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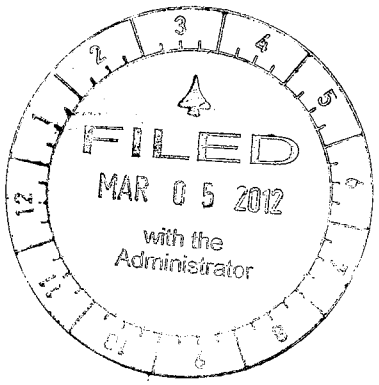

In the Matter of:

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 telephones calls[1] 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 listened[3] 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 PROPIETARY 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

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[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 Propietary 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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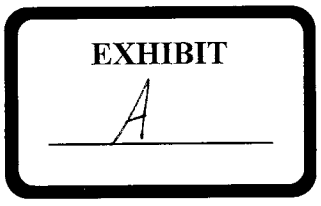

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(Transcription of provided audio:)
CAROL: This is Carol.
SAM: Hi, Carol.
CAROL: Hi, Sam.
SAM: All right. We've got everybody. Sorry for the delay.
CAROL: That is no problem.
SAM: I have with me Joan Schwatz from our legal department, Patrick Leary,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

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enforcement here at the Department and also Kim Reed, who is a fellow examiner.
SAM: Okay. Great.
CAROL: Okay. [redacted]
SAM: [redacted]
CAROL: Yeah. And this was -- yeah, correct. It states that it was prepared on September 16th, 2009. [redacted]
MR. SIEGEL HORN: Hang on. We're checking to make sure that we are all on the same page.
CAROL: Okay.
MR. SIEGEL HORN: Yeah, sure. So here is the confusion, Melanie. [redacted] We have a qwerk in our system that if you don't print it the right way, it will show the date on the form --
CAROL: Oh, yeah.
MR. SIEGEL HORN: -- which in this case is September 16th.

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CAROL: Gotcha.
MS. HALL: [redacted]
MR. SIEGEL HORN: [redacted]
SAM: And that was in September of '09?
MR. SIEGEL HORN: September 18th.
SAM: September 18, 2009. [redacted]
CAROL: Right.
SAM: So that is why you have this one. [redacted]
MS. HALL: Do we need to send out a supplemental request to get that?
SAM: You can just shoot me an e-mail. That is fine.
MS. HALL: Okay.
CAROL: We'll do that. That would be great.
MR. SIEGEL HORN: Great. And we'll get that to you.
CAROL: Wonderful. [redacted]

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

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to Pershing for a number of processes that we provide to the introducing broker.

And in addition to that, each introducing firm has any number of proprietary accounts. And that is what this one is that you are asking about. The account MBS-CMO, the Capital West account, is an account that is considered a proprietary account. So it is used for purposes that the IBD determines is necessary to run their business. So it could be in some cases an allocation account. Some firms establish allocation accounts where they will take a transaction and allocate it to a customer account. If it is an average price account. Sometimes it can be a proprietary training account. It could be error accounts, all of these other types of accounts. And the 8 -- if you look at the account number, it begins with 89. That is [redacted]1033 --

CAROL: Uh-huh.

JOAN SCHWATZ: Often the 89 is the indicator that it is a proprietary account range. And so these accounts are used for a number of purposes. But they are not in customer accounts. So they are not owned by an individual who's introducing them to Pershing through the introducing firm.

So in this case when you ask us what they were allowed to do in there, well, they are allowed to do

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whatever their supervisory principals think is appropriate and necessary for them to conduct business.

CAROL: Okay. So you, Pershing, do not place any restrictions on the activity within that account?

JOAN SCHWATZ: I don't want to be so literal to say we don't place any restrictions, because if we saw someone charging a million dollars of commission on $100,000 trade, we probably would take a look at that and have a question around it.

CAROL: Okay.

JOAN SCHWATZ: If we thought that there was some kind of activity that was, you know, concerning to us, we would ask a question if it jumped up, you know, as a red flag.

CAROL: Okay.

