIBIT

A

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1 (Transcription of provided audio.)
2 CAROL: This is Carol.
3 SAM: Hi, Carol.
4 CAROL: Hi, Sam.
5 SAM: All right. We've got everybody. Sorry
6 for the delay.
7 CAROL: That is no problem.
8 SAM: I have with me Joan Schwatz from our legal
9 department, Patrick Leary, and Jim Siegel Horn, who work
10 in AML, and myself, obviously.
11 CAROL: I'm sorry. There was Joan?
12 JOAN SCHWATZ: Yes. Hi, Carol. This is Joan
13 Schwatz.
14 CAROL: Hi, Joan.
15 JOAN SCHWATZ: And I apologize. It is really my
16 fault that they're late. So I'm sorry.
17 SAM: We always blame the lawyers.
18 CAROL: That's right.
19 MS. HALL: Wait a second. I'm a lawyer, so
20 don't be doing that. Yeah, Carol thinks that is funny.
21 CAROL: Yes.
22 SAM: So, yes, it was Joan, Patrick Leary and
23 Jim Siegel Horn.
24 CAROL: And Jim. Okay. Great. And as I said
25 previously, we have Melanie Hall, who is director of

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1 enforcement here at the Department and also Kim Reed,
2 who is a fellow examiner.
3 SAM: Okay. Great.
4 CAROL: Okay. We've had a chance, of course, to
5 read this SAR report, which was, you know, very, very
6 interesting and we have a few questions with regard to
7 it.
8 SAM: The SAR we're talking about is the one
9 that I produced to you based on your September 15th
10 letter.
11 CAROL: Yeah. And this was -- yeah, correct.
12 It states that it was prepared on September 16th, 2009.
13 Have there been other reports that have been generated
14 with regard to these accounts?
15 MR. SIEGEL HORN: Hang on. We're checking to
16 make sure that we are all on the same page.
17 CAROL: Okay.
18 MR. SIEGEL HORN: Yeah, sure. So here is the
19 confusion, Melanie. Yes, we're talking about that SAR
20 was actually filed on June 29th, 2009, originally. We
21 have a quirk in our system that if you don't print it
22 the right way, it will show the date on the form --
23 CAROL: Oh, yeah.
24 MR. SIEGEL HORN: -- which in this case is
25 September 16th.

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1 CAROL: Gotcha.
2 MS. HALL: So was this the only SAR that you
3 filed regarding these accounts?
4 MR. SIEGEL HORN: No. We -- more recently we
5 filed a supplemental SAR.
6 SAM: And that was in September of '09?
7 MR. SIEGEL HORN: September 18th.
8 SAM: September 18, 2009. So your request in
9 the September 15th letter, which came from Kim Reed, is
10 a copy of the SAR for any activity in these two accounts
11 prior to July and August of 2009.
12 CAROL: Right.
13 SAM: So that is why you have this one. And
14 then the supplemental one, we are happy to share with
15 you, but that is why we produced the one that we did was
16 the September 15th letter.
17 MS. HALL: Do we need to send out a supplemental
18 request to get that?
19 SAM: You can just shoot me an e-mail. That is
20 fine.
21 MS. HALL: Okay.
22 CAROL: We'll do that. That would be great.
23 MR. SIEGEL HORN: Great. And we'll get that to
24 you.
25 CAROL: Wonderful. In this original one --

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1 MR. SIEGEL HORN: Yeah.
2 CAROL: -- just so that we understand kind of
3 the workings at Capital West, this apparently involved
4 an account called MBS/CMO account that was established
5 there in May of 2008. Can you tell us how that account
6 operated, what it was allowed to do?
7 MR. SIEGEL HORN: No. We can't answer your
8 question.
9 SAM: I don't know how we would be able to
10 answer that.
11 MR. SIEGEL HORN: Because we don't -- in our
12 role as a clearing firm we don't allow firms -- we don't
13 put restrictions on that. But we can tell you that
14 generally that account is a firm account.
15 CAROL: Okay.
16 MR. SIEGEL HORN: It's an account that the IBD
17 uses in the course of its business operations.
18 CAROL: Okay.
19 JOAN SCHWATZ: This is Joan Schwatz. I am
20 sorry. Part of the problem is, as a clearing firm, we
21 provide mechanisms for introducing firms to conduct
22 their business. So what that means is that, you know,
23 there is introduced accounts to us that we carry in our
24 books and records. For instance, you know, John Q.
25 Public and his client customer account gets introduced

2 (Pages 2 to 5)

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<p>1 to Pershing for a number of processes that we provide to 2 the introducing broker. 3 And in addition to that, each introducing firm 4 has any number of proprietary accounts. And that is 5 what this one is that you are asking about. The account 6 MBS-CMO, the Capital West account, is an account that is 7 considered a proprietary account. So it is used for 8 purposes that the IBD determines is necessary to run 9 their business. So it could be in some cases an 10 allocation account. Some firms establish allocation 11 accounts where they will take a transaction and allocate 12 it to a customer account. If it is an average price 13 account. Sometimes it can be a proprietary training 14 account. It could be error accounts, all of these other 15 types of accounts. And the 8 -- if you look at the 16 account number, it begins with 89. That is 5KV891033 -- 17 CAROL: Uh-huh. 18 JOAN SCHWATZ: Often the 89 is the indicator 19 that it is a proprietary account range. And so these 20 accounts are used for a number of purposes. But they 21 are not in customer accounts. So they are not owned by 22 an individual who's introducing them to Pershing through 23 the introducing firm. 24 So in this case when you ask us what they were 25 allowed to do in there, well, they are allowed to do</p>	<p>1 account? 2 JOAN SCHWATZ: Not necessarily. I don't 3 remember if we did or we didn't. But we -- and we 4 certainly could. Right. I just -- I wanted to -- I am 5 not trying to be so literal to answer your question, but 6 I just want to make sure. You know, what is difficult, 7 because we are a clearing firm, is that many things are 8 provided as tools to licensed and regulated entities. 9 And so we don't get to say, you can't allocate trades to 10 customers of this account. You can't use it as an error 11 account. We don't want to have activities that we think 12 are suspicious conducted in the accounts on our 13 platform, period. 14 And so in this case we did have some questions 15 around this account as a proprietary account. 16 Absolutely. But we questioned the activity surrounding 17 the CMOs. 18 CAROL: Gotcha. 19 JOAN SCHWATZ: Right. And part of it involved 20 the proprietary account. 21 CAROL: Right. 22 JOAN SCHWATZ: So there were something that set 23 a concern in our mind to get additional information from 24 the introducing firm, and then we followed up by asking 25 them questions around the -- those -- a number of</p>
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<p>1 whatever their supervisory principals think is 2 appropriate and necessary for them to conduct business. 3 CAROL: Okay. So you, Pershing, do not place 4 any restrictions on the activity within that account? 5 JOAN SCHWATZ: I don't want to be so literal to 6 say we don't place any restrictions, because if we saw 7 someone charging a million dollars of commission on 8 \$100,000 trade, we probably would take a look at that 9 and have a question around it. 10 CAROL: Okay. 11 JOAN SCHWATZ: If we thought that there was some 12 kind of activity that was, you know, concerning to us, 13 we would ask a question if it jumped up, you know, as a 14 red flag. 15 CAROL: Okay. 16 JOAN SCHWATZ: But there is no -- there is no 17 set of rules that one has to follow because every 18 introducing firm is a regulated entity and a member firm 19 and we expect that they are complying with the 20 applicable rules and conducting their business in the 21 way that they think is most appropriate for their 22 customer base. 23 CAROL: Okay. So then would it be appropriate 24 to say that you would not have had any conversations 25 with Capital West regarding activity within this</p>	<p>1 accounts that are enumerated in the SAR. 2 CAROL: Can you tell me the activity that 3 Capital West would process through this account? Is 4 that done on a riskless principal basis or on a 5 principal? 6 JOAN SCHWATZ: I don't -- yeah. I mean, if you 7 want, Carol, I mean, I can give you a trade blog of that 8 showing you all of the trades in that account for a 9 particular time period, if you think that would help. 10 CAROL: Yeah. As a matter of fact, I will just 11 put that in the e-mail to you, okay, for the time 12 period? 13 JOAN SCHWATZ: I think they may help you get to 14 where you need to get. 15 CAROL: I think so. I think we'll need that. 16 And did you speak with anyone at Capital West 17 with regard to this report when you were preparing the 18 report? 19 JOAN SCHWATZ: Yeah, we did. 20 MR. SIEGEL HORN: Yeah, we had a conversation 21 with the firm CTO. 22 CAROL: Althea? 23 MR. SIEGEL HORN: Right. 24 CAROL: Alberts? Okay. 25 MR. SIEGEL HORN: And -- okay.</p>

3 (Pages 6 to 9)

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1 CAROL: Do you --
2 JOAN SCHWATZ: I am sorry. Could you give us
3 half a second? I apologize.
4 CAROL: Sure.
5 (Brief talking amongst themselves.)
6 JOAN SCHWATZ: All right, guys. I apologize.
7 We were just trying to all get on the same page. There
8 was some confusion on the timing on my part.
9 CAROL: That is fine.
10 JOAN SCHWATZ: So I think to answer your
11 question around was it principal or not, I am not sure
12 we ever got an answer that was specific as to whether it
13 was a riskless principal account. That MBS/CMO account,
14 account number 891033.
15 CAROL: Right. So but if you send me the
16 activity with regard to that account, it should be
17 apparent on that report? Would that be correct?
18 JOAN SCHWATZ: I don't know that it would be on
19 the trade -- You would probably have to get the trade
20 tickets from Capital West.
21 CAROL: From the firm. Okay.
22 JOAN SCHWATZ: To see if they were marked it as
23 principal or not.
24 CAROL: Okay.
25 JOAN SCHWATZ: Yeah. I think we were more

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1 concerned around the activity generally than the fact
2 that it was marked as a riskless principal account.
3 CAROL: Yeah.
4 JOAN SCHWATZ: So --
5 CAROL: We're concerned with that, too, but I
6 was --
7 JOAN SCHWATZ: I will take a look at some notes,
8 but I don't believe we covered that specific topic.
9 CAROL: Okay.
10 MS. HALL: Did Althea cooperate with you when
11 you visited with her?
12 MR. SIEGEL HORN: She was very forthcoming with
13 respect to what she knew.
14 MS. HALL: Do you think she knew everything?
15 MR. SIEGEL HORN: We think that the (inaudible)
16 firm is probably the most knowledgeable about the
17 transactions.
18 MS. HALL: Uh-huh. Absolutely.
19 JOAN SCHWATZ: See, the COC, not the CCO --
20 (Several people began speaking at the same
21 time.)
22 JOAN SCHWATZ: Dr. McKean has been a
23 long-standing friend and customer of his.
24 CAROL: Right.
25 SAM: Right.

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1 JOAN SCHWATZ: Yeah. This is Joan, and I will
2 be honest, I was not on the call with Althea, but I
3 participated in the second call with the CEO.
4 MS. HALL: So you have talked to Mr. Geary?
5 JOAN SCHWATZ: Yes.
6 SAM: Yes.
7 MS. HALL: And how forthcoming was he?
8 MR. SIEGEL HORN: Very forthcoming.
9 JOAN SCHWATZ: Yeah. He was --
10 MR. SIEGEL HORN: He answered all of our
11 questions. But that was subsequent to filing the SAR.
12 JOAN SCHWATZ: Right. That is what we were
13 trying to do, was iron down the timing and Patrick had
14 had a chance to speak with Althea, and then the SAR was
15 filed, and then basically the timing required us to file
16 the SAR and then we followed it up with the CEO, Mr.
17 Geary, and had a conversation with -- I don't know --
18 Sam, were you on it? Okay. So all four of us on the
19 phone for that conversation.
20 MS. HALL: When did you --
21 JOAN SCHWATZ: And I think it is fair to
22 characterize both of those conversations as being
23 cooperative and forthcoming. I am not sure that our
24 perspective was necessarily exactly the same as their
25 perspective in terms of the concern around the training

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1 activity.
2 MS. HALL: When did you actually talk to him?
3 Was it before the supplement or before the SAR, the
4 first SAR?
5 JOAN SCHWATZ: It was after the first SAR.
6 MS. HALL: Okay.
7 JOAN SCHWATZ: Before the supplement, but it was
8 in early July. So not much after the SAR was filed.
9 CAROL: So you have not spoken to him with
10 regard to the second, the supplemental report, the
11 supplemental SAR?
12 MR. SIEGEL HORN: No. We --
13 JOAN SCHWATZ: Correct.
14 CAROL: Okay.
15 MS. HALL: Or --
16 JOAN SCHWATZ: Right, it was not filed jointly.
17 CAROL: Right.
18 JOAN SCHWATZ: Right. The supplemental SAR came
19 much more recently.
20 CAROL: Uh-huh.
21 MS. HALL: So this -- so you're --
22 JOAN SCHWATZ: The timing was the initial
23 activity was identified. Patrick had that conversation
24 with the CCO, Althea. After that information and the
25 filing of the SAR we were looking at some additional

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1 information, still had questions and asked for a
2 conversation with the CEO and I think with Althea, but I
3 think, if I remember, she was sick or she was traveling.
4 There was some kind of glitch in the timing, if I
5 remember correctly.
6 CAROL: Right.
7 JOAN SCHWATZ: So she -- it was just a
8 scheduling issue more than her not wanting to be there.
9 And so we had asked to have a conversation with both of
10 them and proceeded with Mr. Geary because I am -- she
11 was either sick or traveling. I don't remember. She
12 wasn't available and, since we had rescheduled, we went
13 forward and had that conversation with Mr. Geary. Based
14 on that information and some other information, a
15 supplemental SAR was filed in September. But there was
16 no second conversation with Mr. Geary that led to the
17 filing of the supplemental SAR, if that helps you in
18 chronology.
19 MS. HALL: Okay.
20 CAROL: It does.
21 JOAN SCHWATZ: Okay.
22 CAROL: The supplemental SAR, did that have
23 anything to do with another account by the name of CEMP?
24 MR. SIEGEL HORN: CEMP?
25 CAROL: Yes.