JOAN SCHWATZ: But there is no -- there is no set of rules that one has to follow because every introducing firm is a regulated entity and a member firm and we expect that they are complying with the applicable rules and conducting their business in the way that they think is most appropriate for their customer base.

CAROL: Okay. So then would it be appropriate to say that you would not have had any conversations with Capital West regarding activity within this

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account?

JOAN SCHWATZ: Not necessarily. I don't remember if we did or we didn't. But we -- and we certainly could. Right. I just -- I wanted to -- I am not trying to be so literal to answer your question, but I just want to make sure. You know, what is difficult, because we are a clearing firm, is that many things are provided as tools to licensed and regulated entities. And so we don't get to say, you can't allocate trades to customers of this account. You can't use it as an error account. [redacted]

CAROL: Gotcha.

JOAN SCHWATZ: Right. And part of it involved the proprietary account.

CAROL: Right.

JOAN SCHWATZ: So there were something that set a concern in our mind to get additional information from the introducing firm, and then we followed up by asking them questions around the -- those -- a number of

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accounts [redacted]

CAROL: Can you tell me the activity that Capital West would process through this account? Is that done on a riskless principal basis or on a principal?

JOAN SCHWATZ: I don't -- yeah. I mean, if you want, Carol, I mean, I can give you a trade blog of that showing you all of the trades in that account for a particular time period, if you think that would help.

CAROL: Yeah. As a matter of fact, I will just put that in the e-mail to you, okay, for the time period?

JOAN SCHWATZ: I think they may help you get to where you need to get.

CAROL: I think so. I think we'll need that.

[redacted]

JOAN SCHWATZ: Yeah, we did.

MR. SIEGEL HORN: Yeah, we had a conversation with the firm CTO.

CAROL: Althea?

MR. SIEGEL HORN: Right.

CAROL: Alberts? Okay.

MR. SIEGEL HORN: And -- okay.

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CAROL: Do you --
JOAN SCHWATZ: I am sorry. Could you give us half a second? I apologize.
CAROL: Sure.
(Brief talking amongst themselves.)
JOAN SCHWATZ: All right, guys. I apologize. We were just trying to all get on the same page. There was some confusion on the timing on my part.
CAROL: That is fine.
JOAN SCHWATZ: So I think to answer your question around was it principal or not, I am not sure we ever got an answer that was specific as to whether it was a riskless principal account. That MBS/CMO account, account number [redacted]1033.
CAROL: Right. So but if you send me the activity with regard to that account, it should be apparent on that report? Would that be correct?
JOAN SCHWATZ: I don't know that it would be on the trade -- You would probably have to get the trade tickets from Capital West.
CAROL: From the firm. Okay.
JOAN SCHWATZ: To see if they were marked it as principal or not.
CAROL: Okay.
JOAN SCHWATZ: Yeah. I think we were more

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

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JOAN SCHWATZ: Yeah. This is Joan, and I will be honest, I was not on the call with Althea, but I participated in the second call with the CEO.
MS. HALL: So you have talked to Mr. Geary?
JOAN SCHWATZ: Yes.
SAM: Yes.
MS. HALL: And how forthcoming was he?
MR. SIEGEL HORN: Very forthcoming.
JOAN SCHWATZ: Yeah. He was --
MR. SIEGEL HORN: He answered all of our questions. [redacted]
JOAN SCHWATZ: Right. That is what we were trying to do, was iron down the timing and Patrick had had a chance to speak with Althea, and [redacted] and then we followed it up with the CEO, Mr. Geary, and had a conversation with -- I don't know -- Sam, were you on it? Okay. So all four of us on the phone for that conversation.
MS. HALL: When did you --
JOAN SCHWATZ: And I think it is fair to characterize both of those conversations as being cooperative and forthcoming. I am not sure that our perspective was necessarily exactly the same as their perspective in terms of the concern around the training

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activity.
MS. HALL: When did you actually talk to him?
[redacted]
JOAN SCHWATZ: [redacted]
MS. HALL: Okay.
JOAN SCHWATZ: [redacted]
CAROL: [redacted]
MR. SIEGEL HORN: No. We --
JOAN SCHWATZ: Correct.
CAROL: Okay.
MS. HALL: Or --
JOAN SCHWATZ: [redacted]
CAROL: Right.
JOAN SCHWATZ: Right. [redacted]
CAROL: Uh-huh.
MS. HALL: So this -- so you're --
JOAN SCHWATZ: The timing was the initial activity was identified. Patrick had that conversation with the CCO, Althea. After that information [redacted] we were looking at some additional

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information, still had questions and asked for a conversation with the CEO and I think with Althea, but I think, if I remember, she was sick or she was traveling. There was some kind of glitch in the timing, if I remember correctly.