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1 MR. SIEGEL HORN: No. No. The supplemental SAR
2 is new activity in the same account as the original SAR.
3 JOAN SCHWATZ: That new activity, that was
4 similar to the pattern that we saw on the first SAR,
5 correct?
6 MR. SIEGEL HORN: Correct.
7 JOAN SCHWATZ: Yeah. Correct. So similar
8 transactions that had caused us to be concerned and
9 initiated conversation with the firm.
10 CAROL: Okay. And the activity that I believe
11 that we saw in the statements was in August we saw a
12 transferring out of assets?
13 MR. SIEGEL HORN: Yeah.
14 CAROL: In September we see them coming back?
15 MR. SIEGEL HORN: Right. Yeah.
16 JOAN SCHWATZ: Right.
17 CAROL: And --
18 MR. SIEGEL HORN: It was August 4th --
19 CAROL: Right.
20 MR. SIEGEL HORN: -- CMOs were delivered out.
21 CAROL: Right. And do you know where they were
22 delivered to?
23 MR. SIEGEL HORN: They came back. That is
24 exactly -- with the supplemental report.
25 JOAN SCHWATZ: Right. So we know where they

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1 went to.
2 MR. SIEGEL HORN: No. If memory serves me
3 correctly, they were delivered off of our platform.
4 CAROL: Okay.
5 MR. SIEGEL HORN: And we don't have the method
6 to track it down.
7 CAROL: Okay. But then you saw the very same
8 ones coming back in September, the same positions?
9 MR. SIEGEL HORN: That is correct.
10 MS. HALL: Okay. And you have not talked to
11 anybody since that happened to know about what their
12 explanation of that is?
13 MR. SIEGEL HORN: No, I have not, no.
14 JOAN SCHWATZ: No. I think the answer is that
15 it was consistent with the previous activity and, since
16 we had spoken to the parties there at that time, there
17 was nothing new other than it was just continuing to
18 happen.
19 MS. HALL: Okay. Have you all seen any similar
20 activity involving -- well, it wouldn't be -- it is a
21 bank account. Never mind. I don't have the name of the
22 individual that would be.
23 JOAN SCHWATZ: If you want to send that in the
24 e-mail to Samantha, that --
25 MS. HALL: Okay.

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1 JOAN SCHWATZ: -- I would be happy to search.
2 CAROL: Okay.
3 JOAN SCHWATZ: It is always possible we might
4 not have caught something or may not have looked in that
5 particular direction. So if there is something specific
6 either by name or tax identification number or some
7 other method you would like us to verify activity, we
8 would be really happy to do that.
9 MS. REED: Okay. This is Kim. Have you been
10 contacted by any other regulators or law enforcement
11 agencies?
12 JOAN SCHWATZ: No. You are the only one.
13 MS. HALL: Okay. So you're -- you don't show
14 that these security, these CMOs were delivered to the
15 CEMP Resecuritization Trust 2009-1 account?
16 CAROL: Does that even sound familiar to you?
17 JOAN SCHWATZ: Let's look at the statement.
18 Yes. You know, we have to actually look at the account
19 statements to see if it -- sometimes it will stay where
20 it is going, but oftentimes not.
21 CAROL: Are you aware of the account?
22 (Speakers began talking at the same time.)
23 MS. HALL: I am sorry. What did you say?
24 JOAN SCHWATZ: Which financial institution that
25 account is housed at?

5 (Pages 14 to 17)

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1 CAROL: It just says Bank of New York, Melon.
2 We thought maybe there -- it was set up through
3 Pershing. But you're saying that it is not familiar to
4 you?
5 JOAN SCHWATZ: No, not -- wouldn't necessarily
6 -- it could be with the Bank of New York, Melon.
7 CAROL: Okay.
8 JOAN SCHWATZ: I mean, they're, obviously, a
9 huge facility, and so...
10 CAROL: Right.
11 JOAN SCHWATZ: So, yeah, it would probably say
12 Pershing if it was Pershing.
13 MS. REED: And this is Kim again. Samantha,
14 when you sent me the original SAR and the account
15 statements for those two entities relating to Dr.
16 McKean, you also sent some delivery instructions with --
17 for this CEMP Resecuritization Trust 2009 with some wire
18 instructions?
19 SAM: The response to the first inquiry?
20 MS. REED: Right. And it said -- it is two
21 pages. It is actually a letter that is addressed to
22 Capital West's Securities attention, Chad Goodman, and
23 it is dated July 31st of '09 and it references these
24 bond issues or the bonds that went through the accounts.
25 And then on the second page it has the delivery

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1 instructions. I was assuming those are the delivery
2 instructions for when the bonds were delivered out on
3 August 4th?
4 MS. HALL: And it is a letter from Dr. McKean to
5 CapWest.
6 SAM: Yeah. I mean, I am trying to find it. I
7 am sorry. What was the date again? I apologize.
8 MS. REED: July 31st.
9 SAM: And which account number?
10 MS. REED: It is regarding 5KV001377 and 007119.
11 SAM: 001377?
12 MS. REED: Yeah.
13 CAROL: It is authorization to free deliver.
14 MR. SIEGEL HORN: So that is the letter of
15 authorization?
16 CAROL: Yeah.
17 MS. REED: Right.
18 MR. SIEGEL HORN: So that is a letter of
19 authorization that Dr. McKean is giving CapWest --
20 CAROL: That is correct.
21 MR. SIEGEL HORN: -- instructing them to
22 deliver?
23 MS. REED: Yeah.
24 CAROL: And then attached to that is actually
25 delivery instructions.

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1 JOAN SCHWATZ: Let me take a look at that. Just
2 so that you know, the way that it normally works is that
3 the introducing firm we see those instructions, then
4 obviously enter that instruction on our system for us to
5 effectuate the delivery. Okay. So what we are talking
6 about is on Capital West letterhead and says, see
7 attached instructions. Is that what you are referring
8 to?
9 CAROL: Yeah. I am assuming it is on Capital
10 West letterhead. When I printed it off, it was just
11 blank.
12 MS. HALL: Because it is going to --
13 MS. REED: Oh, it's going -- it is from Dr.
14 McKean to Capital West.
15 CAROL: And the delivery instructions look like
16 Bank of New York Melon.
17 MS. REED: Yeah.
18 CAROL: So it looks like an account at Bank of
19 New York Melon and they name the account at Bank of New
20 York Melon -- appears to be CMP 2009 distribution
21 account.
22 JOAN SCHWATZ: All right. So we'll -- why don't
23 you give us -- instead of keeping you on the phone,
24 we'll refamiliarize ourself with the file and just let
25 me make sure that we've got that. It is the July 31st,

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1 '09 instruction?
2 MS. REED: Right. From Dr. McKean to Capital
3 West. And it has got an attachment for delivery
4 instructions.
5 JOAN SCHWATZ: And it is to that CEMP account --
6 MS. HALL: Right.
7 JOAN SCHWATZ: -- at CMYM?
8 CAROL: There is a -- you know, on the wire
9 instruction it does have a for further credit to and, I
10 guess, just for our sake, if you could verify that that
11 is not a Pershing account. It probably is directly with
12 the bank. But the number is 471559.
13 JOAN SCHWATZ: Okay. We'll take a look at that.
14 CAROL: Okay.
15 JOAN SCHWATZ: Great. We'll take another look
16 at that.
17 CAROL: Okay. We're just kind of trying to
18 follow the securities and find out where it was that
19 they were sent to and where they came back from.
20 MS. HALL: And why.
21 CAROL: Yeah, and why.
22 MS. HALL: Is there any way that you could tell
23 us what Dr. -- Keith Geary's explanation of these
24 transactions was to you?
25 JOAN SCHWATZ: Sure.

6 (Pages 18 to 21)

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1 MR. SIEGEL HORN: Dr. Geary's explanation was
2 that they were --
3 MS. HALL: Yeah, he is not a doctor yet, thank
4 God.
5 MR. SIEGEL HORN: -- his firm, Capital West, was
6 going to re-remic a group of CMOs, so they were going to
7 buy several issues. I think he said between nine and
8 eleven from a variety of banks, package them together
9 with the ultimate goal of getting a higher rating. He
10 said that -- that Keith said that he noticed a
11 duplication between the price and value of CMOs like
12 this and of the scarcity of super senior AAA CMOs in the
13 market place.
14 So they purchased these particular CMOs and he
15 was going to re-remic them and partnership with another
16 financial institution called Braver Stern.
17 CAROL: What is it?
18 MR. SIEGEL HORN: Braver Stern.
19 CAROL: Can you spell that?
20 MS. HALL: B-R-A-V-E-R?
21 MR. SIEGEL HORN: B-R-A-V-E-R. Stern is
22 S-T-E-A-R-N (sic).
23 CAROL: Okay.
24 MR. SIEGEL HORN: He said that originally the
25 bonds were -- the particular CMOs at issue here were

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1 going to be transferred to Braver Stern. He thought
2 that they would take them immediately. But through
3 miscommunication with Braver Stern, Braver Stern
4 indicated that they would not take them immediately,
5 that they would only take them at the time of the actual
6 re-remic would happen. So, therefore, Keith Geary had
7 these in his prop account for CapWest. And at that time
8 he sold them to Dr. McKean.
9 JOAN SCHWATZ: I think one of the things, if I
10 remember, is Geary was explaining that he didn't think
11 that he would have to actually -- the way the
12 transaction would work that he would not have to come
13 out of pocket with the dollars at the time, that they
14 would do the re-remic transactions immediately after
15 receiving -- after purchasing these from -- after
16 purchasing these, so they wouldn't have -- so his firm
17 wouldn't have to come out of pocket the dollars, that
18 they would get those transactions covered by the
19 re-remic.
20 And so when that didn't appear to be imminent,
21 and when Braver Stern wasn't going to reimburse them for
22 the purchase price by taking them off of his books, he
23 was going to have to pay for them, so he wound up
24 finding a buyer in Dr. McKean. Sorry. I am saying Dr.
25 Geary now, too. Sorry. Dr. McKean.

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1 CAROL: Yeah. Convenient. How much was the
2 transaction?
3 JOAN SCHWATZ: I knew you were going to ask us
4 that question.
5 MR. SIEGEL HORN: I believe it would be the
6 dollar amount located on the (inaudible) form, which
7 would be --
8 JOAN SCHWATZ: Page four.
9 MR. SIEGEL HORN: Thirty-nine.
10 JOAN SCHWATZ: Oh, sorry.
11 MR. SIEGEL HORN: Million.
12 CAROL: Thirty-nine million?
13 JOAN SCHWATZ: Page four kind of breaks out the
14 two numbers.
15 MS. HALL: Now, when he says he sold them to Dr.
16 McKean, is he talking about the sale in early June, or
17 is he talking about something that he is saying happened
18 in the latter part of June?
19 MR. SIEGEL HORN: No, he was talking about the
20 sale in June.
21 JOAN SCHWATZ: In June, yes.
22 MS. HALL: And I am just going to give you a
23 piece of information that we have that Dr. McKean is
24 representing that he did not initially purchase these
25 securities, he or Eagle Sky Foundation, until sometime

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1 after the sale by the bank. But it looks to us from the
2 statements that these transactions occurred showing him
3 purchasing and Eagle Sky purchasing these securities in
4 -- on June 1st or something like that?
5 CAROL: Third or something.
6 MS. HALL: Third.
7 MR. SIEGEL HORN: Yeah. That is -- go ahead.
8 MS. HALL: Is that correct?
9 MR. SIEGEL HORN: Yeah.
10 MS. HALL: But he is representing that it was
11 several days between the time -- or that Capital West
12 purchased the securities from the bank and then it was
13 several days before the securities --
14 JOAN SCHWATZ: Right. That makes sense. That
15 was because originally it was Braver Stern. Right. So
16 Capital West bought them from Frontier State Bank.
17 MS. HALL: But did they not immediately go to
18 Dr. McKean and Eagle Sky?
19 JOAN SCHWATZ: Not like the next day, no.
20 MR. SIEGEL HORN: No. I believe there was at
21 least two days, maybe three.
22 JOAN SCHWATZ: Because he was -- he was going to
23 have to pay for them in T plus three. And he was not
24 going to literally have the money or want to raise the
25 money by T plus three. So he was looking for -- he

7 (Pages 22 to 25)

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1 thought when -- he being --
2 CAROL: Geary.
3 JOAN SCHWATZ: -- Geary, thought he would --
4 that by T plus three they would have moved on to Braver
5 Stern and Braver Stern would have used the funds that
6 they had to pay for the transaction. Because he would
7 have gotten paid back from them, and then, you know,
8 would have been paid for.
9 MR. SIEGEL HORN: Right. And I think if you
10 have -- if you look at the three accounts, you can
11 probably -- well, we can definitely trace the time that
12 the CapWest account acquired the security and then look
13 at the date that one of the other accounts was acquired
14 in. See how quickly they turned over. I mean, I think
15 it might be easier to actually look at the account
16 statement than -- when you put things into the SAR form
17 they kind of get -- they kind of get jumbled.
18 MS. HALL: They get blurred together.
19 MR. SIEGEL HORN: Yeah. It is not the easiest.
20 Spreadsheets are better.
21 CAROL: So Capital West is saying that they
22 bought the securities from Frontier State Bank with the
23 intention of selling them to Braver Stern, but Braver
24 Stern said no, so they were kicked back to Eagle Sky and
25 McKean?

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1 JOAN SCHWATZ: Well, they were kicked back to
2 Capital West --
3 (Speakers all began talking at once.)
4 CAROL: And then from there placed in those
5 accounts.
6 JOAN SCHWATZ: Right. And selling them to
7 Braver Stern was part of a re-remic that both Braver
8 Stern and Capital West were going to coordinate
9 together.
10 CAROL: Are you aware of any agreement, anything
11 in writing with regard to that transaction between
12 Capital West and Braver Stern? Would you have seen
13 anything like that?
14 JOAN SCHWATZ: No. But we can say that Braver
15 Stern is an introducing firm that does conduct that type
16 of business.
17 CAROL: Okay.
18 JOAN SCHWATZ: So if they said that Merrill
19 Lynch was doing the re-remic transaction, you know, we
20 wouldn't have -- but we were familiar with Braver Stern
21 in re-remic and other types of -- so it wasn't
22 inconsistent with the type of business that Braver Stern
23 runs.
24 CAROL: We're not familiar with Braver Stern.
25 Are they a New York firm?

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1 JOAN SCHWATZ: Based in New York?
2 CAROL: Yeah.
3 JOAN SCHWATZ: I don't know. I really don't
4 know.
5 CAROL: Don't know anything? Okay. So was
6 Braver Stern involved in this second movement of these
7 securities in August? Are you aware of that?
8 MR. SIEGEL HORN: I don't know.
9 JOAN SCHWATZ: We don't know.
10 CAROL: Okay.
11 JOAN SCHWATZ: I don't believe so. We don't
12 know. Okay. So I mean, in the first instant
13 (inaudible) it never went to Braver Stern, but the
14 explanation that we were given is that they wound up
15 with Eagle Sky and Dr. McKean because Mr. Geary was
16 looking to sell them.
17 CAROL: It's interesting, though, that the
18 transaction -- I would think that he would have had a
19 pretty solid and sure transaction in place when he
20 bought these from Frontier State Bank.
21 JOAN SCHWATZ: Yeah, I think he thought he did,
22 I think, from Braver Stern. We asked him questions
23 surrounding it, but that was the explanation we were
24 given.
25 CAROL: Okay. Did you ever talk to anybody at

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1 Braver Stern? Would that be part of your investigation
2 or anything like that?
3 MR. SIEGEL HORN: Hang on one second.
4 CAROL: Okay.
5 (Whereupon, the speakers conferred amongst
6 themselves.)
7 JOAN SCHWATZ: Okay. Sorry. We're back.
8 CAROL: Okay.
9 MR. SIEGEL HORN: So we just confirmed that a
10 member of Pershings credit department contacted Braver
11 Stern.
12 CAROL: Okay.
13 MR. SIEGEL HORN: In September they did confirm
14 that they had an agreement with CapWest.
15 CAROL: Okay.
16 MR. SIEGEL HORN: But they were conducting the
17 re-remic, that it was expected to close, but that these
18 private label CMOs in the McKean account would not be
19 part of that re-remic.
20 MS. HALL: Huh. And I don't know if you have
21 looked in the last couple of days or not. Are these
22 securities still in Dr. McKean and Eagle Sky's accounts?
23 (Speakers began talking all at the same time.)
24 JOAN SCHWATZ: We don't know.
25 MR. SIEGEL HORN: We can absolutely check,

8 (Pages 26 to 29)

06/25/10 JOAN SCHWATZ AUDIO

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EXHIBIT

B

Page 2

1 (Transcription of provided audio:)
2 JOAN SCHWATZ: -- condition.
3 MS. BONNELL: Right.
4 JOAN SCHWATZ: I think, frankly, just to give
5 you two seconds of my personal opinion -- and it is my
6 personal opinion, but I think it is a pretty decent one
7 based on a lot of time and energy spent here looking at
8 transactions, asking questions to principals over at
9 CapWest/Geary, talking amongst our staff, Jim Ross. I
10 know you want to speak to Ed Banion. Other people like
11 Rich Claus (phonetic), who is in our credit risk area,
12 who were involved in conversations that we offered both
13 -- Rich up on the phone and in person to the FDIC for
14 them to come here and share the information they had, as
15 well as educate the FDIC agents, who were very nice and
16 patient with us, but not, frankly, the most
17 knowledgeable on this particular area, obviously, given
18 that this is the FDIC and maybe not the FCC, but...
19 MS. BONNELL: Right.
20 JOAN SCHWATZ: We did not lend them any money.
21 I think that, frankly, there was a misunderstanding on
22 the part of the principal there about what impact
23 putting those securities in their proprietary account at
24 one point in time would have on their -- on their actual
25 capital requirements.

Page 3

1 MS. BONNELL: Right.
2 JOAN SCHWATZ: And so I think there was a
3 request for financing which was met with "no" from our
4 perspective. I think they reached out to Jim as the
5 relationship manager. The way that things work at
6 Pershing is that there is a relationship management team
7 that is assigned to each of our introducing firms, so
8 that they have two things. The benefit of someone
9 having, you know, the ability to answer a lot of
10 questions upfront for them because they are very
11 knowledgeable about our systems and the way things work
12 and where to get information.
13 But then also they have the (inaudible) liason
14 to work with them from back office areas like credit
15 risk for margin lending and things like that. So Jim's
16 role would have been (inaudible) to people at
17 Geary's/CapWest who were asking for things and may not
18 be getting them. He made them look to Marion with a
19 different person or a better person here at Pershing or
20 just reiterate the request.
21 MS. BONNELL: Okay. So Jim was on the
22 relationship management team?
23 JOAN SCHWATZ: Right. And so Rich Claus, who is
24 the second person in -- I guess in the hierarchy of our
25 credit risk department, would be the decision maker on

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1 who gets extensions of credit and who doesn't. And Ed
2 Banion is in the Margin Department out on the west coast
3 which was assigned to -- sort of geographically for
4 CapWest, given their location in the country. And he
5 did get requests for -- I want to use the word marginal,
6 but I am just going to say extension of credit because
7 I'm not 100 percent sure that it was technically a
8 margin loan. I would have to go back and re-read the
9 e-mail.
10 MS. BONNELL: And who was it that received the
11 extension of credit?
12 JOAN SCHWATZ: Nobody -- someone got a request.
13 We did not extend them any credit.
14 MS. BONNELL: Okay.
15 JOAN SCHWATZ: So I believe something came
16 through Ed Banion and Ed brought it to Rich's attention.
17 MS. BONNELL: Okay.
18 JOAN SCHWATZ: I don't know if that was before
19 or after because I would have to go back and refresh my
20 recollection, before or after he said, no, this is our
21 policy, we don't lend against private label CMO's.
22 MS. BONNELL: And do you know exactly which
23 entity it is that requested the extension of credit?
24 JOAN SCHWATZ: It was CapWest.
25 MS. BONNELL: On behalf of itself or on behalf

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1 of a customer?
2 JOAN SCHWATZ: No, on behalf of itself. I think
3 there may have been an individual request for it. Which
4 customer are you referring to? Are you referring to Dr.
5 McKean?
6 MS. BONNELL: Yes.
7 JOAN SCHWATZ: Yeah. I think -- I would have to
8 go back and pull out the folder, but there was a
9 separate request -- hang on, because I have a big binder
10 here.
11 MS. BONNELL: Okay.
12 JOAN SCHWATZ: And Sam and I just wanted to jump
13 on the phone with you this morning, so we can certainly
14 go through this, but there may have been a separate
15 request for Dr. McKean for the financing in his -- if I
16 am remembering correctly, there may have been a separate
17 request, but I would have to go back and check. Hang
18 on.
19 UNKNOWN SPEAKER: I think it was only for
20 the --
21 JOAN SCHWATZ: So here is Karen Coker to Ed
22 Banion saying that we need a margin debit of 11 million
23 -- and I think she means loan. \$11,182,383.91 on the
24 above account of CMO's.
25 MS. BONNELL: Is that in an e-mail?

2 (Pages 2 to 5)

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1 JOAN SCHWATZ: Yeah. I have a hard copy, but we
2 can get you all of the e-mails. I was going to say we
3 can get you if you send --
4 MS. BONNELL: Don't we actually have it already?
5 Do you know the date of it?
6 JOAN SCHWATZ: Yes. It was from Karen Coker to
7 Ed Banion. Now, Ed forwarded it to me -- I am looking
8 to see the exact date on the e-mail. Yeah, six -- June
9 2nd, 2009, 1:04 p.m. Now, I forwarded it -- I got it
10 forwarded to me from Ed Banion on January 13th of this
11 year.
12 MS. BONNELL: Okay.
13 JOAN SCHWATZ: So I would have sent it around
14 that date.
15 MS. BONNELL: Okay. So --
16 UNKNOWN SPEAKER: I have it.
17 MS. BONNELL: If we don't -- I am just going to
18 look after we hang up.
19 JOAN SCHWATZ: I think we have some -- I think I
20 have --
21 UNKNOWN SPEAKER: I definitely have a copy of
22 that.
23 JOAN SCHWATZ: Yeah. And we sent them -- I
24 think I forwarded them directly to the FDIC, which I
25 would be happy to, I was just going to say, to you as

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1 well.
2 MS. BONNELL: Okay. That would be great.
3 UNKNOWN SPEAKER: I will do that, Terra, when I
4 get back --
5 MS. BONNELL: Thank you. Like I said, actually,
6 we should have it, but I certainly don't think we've
7 seen this e-mail because I think that would help explain
8 some of our questions. So, okay, so Karen Coker did
9 send an e-mail to Ed Banion on June 2nd asking for \$11
10 million --
11 JOAN SCHWATZ: You know what? Just bear with me
12 one second because in the back of this binder are the
13 e-mail -- we put these binders together for when the
14 FDIC came on site.
15 MS. BONNELL: Okay.
16 JOAN SCHWATZ: So bear with me one second
17 because I am refreshing my recollection.
18 MS. BONNELL: Sure.
19 JOAN SCHWATZ: Ed basically sent us e-mails that
20 -- now, we would have to go into the system to make sure
21 there wasn't something else, but he had a whole bunch
22 right on his desktop. So there is a request -- they are
23 all from that June 2nd time frame. So here is a bunch.
24 They kind of go together and we'll forward them to you.
25 MS. BONNELL: Okay. That would be great.