CAROL: Right.

JOAN SCHWATZ: So she -- it was just a scheduling issue more than her not wanting to be there. And so we had asked to have a conversation with both of them and proceeded with Mr. Geary because I am -- she was either sick or traveling. I don't remember. She wasn't available and, since we had rescheduled, we went forward and had that conversation with Mr. Geary. [redacted]

MS. HALL: Okay.

CAROL: It does.

JOAN SCHWATZ: Okay.

CAROL: [redacted]

MR. SIEGEL HORN: CEMP?

CAROL: Yes.

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MR. SIEGEL HORN: No. No. [redacted]

JOAN SCHWATZ: [redacted]

MR. SIEGEL HORN: Correct.

JOAN SCHWATZ: Yeah. Correct. So similar transactions that had caused us to be concerned and initiated conversation with the firm.

CAROL: Okay. And the activity that I believe that we saw in the statements was in August we saw a transferring out of assets?

MR. SIEGEL HORN: Yeah.

CAROL: In September we see them coming back?

MR. SIEGEL HORN: Right. Yeah.

JOAN SCHWATZ: Right.

CAROL: And --

MR. SIEGEL HORN: It was August 4th --

CAROL: Right.

MR. SIEGEL HORN: -- CMOs were delivered out.

CAROL: Right. And do you know where they were delivered to?

MR. SIEGEL HORN: They came back. [redacted]

JOAN SCHWATZ: Right. So we know where they

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went to.

MR. SIEGEL HORN: No. If memory serves me correctly, they were delivered off of our platform.

CAROL: Okay.

MR. SIEGEL HORN: And we don't have the method to track it down.

CAROL: Okay. But then you saw the very same ones coming back in September, the same positions?

MR. SIEGEL HORN: That is correct.

MS. HALL: Okay. And you have not talked to anybody since that happened to know about what their explanation of that is?

MR. SIEGEL HORN: No, I have not, no.

JOAN SCHWATZ: No. I think the answer is that it was consistent with the previous activity and, since we had spoken to the parties there at that time, there was nothing new other than it was just continuing to happen.

MS. HALL: Okay. Have you all seen any similar activity involving -- well, it wouldn't be -- it is a bank account. Never mind. I don't have the name of the individual that would be.

JOAN SCHWATZ: If you want to send that in the e-mail to Samantha, that --

MS. HALL: Okay.

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JOAN SCHWATZ: -- I would be happy to search.

CAROL: Okay.

JOAN SCHWATZ: It is always possible we might not have caught something or may not have looked in that particular direction. So if there is something specific either by name or tax identification number or some other method you would like us to verify activity, we would be really happy to do that.

MS. REED: Okay. This is Kim. Have you been contacted by any other regulators or law enforcement agencies?

JOAN SCHWATZ: No. You are the only one.

MS. HALL: Okay. So you're -- you don't show that these security, these CMOs were delivered to the CEMP Resecuritization Trust 2009-1 account?

CAROL: Does that even sound familiar to you?

JOAN SCHWATZ: Let's look at the statement. Yes. You know, we have to actually look at the account statements to see if it -- sometimes it will stay where it is going, but oftentimes not.

CAROL: Are you aware of the account?

(Speakers began talking at the same time.)

MS. HALL: I am sorry. What did you say?

JOAN SCHWATZ: Which financial institution that account is housed at?

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CAROL: It just says Bank of New York, Melon. We thought maybe there -- it was set up through Pershing. But you're saying that it is not familiar to you?