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1 JOAN SCHWATZ: Yeah. Let me see if I can find
2 the first one, because that would probably help if we
3 just did them in order. Yeah. See, there is a whole
4 back and forth, so I think it will be hard to do over
5 the phone. I think it would be helpful if we just sent
6 them to you. In the whole back and forth I'm just
7 looking to see if it's -- the account number is
8 5KV001377. So it may be the customer account. I may
9 have made a mistake. I would have to -- let me just see
10 if I can figure what account it is very quickly.
11 MS. BONNELL: I'm sorry. What was it? 5KV --
12 JOAN SCHWATZ: 001377.
13 MS. BONNELL: Okay. Well, that would not be --
14 JOAN SCHWATZ: It is actually McKean's account.
15 MS. BONNELL: Yeah, that is what I said, that
16 wouldn't be --
17 JOAN SCHWATZ: A firm account. So I take it
18 back.
19 MS. BONNELL: Okay. And so they are asking for
20 the 11 million on behalf of that account?
21 JOAN SCHWATZ: Yes. Yeah, I take it back. It
22 wasn't --
23 UNKNOWN SPEAKER: I thought it was --
24 JOAN SCHWATZ: No. I think they did have one
25 conversation with Rich Claus, but I am not sure if it is

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1 the subject of the e-mails. These all relate to the
2 customer.
3 MS. BONNELL: Okay.
4 JOAN SCHWATZ: And I think he said this is just
5 not something we would do, but we would have to double
6 check with him.
7 MS. BONNELL: Okay.
8 JOAN SCHWATZ: So these all -- and I apologize,
9 Terra, that was my not remembering correctly, which is
10 why you would want to pull them out. They are all about
11 that account.
12 MS. BONNELL: Okay.
13 JOAN SCHWATZ: Talking about that he has got a
14 lot of money, they are going to have a wire come in,
15 (inaudible) hopeful. I have them all right here. So
16 Sam has them as well. So I will just forward them to
17 you. And it says in here, you will see Ed Banion saying
18 Pershing does not margin private label CMO's. Reasons
19 have to do with volatility, liquidity, lack of
20 consistent pricing associated with these products.
21 MS. BONNELL: Okay.
22 JOAN SCHWATZ: I can't say for 20 years we have
23 had that policy, but certainly I think it is, you know,
24 around the '08 time frame when things really changed in
25 the market.

3 (Pages 6 to 9)

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1 MS. BONNELL: Right.
2 JOAN SCHWATZ: You will see some other Pershing
3 employees' e-mails are copied on here. Some work out
4 with Ed, like Victor Rodriguez, and some work here with
5 Richard Claus in our credit risk department. Like Sal
6 Iriono (phonetic) is in here. And basically they are
7 just saying, you know, can you doublecheck and we
8 doublecheck and they say no again.
9 MS. BONNELL: So in light of the fact that -- in
10 light of the fact that those e-mails have to do with Mr.
11 McKean's account, are you still able to say that Capital
12 West made the request on behalf of --
13 JOAN SCHWATZ: I have to go back and double
14 check.
15 MS. BONNELL: Okay.
16 JOAN SCHWATZ: I'm sorry. Yeah, that was my
17 misspeaking. I apologize. Yeah, I think they did, too,
18 and we talked about this a lot. But these e-mails just
19 relate to the request for that one account. And that is
20 the Ed Banion (inaudible.)
21 MS. BONNELL: And let me ask you if you know
22 anything about the -- apparently, where our breakdown
23 was is that someone had told us that it wasn't --
24 anyway, someone had told us about (inaudible) the
25 Pershing extending credit to Capital West for these

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1 securities. We had never heard that before and then I
2 said something to (inaudible) about it and she said
3 absolutely not we did not (inaudible).
4 So apparently, where the break down was is the
5 way that the account cycled or everything was swepted
6 and -- at Pershing so that firms may have gone to UMB on
7 an account, and then other funds came in from the McKean
8 account to pay for those and so a few days lapsed, that
9 you don't (inaudible) credit.
10 JOAN SCHWATZ: Okay. I am not sure I am
11 following you, but --
12 MS. BONNELL: Okay.
13 JOAN SCHWATZ: Let's say if someone buys
14 securities, they don't have to pay for them on trade
15 days. They have --
16 MS. BONNELL: Right.
17 JOAN SCHWATZ: They have trade day plus three.
18 UNKNOWN SPEAKER: And that is not an extension
19 of credit.
20 JOAN SCHWATZ: That is exactly how it works for
21 everybody.
22 MS. BONNELL: It is just settled?
23 JOAN SCHWATZ: Right. I don't know what you
24 mean by -- they brought a wire in. And it is possible
25 -- Reg T gives you five days to pay. So we would have

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1 to go back -- the original securities that we're talking
2 about in McKean's account --
3 MS. BONNELL: Right.
4 JOAN SCHWATZ: -- come into the firm's
5 proprietary account first.
6 MS. BONNELL: Right. I am aware of that.
7 JOAN SCHWATZ: And I think what happens there is
8 they then realize -- and this is my personal opinion,
9 because no one from there has admitted this, but they
10 have eluded to it that there is now a capital
11 requirement for them.
12 MS. BONNELL: Okay. Yeah, let me speak with
13 you, frankly, please, if I may, but --
14 JOAN SCHWATZ: Absolutely.
15 MS. BONNELL: -- if you can keep this
16 confidential, I would appreciate it.
17 JOAN SCHWATZ: Yeah, sure.
18 MS. BONNELL: Okay. Because I think maybe if I
19 could give you a little information, maybe we could --
20 JOAN SCHWATZ: We're happy to be helpful and we
21 are happy to keep it confidential.
22 MS. BONNELL: Okay. Thank you. So what Capital
23 West -- our belief is like your belief that they intend
24 to actually buy those into the -- their proprietary
25 (inaudible) account?

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1 JOAN SCHWATZ: They told us that they were going
2 to re-remic them with another broker dealer.
3 MS. BONNELL: Right. Okay. So then it is our
4 impression that, once they got into the account -- and
5 we have plenty of evidence supporting that -- but once
6 they got into the account, then they -- I guess, their
7 chief financial officer realized, no, no, no, you can't
8 do this, it's a net capital problem.
9 JOAN SCHWATZ: Right. I think Norm Frager, we
10 spoke to him, too. We asked to speak to a lot of
11 people. He basically is the one who eluded to the fact
12 that he wasn't aware that they were being brought in.
13 And he is a long-time veteran in the business and very
14 knowledgeable. So I think -- this is my personal
15 opinion -- I think he realized what was going on and was
16 like, no, you need to -- you are going to have to put
17 up. Now, capital for that, we don't have that. And so
18 now they need to go somewhere else.
19 MS. BONNELL: Okay. But you formed that
20 conclusion as well. Okay. And that was based on your
21 conversation with Norm?
22 JOAN SCHWATZ: Yes. And a lot of us were on the
23 phone with him. We were interviewing them to understand
24 the set of transitions better because, frankly, they
25 don't totally make sense to us.

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1 MS. BONNELL: And was Jim -- well, not Jim.
2 Do you remember when that conversation was?
3 JOAN SCHWATZ: We had numerous conversations. I
4 would have to look at my notes, but once we -- this is
5 what happened. We sent this closer in time to when this
6 happened.
7 MS. BONNELL: Right.
8 JOAN SCHWATZ: Then we sort of decided that it
9 was a one time thing that we would let it go and then we
10 revisited it towards the end of the year. Now, I have
11 some notes -- I am just thumbing through a file about
12 speaking to Norm on the 20th of January of this year.
13 We could go through -- I don't think that is the exact
14 conversation. We have had a number of conversations
15 where we let them know what our concerns were and we had
16 follow-up. So I would say, you know, December, January,
17 February time frame.
18 MS. BONNELL: Well, the time period that we're
19 interested in is actually -- it goes --
20 JOAN SCHWATZ: It is when we spoke to him. That
21 doesn't mean that is when it happened.
22 MS. BONNELL: Okay. Well, let me go back. The
23 original private label CMOs (inaudible) account, that
24 was May 28th?
25 JOAN SCHWATZ: Yeah, May of '08. That is what

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1 I'm saying. We looked at this closer in time to that
2 time. So we looked at it, let's say last year around
3 that time.
4 MS. BONNELL: Right.
5 JOAN SCHWATZ: And then we sort of did an
6 internal review and concluded that, you know, we would
7 -- we would keep an eye out, but there wasn't anything
8 further that would happen. And a second transaction was
9 attempted by Geary Securities as part of another
10 re-remic.
11 MS. BONNELL: Okay.
12 JOAN SCHWATZ: And that is what sort of set off
13 a whole nother review. But that second transaction,
14 that CEMP II transaction was --
15 MS. BONNELL: September?
16 JOAN SCHWATZ: I was going to say it was like
17 third quarter, end of third quarter of last year. And
18 then we started looking at it basically the beginning of
19 the fourth quarter last year, and then it just kind of
20 took us through the end of the year and beginning of the
21 following year.
22 MS. BONNELL: So for the CEMP II did they seek
23 your -- you know, did they open communications with you
24 before they tried it again or did they just try it
25 again?

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1 JOAN SCHWATZ: Well, it was a little bit
2 different because they knew that they were going to not
3 -- they were, I think, more knowledgeable about not
4 being able to bring them in the inventory account, but
5 we had another issue that came out of it because they
6 were looking -- we want everything to be free delivered
7 directly to whoever was holding the assets for the
8 dealer. There really was no need for them to come on
9 Pershing's platform at all.
10 MS. BONNELL: Okay.
11 JOAN SCHWATZ: And if I remember -- and this is
12 off the top of my head, but there was one account that
13 was delivering in a position and we wound up having an
14 issue with that. And then, because there are other
15 downstream implications, we put that account on
16 restriction and they didn't pay for it. Basically the
17 idea that they were delivering the positions (inaudible)
18 to whoever was closing the CEMP transaction. None of
19 that was happening on Pershings' books and records. So
20 the idea was to have them deliver it there. But
21 something stopped here from another customer account,
22 not the (inaudible) Geary. But then that causes -- you
23 know, you need to pay for it. There is regulatory
24 requirements. You don't need to pay on day one, but by
25 (inaudible) three you need to pay.

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1 MS. BONNELL: Right.
2 JOAN SCHWATZ: So this account became restricted
3 and we made it clear that none of these activities could
4 be passing through Pershing's books.
5 MS. BONNELL: Okay.
6 JOAN SCHWATZ: And then subsequently, as we
7 continued our review, we decided that, you know, we just
8 weren't -- this is primarily where their business is
9 looking, this is not where we are going.
10 MS. BONNELL: Is that -- the conversation that
11 you had where they tried to -- that you wanted them to
12 redeliver it to whoever to hold it and then they said
13 they tried to bring one in to the proprietary account
14 again, do you remember if that bond -- like who the
15 seller was on the bond itself?
16 JOAN SCHWATZ: We can piece that together. I
17 don't remember off the top of my head.
18 MS. BONNELL: I am wondering if it is a bond
19 that they purchased from Mesirow Financial?
20 JOAN SCHWATZ: Yeah, that is it. It was
21 Mesirow. Thank you.
22 MS. BONNELL: Okay.
23 JOAN SCHWATZ: That helps. Yeah, it was Mesirow
24 because I remember that, because we don't normally have
25 accounts from Mesirow in our books.

5 (Pages 14 to 17)

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1 MS. BONNELL: Okay. So the problem there was
2 that you guys basically told them, no, you can't bring
3 it in without paying for it?
4 JOAN SCHWATZ: Well, the rules are such that you
5 have to pay for things once they are --
6 MS. BONNELL: Right. Right. I get it. I am
7 just --
8 JOAN SCHWATZ: Yeah, yeah. No, I just want to
9 make it clear. I mean, this isn't like just an internal
10 policy.
11 MS. BONNELL: Right, right. Absolutely.
12 JOAN SCHWATZ: Yeah. That was my only point I
13 am making.
14 MS. BONNELL: Okay.
15 JOAN SCHWATZ: So some things are internal
16 policies like we don't margin against private label
17 CMO's. There is no regulation that says that. It's
18 just our own credit decision. So we don't want to be in
19 a position where -- you know, with margin, that someone
20 would have to sell something and you wouldn't be able to
21 sell it. That could expose us to risk.
22 MS. BONNELL: So --
23 JOAN SCHWATZ: Yeah, it absolutely was the
24 Mesirov position, now that you mention it.
25 MS. BONNELL: Okay. So did they -- did they --

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1 even though they knew that these private label CMO's
2 were not marginable, like how did they try to get around
3 the fact that they knew that they weren't marginable,
4 but they didn't have the money to pay for it? Like did
5 they ask for any other sort of credit extension or --
6 JOAN SCHWATZ: No, not -- I don't think on that
7 one. I think they knew -- I think they just screwed up
8 on the timing because that deal wound up getting
9 postponed several times, Terra, and then it actually, I
10 don't think ever closed.
11 Part of the problem, if I am remembering as we
12 are talking was, they -- in order -- they had a problem
13 with the buyer because one of the banks that wanted to
14 buy it -- and it is one of these like Bank of Union --
15 there is Washita Bank. There is a whole bunch that are
16 related to, not just Joseph McKean, but the other guy,
17 Chad Headington. I would have -- I am doing this off
18 of my memory, but we could probably piece, Humpty-Dumpty
19 together again.
20 MS. BONNELL: Sure. That is okay. I don't --
21 JOAN SCHWATZ: Yes. But what happened was they
22 couldn't get the timing right and one of the banks that
23 was going to be the purchaser of the Part A, you know --
24 MS. BONNELL: Right.
25 JOAN SCHWATZ: -- was going to need to get some,

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1 I guess, guidance from, I think it was the FDIC, but it
2 could have been another government authority to say that
3 they could put these on their books and records and not
4 be violating the ratio.
5 And so until that -- well, I know what. They
6 were waiting for the Federal Home Loan Bank of Topeka to
7 give them guidance on whether or not they would value
8 these assets as, you know, A, B, C, or D, E, F. And
9 depending on that guidance, would determine whether or
10 not that bank could take these assets on, because then
11 that would throw their other ratios off for the FDIC.
12 MS. BONNELL: Okay.
13 JOAN SCHWATZ: So that -- I don't think that
14 second deal ever closed. And so they -- like there were
15 several stops and starts, but there was absolutely no
16 request for margin on that because it was not even an
17 issue anymore. They knew from last time it wasn't going
18 to happen.
19 MS. BONNELL: Right. Okay. So let's go back
20 for a minute to my other question about where I -- you
21 were telling me it was trade, but in three days to pay
22 for it.
23 JOAN SCHWATZ: Right.
24 MS. BONNELL: Okay. So what we're trying to
25 figure out is the -- it was clearly the intent of

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1 Capital West to buy these private label CMO's in May,
2 2000 -- May 28th, 2009, from Frontier State Bank. That
3 was their original -- do you believe that to be their
4 original intent?
5 JOAN SCHWATZ: And we had interviews with
6 people, Mr. Geary himself in the very beginning, who
7 said that was their plan. Their plan, though, was not
8 to leave them in their proprietary account, but rather
9 to move them the same day or the next day over to an
10 account for the IBD that was going to be helping them
11 with the re-remic.
12 MS. BONNELL: Okay. What is IBD?
13 JOAN SCHWATZ: I am sorry. I apologize. We're
14 a clearing firm, so everybody that is another broker
15 dealer introduces to us, so we call them introducing --
16 MS. BONNELL: Oh, I gotcha.
17 JOAN SCHWATZ: So I apologize.
18 MS. BONNELL: Okay.
19 JOAN SCHWATZ: For moving the assets. So
20 basically what Geary told us is, yeah, I wanted to buy
21 these from Frontier State Bank, but I knew I did not
22 have the cash to pay for them, so the theory was I was
23 going to buy them, and then move them that day, the next
24 day, basically journal them out to this other broker
25 dealer, Braver Stern, who was involved with a re-remic

6 (Pages 18 to 21)

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1 transaction.
2 And re-remic is basically just, you know, the
3 rewrapping of some of these securities. And of course,
4 I'm sure you've had an opportunity to hear from Mr.
5 Geary, his whole theory about marrying them with
6 treasury trips and better reading, you know, good at
7 revenue off what we will be good assets.
8 But long story short, the plan that we initially
9 heard was that they did not intend to keep them here. I
10 think what sort of keyed us off from a -- from a sort of
11 a cause for concern was that they come into the prop
12 account and then they wind up in a customer account, and
13 then we find out that this customer is the sole
14 shareholder of the bank.
15 MS. BONNELL: Right.
16 JOAN SCHWATZ: And that he has a personal
17 relationship with the principal at the IBD. And so to
18 us it appears as though potentially someone is trying to
19 make a transaction that, you know, would not be obvious
20 to an outside viewer. You would have to follow a trail.
21 MS. BONNELL: Right. Okay. So he -- it was Mr.
22 Geary himself that stated that he had just -- he was
23 planning -- you know, he brought them into the account
24 and was planning (inaudible) to Braver Stern?
25 JOAN SCHWATZ: Yeah, that was definitely a

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1 conversation we had with him, you know, sometime in
2 December of '09.
3 MS. BONNELL: But once he brought them into the
4 proprietary account, he would still have to pay the
5 seller of those private label CMOs, wouldn't he?
6 JOAN SCHWATZ: Yeah, accept if he -- I mean,
7 theoretically, I guess his theory was he would buy them
8 on Monday. He transferred them Monday and when he got
9 the money from Braver Stern he would, I guess, be able
10 to pay the seller. I don't know. We didn't -- I mean,
11 that is -- we never really got a great answer because --
12 MS. BONNELL: Right.
13 JOAN SCHWATZ: -- yeah, you have to pay for what
14 you buy.
15 MS. BONNELL: Okay.
16 JOAN SCHWATZ: So I guess, you know, what
17 happens then is they put it in this customer account and
18 now they are looking for like margin financing.
19 MS. BONNELL: Do you think that -- okay. Let's
20 say -- let's say that these were margin eligible. If he
21 -- how long would -- he would have just been able to
22 keep them on margin until the equity exceeded -- until
23 there was a margin loan, right? Or how long would he
24 have been able to keep these on margin, I guess is my
25 question.

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1 JOAN SCHWATZ: It is hard to say with these.
2 I mean, theoretically, yes, you are able to keep
3 something on margin as long as you maintain our
4 requirement.
5 MS. BONNELL: Right.
6 JOAN SCHWATZ: You know, 50 percent equity. I
7 couldn't -- you know, it is just hard. That is in a
8 vacuum. With these that is the whole problem --
9 MS. BONNELL: Right.
10 JOAN SCHWATZ: -- IBM where you can say it is
11 worth 50 bucks a share.
12 MS. BONNELL: So it is the normal -- the normal
13 margin rules would have applied if he would have been
14 able to buy these on margin. So I guess what I'm
15 wondering is, if he did not know that they weren't
16 marginable and he brought them in with the idea of, oh,
17 I will be able to margin these, then he would have been
18 able to keep them in that account until the time that it
19 then met the margin requirement and there was a margin
20 loan.
21 JOAN SCHWATZ: He could still bring in cash,
22 though.
23 MS. BONNELL: Right, right. Okay.
24 JOAN SCHWATZ: The worst is like he would just
25 have to cover that percentage. We could sell the

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1 security to generate cash or he could bring in new cash.
2 So I don't think that there would be like an expiration
3 on the margin like it's 30 days, 60 days, 90 days.
4 MS. BONNELL: Right. Okay.
5 JOAN SCHWATZ: I mean, in a vacuum it is just --
6 with these that is why it is so hard -- that is why we
7 don't margin them. So, yeah, in stock, let's just say.
8 MS. BONNELL: Okay.
9 JOAN SCHWATZ: You can have margin for as long
10 as we are willing to lend you. I mean, if something
11 else happened that caused us to be concerned about your
12 credit worthiness, we have the right to call off the
13 margin loan.
14 MS. BONNELL: Right.
15 JOAN SCHWATZ: But short of that happening, it
16 is, you know, as long as the balance is maintained.
17 MS. BONNELL: But I guess -- right. I
18 understand all of that. What I was -- I did not
19 communicate it very well, but I do understand it,
20 actually.
21 JOAN SCHWATZ: No, that's okay.
22 MS. BONNELL: But basically what I was thinking
23 is, is that if he didn't know that they were not
24 marginable, then he would have been buying himself time.
25 He could have bought them on a margin and -- you know,

7 (Pages 22 to 25)

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1 if he didn't realize they weren't marginable, he may
2 have been able to buy some time for coming up with money
3 for it.
4 JOAN SCHWATZ: Yeah, I guess theoretically. I
5 mean, I don't think we went into that much detail with
6 him because we were more concerned about like, well, you
7 know, why they wound up in a customer account. That was
8 really our focus.
9 MS. BONNELL: Right.
10 JOAN SCHWATZ: I mean, how did you mark it off
11 and how did you price this thing and like why isn't
12 there a profit or why -- I forget what the numbers were
13 right now, but we were looking for what made this an
14 arm's length transaction and not something that was
15 pre-arranged because it just didn't look right to us.
16 MS. BONNELL: Okay. And there -- the reason I'm
17 going down that line is because I know that he did not
18 have money at Braver Stern to pay for them. Like there
19 wasn't -- he had no money to pay for them. They were
20 going to be able to pay for them through Braver Stern
21 basically.
22 JOAN SCHWATZ: Okay. And that -- and we
23 wouldn't have known that.
24 MS. BONNELL: Right.
25 JOAN SCHWATZ: But he sort of said that it was

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1 just not -- Braver said that it just wasn't going to
2 happen because, frankly, I think they knew they were
3 going to take a capitalist charge. It is a very
4 significant amount of money you would have to come up
5 with for the \$40 million in securities.
6 MS. BONNELL: Do you think that it is feasible
7 that he knew that these were not marginable?
8 JOAN SCHWATZ: It would be hard for me to guess.
9 I will tell you this. This is just my Joan Schwartz
10 opinion.
11 MS. BONNELL: Right. Well, and I am just giving
12 you my opinion, Terra Bonnell's opinion.
13 JOAN SCHWATZ: Yeah. I think had he consulted
14 better with Norm Frager, he would have known. I think
15 he was sort of out there. He does the CEMP transaction
16 thing. He has a separate business that was affiliated
17 with Geary Securities, the broker dealer. And I think
18 he sort of did his own thing without really checking
19 with Norm, who does not sit on site, and Norm was really
20 pissed when Norm realized that they were in the
21 proprietary account.
22 MS. BONNELL: Right.
23 JOAN SCHWATZ: So I think that it is possible,
24 because Geary does not really understand the broker
25 dealer world and those rules, he may not have understood

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1 whether or not it was marginable and was (inaudible)
2 because he kept saying, well, this is a customer that
3 has, you know, hundreds of millions of dollars and they
4 have this much in the account. We only need it for two
5 weeks. I think he is used to like a bank system of
6 borrowing and lending and a credit assessment and not
7 the securities rule.
8 MS. BONNELL: Right.
9 JOAN SCHWATZ: So I certainly think it is
10 possible he did not understand the marginal
11 requirements. And he certainly wouldn't have known what
12 our firm policy was unless he asked about the, you know,
13 private label CMOs.
14 MS. BONNELL: Right. Okay. So let's say that
15 -- okay. So he buys them basically into the inventory
16 account and he realizes that he can't hold them there,
17 so he then states then that he transferred -- or they
18 are sold to Dr. McKean and Eagle Sky Foundation.
19 JOAN SCHWATZ: Yeah.
20 MS. BONNELL: So then -- okay. At that point --
21 JOAN SCHWATZ: And I would say sold, but
22 transferred might make me comfortable because I can't
23 remember.
24 MS. BONNELL: Well, they were -- the reason I'm
25 using the word sell is because they were actually trade

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1 tickets.
2 JOAN SCHWATZ: I know it says sell, I know it
3 says buy, but our position was, just to share with you
4 honestly, where was the money that he paid them?
5 MS. BONNELL: Well, that is what I was getting
6 at.
7 JOAN SCHWATZ: I don't think he ever gives them.
8 So sell, to me, just -- you know, we're just talking
9 here and I would have to go back and read my notes, but
10 so if I sell you -- so let's say I bring in my personal
11 account and I sell it to you, Terra, then theoretically
12 maybe I bought them from Sam. So theoretically, I would
13 give Sam the dollar for what I bought her. I would then
14 become the owner, and then I would give you the dollar
15 -- I am sorry. And then I would sell them to you, so
16 you would give me the dollar.
17 MS. BONNELL: Right.
18 JOAN SCHWATZ: And theoretically, I should be
19 making something when I sell it to you from what I paid
20 for it. So maybe you're giving me a dollar and a
21 quarter.
22 MS. BONNELL: But if they were just -- okay.
23 Let's say --
24 JOAN SCHWATZ: I don't know that he ever gave me
25 -- I don't know that he ever gave Frontier State Bank

8 (Pages 26 to 29)

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1 the money.
2 MS. BONNELL: Right. Right. Okay.
3 JOAN SCHWATZ: It looks like he -- that
4 potentially the money came from McKean that ultimately
5 went to pay Frontier State Bank.
6 MS. BONNELL: Okay. Regardless of the money --
7 JOAN SCHWATZ: Right.
8 MS. BONNELL: -- if he -- let's say if he were
9 transferring them, wouldn't there have been a way to
10 journal those securities without doing a trade ticket?
11 Like I'm just asking without looking at the flow of
12 funds, just in general.
13 JOAN SCHWATZ: Okay. Could he have done a
14 transfer without --
15 MS. BONNELL: Doing the trade ticket.
16 JOAN SCHWATZ: I am not sure that would have
17 worked from that prop account because usually prop
18 accounts are supposed to be -- I guess it could have
19 been a journal. I would have to go back and look. It
20 could have been a journal without it being a sale
21 ticket. But you know what, to me, that is more -- I
22 would have to look at the price because I remember we
23 focused on the price. I don't know if you have it in
24 front of you. Was it a one payment cap price? I think
25 it was.