JOAN SCHWATZ: No, not -- wouldn't necessarily -- it could be with the Bank of New York, Melon.

CAROL: Okay.

JOAN SCHWATZ: I mean, they're, obviously, a huge facility, and so...

CAROL: Right.

JOAN SCHWATZ: So, yeah, it would probably say Pershing if it was Pershing.

MS. REED: And this is Kim again. Samantha, [redacted] you also sent some delivery instructions with -- for this CEMP Resecuritization Trust 2009 with some wire instructions?

SAM: The response to the first inquiry?

MS. REED: Right. And it said -- it is two pages. It is actually a letter that is addressed to Capital West's Securities attention, Chad Goodman, and it is dated July 31st of '09 and it references these bond issues or the bonds that went through the accounts. And then on the second page it has the delivery

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instructions. I was assuming those are the delivery instructions for when the bonds were delivered out on August 4th?

MS. HALL: And it is a letter from Dr. McKean to CapWest.

SAM: Yeah. I mean, I am trying to find it. I am sorry. What was the date again? I apologize.

MS. REED: July 31st.

SAM: And which account number?

MS. REED: It is regarding [redacted]377 and [redacted]7119.

SAM: [redacted]1377?

MS. REED: Yeah.

CAROL: It is authorization to free deliver.

MR. SIEGEL HORN: So that is the letter of authorization?

CAROL: Yeah.

MS. REED: Right.

MR. SIEGEL HORN: So that is a letter of authorization that Dr. McKean is giving CapWest --

CAROL: That is correct.

MR. SIEGEL HORN: -- instructing them to deliver?

MS. REED: Yeah.

CAROL: And then attached to that is actually delivery instructions.

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JOAN SCHWATZ: Let me take a look at that. Just so that you know, the way that it normally works is that the introducing firm we see those instructions, then obviously enter that instruction on our system for us to effectuate the delivery. Okay. So what we are talking about is on Capital West letterhead and says, see attached instructions. Is that what you are referring to?

CAROL: Yeah. I am assuming it is on Capital West letterhead. When I printed it off, it was just blank.

MS. HALL: Because it is going to --

MS. REED: Oh, it's going -- it is from Dr. McKean to Capital West.

CAROL: And the delivery instructions look like Bank of New York Melon.

MS. REED: Yeah.

CAROL: So it looks like an account at Bank of New York Melon and they name the account at Bank of New York Melon -- appears to be CMP 2009 distribution account.

JOAN SCHWATZ: All right. So we'll -- why don't you give us -- instead of keeping you on the phone, we'll refamiliarize ourself with the file and just let me make sure that we've got that. It is the July 31st,

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'09 instruction?

MS. REED: Right. From Dr. McKean to Capital West. And it has got an attachment for delivery instructions.

JOAN SCHWATZ: And it is to that CEMP account --

MS. HALL: Right.

JOAN SCHWATZ: -- at CMYM?

CAROL: There is a -- you know, on the wire instruction it does have a for further credit to and, I guess, just for our sake, if you could verify that that is not a Pershing account. It probably is directly with the bank. But the number is [redacted]559.

JOAN SCHWATZ: Okay. We'll take a look at that.

CAROL: Okay.

JOAN SCHWATZ: Great. We'll take another look at that.

CAROL: Okay. We're just kind of trying to follow the securities and find out where it was that they were sent to and where they came back from.

MS. HALL: And why.

CAROL: Yeah, and why.

MS. HALL: Is there any way that you could tell us what Dr. -- Keith Geary's explanation of these transactions was to you?

JOAN SCHWATZ: Sure.

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MR. SIEGEL HORN: Dr. Geary's explanation was that they were --

MS. HALL: Yeah, he is not a doctor yet, thank God.

MR. SIEGEL HORN: -- his firm, Capital West, was going to re-remic a group of CMOs, so they were going to buy several issues. I think he said between nine and eleven from a variety of banks, package them together with the ultimate goal of getting a higher rating. He said that -- that Keith said that he noticed a duplication between the price and value of CMOs like this and of the scarcity of super senior AAA CMOs in the market place.