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1 UNKNOWN SPEAKER: I think it was, yeah.
2 MS. BONNELL: Yeah, I don't have it in front of
3 me, but I imagine --
4 JOAN SCHWATZ: I think it was, but I am looking
5 at Tim because I can't remember exactly, but it could
6 have been --
7 UNKNOWN SPEAKER: There wasn't too much of a
8 difference.
9 JOAN SCHWATZ: But sometimes, you know, to be
10 honest on that, I don't think we would have focused on
11 that. It is just maybe a routine of how someone does it
12 or preference or someone does not realize you can just
13 journal it.
14 MS. BONNELL: Okay. So regardless, you would
15 consider it a transfer because there wasn't a
16 (inaudible) funds?
17 UNKNOWN SPEAKER: It did raise an eyebrow.
18 (Multiple people started talking at the same
19 time making it inaudible.)
20 JOAN SCHWATZ: When you sell it you should --
21 yeah, if I sell it to you, I should get a dollar and a
22 quarter. Why else would I be buying if I am not going
23 to make any money?
24 So the other thing is sometimes firm accounts
25 are like allocation accounts. So let's take it out of

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1 this setting, but in a big account setting I buy a block
2 of stock and I'm allocating it to all of the accounts
3 that, you know, want ten shares of something and I
4 bought 100 shares, I got a better price. Those are
5 transfers.
6 You know, I am just trying to be honest about
7 answering the ticket. I think we were just focused on
8 the price and I don't think we focused on that it was a
9 sales ticket versus a -- like a journal. But it could
10 be significant. I just don't think we necessary -- I
11 would have to go back and look again.
12 MS. BONNELL: Okay. I mean, I understand.
13 JOAN SCHWATZ: I think we were really focused on
14 the price because it went to the whole, hey, this looks
15 hinky to us like the guy -- you know, we look at the
16 transaction to begin with, because it comes up through
17 this credit thing where we've got this proprietary
18 account. We don't usually get a lot of proprietary
19 accounts holding \$40 million of assets that they don't
20 realize that they have to pay for, that they don't want
21 to pay for or they can't pay for and then they wind up
22 in a customer account. We were just concerned from that
23 effect like did the firm do right by the customer. And
24 then we looked at who the customer is and it is McKean
25 and then we go, well, where did these securities come

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1 from. Oh, they came from the bank. And someone looks
2 up the bank and realizes McKean is the owner of the
3 bank. So we are like --
4 MS. BONNELL: Right.
5 JOAN SCHWATZ: -- what is going on?
6 MS. BONNELL: Exactly.
7 JOAN SCHWATZ: Yeah. So we are like, were they
8 trying to get around something, then we find out that
9 they are under review at the bank. So you know, I
10 think, to be honest just remembering, but as we're
11 talking refreshing my own recollection, the price is
12 what was really key to us. Now, later I think there is
13 a cancel "as of", though.
14 MS. BONNELL: I am sorry. Later there is a
15 what?
16 JOAN SCHWATZ: There is a cancellation many
17 months later for a cancel of the original transaction.
18 MS. BONNELL: Right. Back in November?
19 JOAN SCHWATZ: Yeah. And that is really --
20 because that changes the settlement date. A cancel "as
21 of" is a way for a firm to go, oh, we made a mistake and
22 you know. So they cancel the trade and what we call as
23 of is they do it again, as of a certain date. But
24 people do that legitimately for every security
25 transaction. It is like a T account. You have to have

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1 a debit and a credit.
2 MS. BONNELL: Right.
3 JOAN SCHWATZ: So as of and cancels aren't
4 necessarily suspicious in and of themselves. I am going
5 to tell you from a very skeptical point of view, having
6 done this all my life, cancels and as of's can be places
7 where people try to hide things. So when we realized
8 later -- and someone, I think, maybe even asked us about
9 it, one of the regulators.
10 MS. BONNELL: Right.
11 JOAN SCHWATZ: We went back and looked. It is
12 this trade again, but they are changing the settlement
13 date. And the reason we thought that was important is
14 the settlement date becomes the key because that is when
15 the money is due day.
16 MS. BONNELL: Right.
17 JOAN SCHWATZ: So that was suspicious to us,
18 too.
19 MS. BONNELL: Okay. So I think (inaudible) says
20 they changed it -- it was like November of 2009?
21 JOAN SCHWATZ: Yeah.
22 MS. BONNELL: And it was from --
23 JOAN SCHWATZ: Like --
24 MS. BONNELL: The settlement date was June 1st
25 and they changed it to May 28th?

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1 JOAN SCHWATZ: I think it was the other way. I
2 would have to go back and look, but I think the point
3 was they were trying to buy themselves more time to have
4 to come in with the money.
5 MS. BONNELL: Okay.
6 JOAN SCHWATZ: I think that was it.
7 MS. BONNELL: Okay.
8 JOAN SCHWATZ: But we can go back and check
9 because I wouldn't swear right now, having not looked at
10 it in many months.
11 MS. BONNELL: Right. Well -- let's see, it's
12 okay. I think I have it.
13 JOAN SCHWATZ: And we definitely do, but I --
14 you know, I can go back and look. Let me just -- I am
15 just trying to --
16 MS. BONNELL: Actually, I have it right here.
17 JOAN SCHWATZ: I am going to -- while you are
18 doing that, I am going to look quickly at the SAR that
19 we filed. Do you have those copies?
20 MS. BONNELL: Yeah. I have one original plus a
21 revised one.
22 JOAN SCHWATZ: Yeah. I'm just going to look
23 quickly to see if there is something that refreshes my
24 recollection in there because I can't get through the
25 account statements that quickly.

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1 MS. BONNELL: Well, I have the trade tickets on
2 my lap right here. I just have to find --
3 JOAN SCHWATZ: What Carol was remembering is
4 that they traded -- they changed the trading from the
5 28th to the -- she was remembering it as going from the
6 later date to the earlier date. I remember it going
7 from the earlier date to the later date because that was
8 trying to buy them more time to have to bring in the
9 money, but I could not at this point swear about it.
10 MS. BONNELL: Okay. Is Michelle Malvonavo, is
11 she at your firm?
12 JOAN SCHWATZ: That doesn't sound familiar, but
13 let me see if she is on our system.
14 MS. BONNELL: I'm sorry. I don't mean to get
15 you off on another track.
16 JOAN SCHWATZ: Oh, that's fine. Look, you know,
17 I don't know her, but let me see if she is here. Is it
18 M-A-L-V-O-N?
19 MS. BONNELL: M-A-L-V-O-N-A-V-O.
20 JOAN SCHWATZ: It looks like we have a Michelle
21 Malvonavo in Marion. So she might be a back office
22 processing person.
23 MS. BONNELL: Okay. Because for one of these
24 securities what happened is -- okay. There is all these
25 prior trade tickets. Okay. And then on June 25th there

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1 is a ticket, and then for trade date June 1st, 2009
2 settlement date to June 1st, 2009. And that is just
3 like -- that is like the third trade ticket of all of
4 these, or the second one. But it's not the first one.
5 It's starting in the middle.
6 JOAN SCHWATZ: Okay.
7 MS. BONNELL: And then November 12 of 2009.
8 JOAN SCHWATZ: That is the one we were just
9 talking about, right?
10 MS. BONNELL: Right. There is a -- the other
11 one is cancelled and this one is trade day May 28th of
12 2009, settlement date May 28th, 2009. So it went from
13 June 1st to trade to May 28th trade, June 1st
14 settlement, May 28th settlement.
15 Okay. And but then on the same date, May -- and
16 that one I just spoke of was entered by Capital West
17 (inaudible.) Then on May -- on November 12, 2009
18 Michelle entered another one and it was trade date May
19 28th, 2009 for settlement to June 1st, 2009. So it did
20 go from May 28th, 2009 to June 1st, 2009, but for some
21 reason it was entered by Michelle, who I believe to be
22 at Pershing rather than --
23 JOAN SCHWATZ: And there is a Michelle here.
24 MS. BONNELL: Yeah.
25 JOAN SCHWATZ: You know what, I would -- we

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1 would have to call and ask her.
2 MS. BONNELL: Yeah, that is a new name.
3 JOAN SCHWATZ: I will just say this. I mean,
4 where she is on Marion. So you know what it is without
5 knowing the answer is, we have some of our back office
6 processing people down in -- Lake Marion is our back-up
7 location. So depending on the function and where they
8 were assigned and to who -- like to who they kind of get
9 -- like we were saying added the west coast margin, but
10 he is assigned to handle Geary and a number of other
11 broker dealers. She may be their person or she may be
12 someone that it was referred to.
13 And sometimes from having (inaudible) back
14 office information on cancels and as of's, I'm not sure
15 they -- I will be honest. I would have to check if they
16 can go in and even enter something that was that far
17 from the actual trade deal. I think there is some, if
18 my recollection serves me correctly -- and I would have
19 to validate this -- if you want to do it after the
20 settlement date of a transaction, if you want to cancel
21 and then ad lib it, I think it has to come through us.
22 I am not sure that they can enter it on the system, but
23 I would have to go back and check.
24 MS. BONNELL: Okay. Well, it is weird, though,
25 because they were able -- Karen Coker was able to enter

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1 one of them on November 12th.
2 JOAN SCHWATZ: Okay.
3 MS. BONNELL: And then -- but then it is like
4 maybe she -- maybe she was -- (inaudible.)
5 JOAN SCHWATZ: I don't -- you know, it has come
6 up in another matter, but I am definitely not the expert
7 on all of the rules. So you know, I'm sure you can
8 understand it is sort of a case by case --
9 MS. BONNELL: Sure, I understand.
10 JOAN SCHWATZ: You don't really want me telling
11 you --
12 MS. BONNELL: Well, maybe they -- because it
13 went -- you know, the settlement date was June 1st as of
14 June 25th. It was June 1st, then she changed it on
15 November 12th to 5/28. And then Michelle changed it
16 back to June 1st. So maybe that was Michelle saying --
17 I mean, maybe there was -- maybe Michelle entered it
18 because there is some policy or something that says you
19 can't change the settlement date.
20 JOAN SCHWATZ: I know that there is some rule
21 around post settlement date, cancelling it as of. I
22 don't know how many days it is, but what we can do is I
23 would certainly be happy to reach out to Michelle and
24 see if she has a recollection.
25 MS. BONNELL: Okay. I would appreciate that.