So they purchased these particular CMOs and he was going to re-remic them and partnership with another financial institution called Braver Stern.

CAROL: What is it?

MR. SIEGEL HORN: Braver Stern.

CAROL: Can you spell that?

MS. HALL: B-R-A-V-E-R?

MR. SIEGEL HORN: B-R-A-V-E-R. Stern is S-T-E-A-R-N (sic).

CAROL: Okay.

MR. SIEGEL HORN: He said that originally the bonds were -- the particular CMOs at issue here were

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going to be transferred to Braver Stern. He thought that they would take them immediately. But through miscommunication with Braver Stern, Braver Stern indicated that they would not take them immediately, that they would only take them at the time of the actual re-remic would happen. So, therefore, Keith Geary had these in his prop account for CapWest. And at that time he sold them to Dr. McKean.

JOAN SCHWATZ: I think one of the things, if I remember, is Geary was explaining that he didn't think that he would have to actually -- the way the transaction would work that he would not have to come out of pocket with the dollars at the time, that they would do the re-remic transactions immediately after receiving -- after purchasing these from -- after purchasing these, so they wouldn't have -- so his firm wouldn't have to come out of pocket the dollars, that they would get those transactions covered by the re-remic.

And so when that didn't appear to be imminent, and when Braver Stern wasn't going to reimburse them for the purchase price by taking them off of his books, he was going to have to pay for them, so he wound up finding a buyer in Dr. McKean. Sorry. I am saying Dr. Geary now, too. Sorry. Dr. McKean.

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CAROL: Yeah. Convenient. How much was the transaction?

JOAN SCHWATZ: I knew you were going to ask us that question.

MR. SIEGEL HORN: [redacted]

JOAN SCHWATZ: [redacted]

MR. SIEGEL HORN: Thirty-nine.

JOAN SCHWATZ: Oh, sorry.

MR. SIEGEL HORN: Million.

CAROL: Thirty-nine million?

JOAN SCHWATZ: [redacted]

MS. HALL: Now, when he says he sold them to Dr. McKean, is he talking about the sale in early June, or is he talking about something that he is saying happened in the latter part of June?

MR. SIEGEL HORN: No, he was talking about the sale in June.

JOAN SCHWATZ: In June, yes.

MS. HALL: And I am just going to give you a piece of information that we have that Dr. McKean is representing that he did not initially purchase these securities, he or Eagle Sky Foundation, until sometime

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after the sale by the bank. But it looks to us from the statements that these transactions occurred showing him purchasing and Eagle Sky purchasing these securities in -- on June 1st or something like that?

CAROL: Third or something.

MS. HALL: Third.

MR. SIEGEL HORN: Yeah. That is -- go ahead.

MS. HALL: Is that correct?

MR. SIEGEL HORN: Yeah.

MS. HALL: But he is representing that it was several days between the time -- or that Capital West purchased the securities from the bank and then it was several days before the securities --

JOAN SCHWATZ: Right. That makes sense. That was because originally it was Braver Stern. Right. So Capital West bought them from Frontier State Bank.

MS. HALL: But did they not immediately go to Dr. McKean and Eagle Sky?

JOAN SCHWATZ: Not like the next day, no.

MR. SIEGEL HORN: No. I believe there was at least two days, maybe three.

JOAN SCHWATZ: Because he was -- he was going to have to pay for them in T plus three. And he was not going to literally have the money or want to raise the money by T plus three. So he was looking for -- he

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thought when -- he being --
CAROL: Geary.
JOAN SCHWATZ: -- Geary, thought he would -- that by T plus three they would have moved on to Braver Stern and Braver Stern would have used the funds that they had to pay for the transaction. Because he would have gotten paid back from them, and then, you know, would have been paid for.
MR. SIEGEL HORN: Right. And I think if you have -- if you look at the three accounts, you can probably -- well, we can definitely trace the time that the CapWest account acquired the security and then look at the date that one of the other accounts was acquired in. See how quickly they turned over. I mean, I think it might be easier to actually look at the account statement than -- [redacted]
MS. HALL: [redacted]
MR. SIEGEL HORN: Yeah. [redacted]
CAROL: So Capital West is saying that they bought the securities from Frontier State Bank with the intention of selling them to Braver Stern, but Braver Stern said no, so they were kicked back to Eagle Sky and McKean?