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1 JOAN SCHWATZ: Absolutely. That is the first
2 time we have ever heard her name, to be honest. No one
3 has ever asked us, not any of the people we have spoken
4 to. So to be honest, I don't think we looked at that
5 and called her. But why don't we do this. After we
6 hang up, we'll give her a call and see if she can look
7 at it. And it was November, what day?
8 MS. BONNELL: November 12th of 2009.
9 JOAN SCHWATZ: Yeah.
10 MS. BONNELL: And it is (inaudible), which that
11 is the same execution time as all the others, so I guess
12 the execution time line stayed the same.
13 JOAN SCHWATZ: We'll definitely give her a call.
14 And I am going to have to pull up those trade tickets,
15 too.
16 MS. BONNELL: Okay. Is there anything on them
17 that I could tell you that would help you pull them up?
18 JOAN SCHWATZ: I don't think so. I think we'll
19 be able to look for them. Yeah, I think we must -- I
20 know that Sam and myself and one of our colleagues is
21 looking at account statements. If we produce the trade
22 tickets, which I am sure we could have, I don't even
23 think that somebody asked us for them. I am betting you
24 guys got them from --
25 MS. BONNELL: We did. We got these from Geary

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1 Securities.
2 JOAN SCHWATZ: I don't think we ever looked at
3 the tickets, I am just thinking as I talk to you,
4 because, like I said, we were not originally focused on
5 that and then somebody asked us about this November as
6 of and we looked at the account statement. I am going
7 to check with one other person that was working on our
8 team from compliance. His name is Jim Feaglehorn
9 (phonetic.) And we may have copies of the tickets over
10 there.
11 MS. BONNELL: Okay. Let me tell you at least
12 what securities (inaudible) because I think all of the
13 -- because you know there is a whole --
14 JOAN SCHWATZ: Yeah.
15 MS. BONNELL: -- and I think all of the -- I am
16 not sure they are all exactly the same, but the one I'm
17 looking at is (inaudible) Citi Mortgage?
18 JOAN SCHWATZ: Is there a QSIP (phonetic) number
19 there?
20 MS. BONNELL: 189 --
21 JOAN SCHWATZ: I am sorry. Say that again.
22 MS. BONNELL: 189 --
23 JOAN SCHWATZ: Yeah.
24 MS. BONNELL: -- 76GAP1.
25 JOAN SCHWATZ: That is the best way for us to

11 (Pages 38 to 41)

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1 look it up. Thanks. Yeah. No. And I -- that was what
2 was, you know, sometimes confusing is that there is all
3 of these pieces moving. But I know that we did
4 recently, more recently look at this November
5 transaction. So I think Jim had pulled the ticket.
6 Yeah. And then we'll pull them and we'll have a
7 conversation with Michelle.
8 MS. BONNELL: Thank you, because we really
9 appreciate you helping us out.
10 JOAN SCHWATZ: Oh, not a all.
11 UNKNOWN SPEAKER: So I guess when all is said
12 and done, Terra, is there still the need to interview
13 Jim and Ed?
14 MS. BONNELL: Maybe not.
15 JOAN SCHWATZ: See, I was thinking that we --
16 MS. BONNELL: Joan, were you or Sam, were you
17 guys present on the conversation with -- between Jim and
18 Keith Geary?
19 JOAN SCHWATZ: NO, not back in -- back in May of
20 '09, no.
21 MS. BONNELL: All right.
22 JOAN SCHWATZ: No. I was going to say we were
23 present for things where we asked Geary questions where
24 there were subsequent conversations where Jim was
25 present, but they were after that time.

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1 MS. BONNELL: Okay.
2 JOAN SCHWATZ: But no one -- I think it was like
3 him calling Jim. And I think Jim's recollection was he
4 didn't really deal with him. He just kind of sent him
5 to Claus or Ed and said, you need to deal with them.
6 You know, I don't override their policy. I've let them
7 know you want them to look at it.
8 MS. BONNELL: Okay. Well, I tell you what, I
9 will -- how about I doublecheck here and decide how we
10 want to proceed with that.
11 JOAN SCHWATZ: That is fair. And I would just
12 offer this, too. I mean, we -- I would be happy to, you
13 know, do sort of a declaration or accusation, or
14 whatever you want to call it, and we could provide some
15 documentary support for the statements that might be
16 helpful about the fact that we, you know, never meet any
17 margins, loans to this firm for this account, whatever
18 we specifically want to get down to, and that it has
19 been our position that we don't, you know, provide
20 margin.
21 MS. BONNELL: Okay. That actually might be a
22 really good way to proceed.
23 JOAN SCHWATZ: Yeah. I mean, it is up to -- I
24 understand that you have other needs, but I guess what I
25 am offering is, if we can accommodate -- I will say

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1 this. Ed is really good at what he does. He is not a
2 good witness.
3 MS. BONNELL: Okay.
4 JOAN SCHWATZ: He is really, really nice, but he
5 is probably one of the worst people I have had to
6 prepare and that you will ever -- I mean, if you are
7 going to put him on the stand, it is not going to go
8 well.
9 MS. BONNELL: Okay.
10 JOAN SCHWATZ: And he is not a guilty guy by
11 like a million miles. He is like the most honest, hard
12 working guy. He has been here for like 30 years. He
13 was like sick for days at the FDIC call and it went
14 really poorly. You can ask. And then I sort of jumped
15 in and started asking questions.
16 And in fairness, you know, the agent is an agent
17 for the bank-related things, you know. It is over the
18 phone. He's out in L.A. So I said to her, like I know
19 that you are frustrated, but he wasn't trying to be
20 difficult. And then he comes -- they came out in
21 person, the supervisor and the agent, and, you know, Ed
22 was better in person, but I guess I am just thinking of
23 myself. You know, between the two of us as a witness
24 choice I would go with me instead of him or just about
25 anyone else. And lawyers are the worst witnesses, I

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1 think, so... I think we were able to get the
2 information out, but it is like a difficult go of it.
3 MS. BONNELL: Okay.
4 JOAN SCHWATZ: So you know, Claus is a better
5 witness, frankly. Not that I am offering up any one of
6 our people. And we're happy to have you on the phone
7 with whomever you want, so please don't mistake what I
8 am saying as being, you know, in any way trying to be
9 difficult because we will get Ed on the phone and we'll
10 have him walk you through the e-mails. If we need to
11 get Michelle Malvonavo on the phone, we'll get her on
12 the phone. We're certainly not going to give you a hard
13 time with that.
14 I am just trying to think -- you know, some of
15 this is road well traveled and, you know, Sam and I have
16 been present for conversations and can attest to them.
17 I would certainly be happy to do it from my perspective,
18 if you think counsel would be helpful.
19 MS. BONNELL: Okay. That is great.
20 JOAN SCHWATZ: But it's just a consideration in
21 your strategy.
22 MS. BONNELL: Thank you. I appreciate that.
23 Now, Jim Ross, is he in Illinois?
24 JOAN SCHWATZ: He is in -- yeah. He is located
25 in our Illinois office, yes.

12 (Pages 42 to 45)

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1 MS. BONNELL: Okay.
2 JOAN SCHWATZ: Ed is down in Los Angeles.
3 Richard Claus is here in Jersey City, and Michelle is in
4 Lake Marion.
5 MS. BONNELL: Okay.
6 JOAN SCHWATZ: So it is covered, I think, in all
7 corners of the country.
8 MS. BONNELL: Okay. Well, if I had more time on
9 this matter, I think I would need to visit with everyone
10 to get a little travel in, but, unfortunately, I don't
11 think we have that time.
12 JOAN SCHWATZ: Well, the other thing I can -- we
13 had Ed come to New York -- to New Jersey at our expense.
14 MS. BONNELL: Okay.
15 JOAN SCHWATZ: And so if we needed to, we would
16 be happy to make ourselves available in one location.
17 MS. BONNELL: Okay.
18 JOAN SCHWATZ: Preferably here in Jersey City,
19 so if you need to travel, you could travel one place and
20 we could make everyone available to you whether in
21 person, on video conference or over the phone.
22 UNKNOWN SPEAKER: I don't want to go to Florida
23 in the summer.
24 JOAN SCHWATZ: Yeah, no offense.
25 MS. BONNELL: Well, especially now that you

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1 can't visit the beaches, right?
2 JOAN SCHWATZ: Right.
3 UNKNOWN SPEAKER: Exactly.
4 JOAN SCHWATZ: And it is pretty hot here. I
5 don't know what it is like by you, but...
6 MS. BONNELL: No, it is. Okay. Well, I guess
7 right now if you will just figure something out on
8 Michelle and then, you know, send me those e-mails
9 between Karen Coker to Ed.
10 JOAN SCHWATZ: Right. So there is a whole -- I
11 think there is nine e-mails that Ed gave us that we gave
12 the FDIC. Sam is just going to forward them all to you.
13 There is some duplications.
14 MS. BONNELL: Okay. No problem.
15 JOAN SCHWATZ: But we'll just send them to you.
16 What -- Sam and I are going to hang up and call Michelle
17 Malvonavo.
18 MS. BONNELL: Okay.
19 JOAN SCHWATZ: And try and get a sense of if she
20 remembers anything. We don't tape anybody, so we
21 wouldn't even have like a phone record of a
22 conversation.
23 MS. BONNELL: Okay.
24 JOAN SCHWATZ: We can see if she has got any
25 e-mails, and if she doesn't have them, we can go back

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1 and see if we've got anything archived.
2 MS. BONNELL: Okay. That would be great.
3 JOAN SCHWATZ: All right. And then we're going
4 to hold off for now, Terra, on the Jim Ross and Ed
5 Banion interviews and you're going to let me know how
6 you want to proceed?
7 MS. BONNELL: Yeah. And I am going to actually
8 let you know probably this afternoon.
9 UNKNOWN SPEAKER: Okay. Great. And Terra, just
10 in case Sam is not around, I'll give you my number as a
11 backup. But Sam is a great first contact. It is
12 201-413-2538. And Sam and I talk about five million
13 times a day.
14 MS. BONNELL: Okay. Great.
15 JOAN SCHWATZ: Just in case if you need, you
16 know, one of us I would offer her as a backup. And
17 then --
18 SAM: If I'm not there, it's because I'm in
19 here.
20 MS. BONNELL: Okay. I gotcha. I understand.
21 Okay. Well, thank you both so much.
22 JOAN SCHWATZ: All right. We appreciate it.
23 Thanks.
24 MS. BONNELL: Bye.
25 (End of audio.)

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1 CERTIFICATE
2 STATE OF OKLAHOMA)
3)
4 COUNTY OF TULSA)
5
6 I, Jodi D'voree Horvath, Certified Shorthand
7 Reporter in and for the State of Oklahoma, do hereby
8 certify that the foregoing transcript consisting of 49
9 pages transcribed from the provided audio tapes is true
10 and correct to the best of my ability based on the
11 condition of the audio tapes.
12 I am not an attorney for or a relative of any
13 party.
14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and stamp this 1st day of March, 2012.
16
17
18 Jodi Horvath, CSR, RPR
License # 1410
19
20 My Commission Expires:
21 December 31, 2012
22
23
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25

13 (Pages 46 to 49)

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EXHIBIT

 C

Page 2

1 (Transcription of provided audio:)
2 SAM: It started from the beginning with this
3 particular piece, Terra. And it started on July 14th,
4 2008 with the buy of it in the 5KV account. That was
5 delivered out, again, because it is a COD account.
6 MS. BONNELL: Okay.
7 SAM: There was a cancel and correction done on
8 August 4th, which were not --
9 MS. BONNELL: Back in '08?
10 SAM: Yeah.
11 MS. BONNELL: Okay.
12 SAM: And then it sold, as you know, on May
13 28th. And then the position, presumably, that was
14 delivered out in July of '08. Was then delivered in --
15 on February 28th of '09.
16 MS. BONNELL: Okay. So it was sold and then
17 they put it in the account so then it could go to the
18 seller basically?
19 SAM: Say that again?
20 MS. BONNELL: They sold it on 5/28?
21 SAM: And it was received in.
22 MS. BONNELL: And then it was received in?
23 SAM: Yeah. And then we go flat.
24 MS. BONNELL: Right, right. Because then the
25 securities were transferred to whoever the buyer was?

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1 SAM: Right.
2 JIM: Exactly.
3 MS. BONNELL: Okay. So then --
4 JIM: We never cut to the (inaudible) here.
5 SAM: Right.
6 MS. BONNELL: Okay.
7 JIM: Somewhere else.
8 MS. BONNELL: So when we're talking about the
9 cash, they -- let's see, so the negative -- the -- okay.
10 The -- when you are looking at the sale, they would have
11 received 8.4 million for the sale?
12 SAM: If we -- the position is delivered in to
13 flatten the position. It goes flat. The position goes
14 flat and the dollar amount goes flat.
15 MS. BONNELL: So there is no cash that was put
16 into this account for the sale?
17 JIM: Correct, because it is position net.
18 MS. BONNELL: Right.
19 JIM: Right.
20 MS. BONNELL: Okay. Okay. So I guess it would
21 make sense to me if the buyer and the seller were the
22 same people. Like -- well, but here they are
23 technically two different entities. Okay. The security
24 was received, I believe, from UMB.
25 JIM: Okay.