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

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

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Braver Stern? [redacted]
MR. SIEGEL HORN: Hang on one second.
CAROL: Okay.
(Whereupon, the speakers conferred amongst themselves.)
JOAN SCHWATZ: Okay. Sorry. We're back.
CAROL: Okay.
MR. SIEGEL HORN: So we just confirmed that a member of Pershings credit department contacted Braver Stern.
CAROL: Okay.
MR. SIEGEL HORN: In September they did confirm that they had an agreement with CapWest.
CAROL: Okay.
MR. SIEGEL HORN: But they were conducting the re-remic, that it was expected to close, but that these private label CMOs in the McKaen account would not be part of that re-remic.
MS. HALL: Huh. And I don't know if you have looked in the last couple of days or not. Are these securities still in Dr. McKean and Eagle Sky's accounts?
(Speakers began talking all at the same time.)
JOAN SCHWATZ: We don't know.
MR. SIEGEL HORN: We can absolutely check,

though.
MS. HALL: Okay.
MR. SIEGEL HORN: If you just want to include that in your e-mail.
CAROL: You bet.
MS. HALL: Okay.
MR. SIEGEL HORN: We'll gladly check and confirm.
CAROL: Okay. No problem. And you said Braver Stern was contacted by somebody in your credit department?
MR. SIEGEL HORN: Correct.
JOAN SCHWATZ: Correct.
CAROL: And they essentially confirmed?
JOAN SCHWATZ: They confirmed that there was a re-remic transaction.
MR. SIEGEL HORN: With Capital West, yeah.
MS. HALL: But that these particular CMOs were not going to be a part of it?
MR. SIEGEL HORN: Correct.
JOAN SCHWATZ: Correct.
CAROL: Did they elaborate as to what they thought would be part of it?
JOAN SCHWATZ: I don't think they went into that level of detail.

CAROL: Okay. Would it be possible to get the name of the contact person at Braver Stern that your people talked to?
JOAN SCHWATZ: Sure.
CAROL: I will put that in an e-mail.
JOAN SCHWATZ: If they have it.
CAROL: Yeah. Okay.
JOAN SCHWATZ: Do you want to put that in the e-mail as well, Carol?
CAROL: I will, uh-huh. You know, Sam, if it is okay, I think after we -- I will get this e-mail to you, [redacted] would it be okay if we then contacted you?
SAM: Sure.
CAROL: Okay. Melanie, did you have anymore questions?
I think that that is all we have for today.
JOAN SCHWATZ: Okay.
CAROL: Thank you so much for taking the time to speak with us. We really appreciate it.
JOAN SCHWATZ: Sure thing.
MR. SIEGEL HORN: Hope it helps.
CAROL: All right. Thanks.
(End of audio to be transcribed)

CERTIFICATE

STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

I, Jodi D'voree Horvath, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the foregoing transcript consisting of 32 pages transcribed from the provided audio tapes is true and correct to the best of my ability based on the condition of the audio tapes.

I am not an attorney for or a relative of any party.

IN WITNESS WHEREOF, I have hereunto set my hand and stamp this 1st day of March, 2012.

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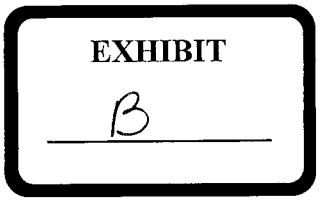

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(Transcription of provided audio:)
JOAN SCHWATZ: -- condition.
MS. BONNELL: Right.
JOAN SCHWATZ: I think, frankly, just to give you two seconds of my personal opinion -- and it is my personal opinion, but I think it is a pretty decent one based on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

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

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

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

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JOAN SCHWATZ: Yeah. I have a hard copy, but we can get you all of the e-mails. I was going to say we can get you if you send --

MS. BONNELL: Don't we actually have it already? Do you know the date of it?