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1 MS. BONNELL: From an account there. And I
2 don't want to -- I mean, I guess you probably know some
3 of this anyway, so I am just going to give this
4 information to you and hope that you keep it
5 confidential.
6 JIM: Correct.
7 MS. BONNELL: But you probably know it. So --
8 okay. So the security was received from the Frontier
9 State Bank account at UMB.
10 SAM: Right.
11 MS. BONNELL: That is who was (inaudible) it. So
12 it comes -- okay. So but first they sell it. Frontier
13 State Bank account sells it. The Capital West account
14 sells it. So they had to sell it to someone. And I
15 think that, even though this documentation does not
16 indicate it, I think they sold it to either Eagle Sky or
17 Dr. McKean. So they sold it to somebody else, but they
18 received it from Frontier State Bank. So wouldn't you
19 assume that that third person that bought it from
20 Frontier State Bank would have paid? But you are saying
21 that they didn't because it netted out?
22 JIM: All right. Now, we're only speaking from
23 the Pershing --
24 SAM: Yeah.
25 JIM: -- here?

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1 SAM: I don't think we would know to confirm or
2 deny what you are alleging. I don't know how we would
3 know that.
4 MS. BONNELL: Well, I guess what I am thinking
5 is -- and I think it is just my knowledge. So excuse me
6 for being frustrating here, because I am sure I am. But
7 anytime that you have a security come into the account,
8 you sell a security from the account, let's say the
9 security was already in the account and they just sold
10 it to someone, you would expect a credit for the sale,
11 right? Like a cash credit? Because don't you usually
12 get money for the securities you sell?
13 SAM: Yeah.
14 MS. BONNELL: So let's say that the security is
15 already in the account.
16 SAM: Right.
17 MS. BONNELL: You don't have the security
18 received.
19 SAM: Right. So the position would go flat.
20 MS. BONNELL: But you would get --
21 SAM: With the credit remaining. That is not a
22 COD account, though. That is not the way a COD account
23 works.
24 MS. BONNELL: But -- okay. So even on a COD,
25 cash on delivery, so wouldn't you get cash when it was

2 (Pages 2 to 5)

Page 6	Page 8
<p>1 delivered? Oh, I gotcha. 2 JIM: See, right here is what I -- you just gave 3 us a piece of information that might -- if you let us 4 research this a little bit, maybe we can walk you 5 through this step by step. 6 MS. BONNELL: Okay. And I am sorry. I am 7 sorry. I am trying to understand it. It is just -- 8 JIM: It's confusing. Yeah, exactly. But what 9 you're saying is that an entity involved in this 10 purchase was also the McKean or Eagle Sky account at 11 Geary Securities? 12 MS. BONNELL: Right. 13 JIM: So you think they were involved in this 14 transaction. 15 MS. BONNELL: So I think when you look at their 16 -- one of their accounts -- I am not sure which one, 17 because they kind of -- so you will see that that same 18 security went to their account next. 19 JIM: Yeah, okay. 20 MS. BONNELL: So then you would assume that 21 there would be cash coming from one or both accounts 22 into here, but what you're saying is, there wasn't any 23 cash, it was just netted? 24 JIM: Correct. 25 SAM: Yes.</p>	<p>1 (End of audio.) 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 7	Page 9
<p>1 MS. BONNELL: Okay. Then I'm really confused. 2 Okay. 3 JIM: Let us find that other leg of the trade -- 4 MS. BONNELL: Okay. 5 JIM: -- you are referring to and maybe we will 6 be able to better explain it, because they should be on 7 the same page. 8 SAM: If her theory is correct. 9 JIM: But it -- 10 MS. BONNELL: Well, I have trade tickets. Let 11 me double check. Maybe by some chance I picked up a 12 security that did not end up there. But I have Capital 13 West trade tickets. 14 JIM: Yes. 15 MS. BONNELL: This isn't like a random -- 16 JIM: No. I hear you. 17 MS. BONNELL: The only -- yeah, the only way 18 that this theory is wrong is if I happened to pick up a 19 security that was on the same day that wasn't part of 20 all of these transactions. 21 JIM: Sure. We'll find the other leg in that 22 trade -- 23 MS. BONNELL: Okay. 24 JIM: -- and we'll give you a call back. 25 MS. BONNELL: Okay. Thank you. Bye.</p>	<p>1 CERTIFICATE 2 STATE OF OKLAHOMA) 3) 4 COUNTY OF TULSA) 5 6 I, Jodi D'voree Horvath, Certified Shorthand 7 Reporter in and for the State of Oklahoma, do hereby 8 certify that the foregoing transcript consisting of nine 9 pages transcribed from the provided audio tapes is true 10 and correct to the best of my ability based on the 11 condition of the audio tapes. 12 I am not an attorney for or a relative of any 13 party. 14 IN WITNESS WHEREOF, I have hereunto set my 15 hand and stamp this 1st day of March, 2012. 16 17 18 Jodi Horvath, CSR, RPR 19 License # 1410 20 My Commission Expires: 21 December 31, 2012 22 23 24 25</p>

3 (Pages 6 to 9)

**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

AFFIDAVIT OF CAROL GRUIS

STATE OF OKLAHOMA)
) **ss:**
COUNTY OF OKLAHOMA)

I, Carol Gruis, being of lawful age and being duly sworn, deposes and states as follows:

1. I am currently the Director of Examinations of the Oklahoma Department of Securities (Department).
2. I was initially employed by the Department as an examiner in July of 1992. I was promoted to my current position in 2006.
3. Prior to my employment with the Department, I worked for the National Association of Securities Dealers, Inc., now known as FINRA. My last position with FINRA was as a Senior Compliance Examiner.
4. Prior to my employment with FINRA, I worked in the operations department of a broker-dealer for three years.
5. As part of my current duties, I supervise Department personnel who conduct on-site examinations of registered broker-dealers and investment advisers, which includes reviewing all violations and deficiencies cited by the examiners. After reviewing each firm's response to the deficiencies, I make the final determination on behalf of the Examinations Division of

EXHIBIT

 D

whether violations have occurred and whether the matter should be referred for enforcement action.

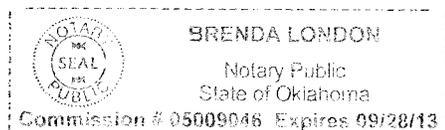
6. As part of my assigned duties as Director of Examinations, I also assist in investigations conducted by the Department's Enforcement Division.
7. In connection with the referenced action, I reviewed the results of the Department's on-site examination of Geary Securities Inc. I analyzed, *inter alia*, account statements, financial records, clearing firm records, and regulatory filings made by Geary Securities, Inc.
8. In connection with the referenced action, I participated in telephonic communications with representatives of Pershing, Inc., the clearing firm at all material times hereto for Geary Securities, Inc. Some, but not all, of those communications were recorded, in whole or in part, by the Department.
9. The primary topic of the telephonic communications was the movement of the private label collateralized mortgage obligations (PL-CMOs) sold by Frontier State Bank of Oklahoma City, Oklahoma, on May 28, 2009.
10. During the course of the communications, questions arose which required the Pershing representatives to end the calls in order to review applicable records and to confirm relevant information.
11. The Department's questions as to the movement of the PL-CMOs were finally resolved by Pershing in a telephone conversation on or about July 22, 2010, in which the Pershing documents, attached as Exhibit 1 hereto, were discussed. This particular telephonic communication was not recorded by the Department.

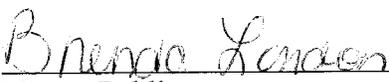
FURTHER AFFIANT SAITH NOT.



Carol Gruis

Subscribed and sworn to before me this 5th day of March, 2012.





Notary Public

United Missouri Bank	
A/C # 290-141 r/v/o Frontier Bank	
1	13,040,000
Securities	
4b	13,040,000.00
Cash	
4b	\$ 8,453,516.81

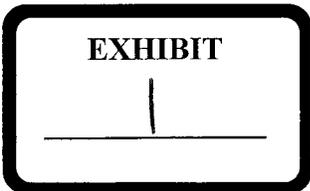
Depository Trust Company	
A/C # 0443 r/v/o Pershing LLC	
4a	13,040,000.00
Securities	
4a	\$ 8,453,516.81
Cash	
4a	\$ 8,453,516.81
A/C # 2451 r/v/o UMB Bank, NA	
1	13,040,000
Securities	
4a	13,040,000
Cash	
4a	\$ 8,453,516.81

Pershing LLC	
A/C# 970-100558 DTC Depository Location	
4c	13,040,000.00
Securities	
4c	\$ 8,453,516.81
Cash	
4d	\$ 8,453,516.81
A/C # SKV-001146 r/v/o Frontier State Bank Attn: Debbie Smith	
3	13,040,000
Securities	
4c	13,040,000
Cash	
4c	\$ 8,453,516.81
A/C # SKV-891033 r/v/o Geary Securities, Inc --MBS/CMO Accounts--	
3	13,040,000
Securities	
5	13,040,000
Cash	
5	\$ 8,409,716.20
A/C # SKV-001377 r/v/o Joseph D McKean Jr 1 D McKean	
2	41,882,608.50
Cash	
5	\$ 41,882,608.50

The Bank of New York Mellon Corporation Confidential

07/22/2010

Page 1



Bank of New York Corp. Confidential

Description

- 1 Opening security position held at DTC for the account of UMB for the benefit of Frontier Bank (par value 13,040,000 of cusip 059513CB5)
- 2 Cash Balance on 5/31/2009 held at Pershing for the account of Joseph D McKean Jr

- 3 Frontier Bank Sells 13,040,000 to Geary Securities MBS/CMO Account vs \$8,453,516.81 with trade date of 5/28/09 and same day settlement
- 4 Frontier Bank instructs UMB to deliver 13,040,000 in settlement of it's sell trade. UMB delivers to Pershing through DTC vs. payment of \$8,453,516.81
- 4a UMB instructs DTC to deliver securities to Pershing 13,040,000 vs payment of \$8,453,516.81
- 4b UMB records the deliver of securities and receipt of cash in Frontier's account
- 4c Pershing records the receipt of securities and payment in Frontier's account
- 4d Pershing net settles with DTC end of day
- 4e UMB net settles with DTC end of day
- 5 Geary Securities sells 13,040,000 to Joseph D McKean Jr vs \$8,409,716.20 on 6/1/2009, which is later corrected to 5/28/2009

REPORT: FT220 ACCOUNT=> SKV-891033
 RUN DATE: 030523-22540621

CAPITAL WEST SECURITIES INC
 --MBS/CMO ACCOUNT--
 SETTLEMENT DATE INVENTORY RECAP

FOR: 05/25/09

PAGE: 12

SECURITY	TOTAL POSITION	BOOK COST		MARKET VALUE		CPM INT/DEV		ACC INT - DEV		PROFIT/LOSS-		TICKETS	
		AVERAGE PRICE	CURRENT PRICE	TRADE INT	MTD INT - CDV	UNREALIZED	MTD SALES CRD	YESTDAY	M-T-D REAL	PKASHING CHG	M-T-D		
ACCOUNT SKV-891033 TOTALS													
EQUITY TOTALS													
LONG	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SHORT	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FLAT	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NET	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
OPTIONS TOTALS													
LONG	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SHORT	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FLAT	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NET	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FIXED INCOME TOTALS													
LONG	118,801,150	76,727,470.63	37,210,162.22	0.00	498007.28-	448206.61	49800.67-	39517308.41-	0.00	0.00	0.00	0.00	0.00
SHORT	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FLAT	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	199507.71	0.00	0.00	0.00
NET	118,801,150	76,727,470.63	37,210,162.22	0.00	498007.28-	448206.61	49800.67-	39517308.41-	0.00	199507.71	0.00	0.00	0.00
TOTAL-ALL SECURITIES													
LONG	118,801,150	76,727,470.63	37,210,162.22	0.00	498007.28-	448206.61	49800.67-	39517308.41-	0.00	0.00	0.00	0.00	0.00
SHORT	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FLAT	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	199507.71	0.00	0.00	0.00
NET	118,801,150	76,727,470.63	37,210,162.22	0.00	498007.28-	448206.61	49800.67-	39517308.41-	0.00	199507.71	0.00	0.00	0.00
TOTAL-ACCOUNT:													
SKV-891033		76,727,470.63	37,210,162.22	0.00	498007.28-	448206.61	49800.67-	39517308.41-	0.00	199507.71	0.00	0.00	0.00

S/D BOOKKEEPING BALANCE = 79,385,481.82

-0-
 Zero Balance resulting from
 No Billing to McKeon Accts
 & Receipt of \$30+ Million Cash
 from McKeon.

EXHIBIT
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