JOAN SCHWATZ: Yes. It was from Karen Coker to Ed Banion. Now, Ed forwarded it to me -- I am looking to see the exact date on the e-mail. Yeah, six -- June 2nd, 2009, 1:04 p.m. Now, I forwarded it -- I got it forwarded to me from Ed Banion on January 13th of this year.

MS. BONNELL: Okay.

JOAN SCHWATZ: So I would have sent it around that date.

MS. BONNELL: Okay. So --

UNKNOWN SPEAKER: I have it.

MS. BONNELL: If we don't -- I am just going to look after we hang up.

JOAN SCHWATZ: I think we have some -- I think I have --

UNKNOWN SPEAKER: I definitely have a copy of that.

JOAN SCHWATZ: Yeah. And we sent them -- I think I forwarded them directly to the FDIC, which I would be happy to, I was just going to say, to you as

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well.

MS. BONNELL: Okay. That would be great.

UNKNOWN SPEAKER: I will do that, Terra, when I get back --

MS. BONNELL: Thank you. Like I said, actually, we should have it, but I certainly don't think we've seen this e-mail because I think that would help explain some of our questions. So, okay, so Karen Coker did send an e-mail to Ed Banion on June 2nd asking for $11 million --

JOAN SCHWATZ: You know what? Just bear with me one second because in the back of this binder are the e-mail -- we put these binders together for when the FDIC came on site.

MS. BONNELL: Okay.

JOAN SCHWATZ: So bear with me one second because I am refreshing my recollection.

MS. BONNELL: Sure.

JOAN SCHWATZ: Ed basically sent us e-mails that -- now, we would have to go into the system to make sure there wasn't something else, but he had a whole bunch right on his desktop. So there is a request -- they are all from that June 2nd time frame. So here is a bunch. They kind of go together and we'll forward them to you.

MS. BONNELL: Okay. That would be great.

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JOAN SCHWATZ: Yeah. Let me see if I can find the first one, because that would probably help if we just did them in order. Yeah. See, there is a whole back and forth, so I think it will be hard to do over the phone. I think it would be helpful if we just sent them to you. In the whole back and forth I'm just looking to see if it's -- the account number is [redacted]1377. So it may be the customer account. I may have made a mistake. I would have to -- let me just see if I can figure what account it is very quickly.

MS. BONNELL: I'm sorry. What was it? [redacted]

JOAN SCHWATZ: [redacted]1377.

MS. BONNELL: Okay. Well, that would not be --

JOAN SCHWATZ: It is actually McKean's account.

MS. BONNELL: Yeah, that is what I said, that wouldn't be --

JOAN SCHWATZ: A firm account. So I take it back.

MS. BONNELL: Okay. And so they are asking for the 11 million on behalf of that account?

JOAN SCHWATZ: Yes. Yeah, I take it back. It wasn't --

UNKNOWN SPEAKER: I thought it was --

JOAN SCHWATZ: No. I think they did have one conversation with Rich Claus, but I am not sure if it is

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the subject of the e-mails. These all relate to the customer.

MS. BONNELL: Okay.

JOAN SCHWATZ: And I think he said this is just not something we would do, but we would have to double check with him.

MS. BONNELL: Okay.

JOAN SCHWATZ: So these all -- and I apologize, Terra, that was my not remembering correctly, which is why you would want to pull them out. They are all about that account.

MS. BONNELL: Okay.

JOAN SCHWATZ: Talking about that he has got a lot of money, they are going to have a wire come in, (inaudible) hopeful. I have them all right here. So Sam has them as well. So I will just forward them to you. And it says in here, you will see Ed Banion saying Pershing does not margin private label CMO's. Reasons have to do with volatility, liquidity, lack of consistent pricing associated with these products.

MS. BONNELL: Okay.

JOAN SCHWATZ: I can't say for 20 years we have had that policy, but certainly I think it is, you know, around the '08 time frame when things really changed in the market.

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

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

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

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

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MS. BONNELL: And was Jim -- well, not Jim. Do you remember when that conversation was?

JOAN SCHWATZ: We had numerous conversations. I would have to look at my notes, but once we -- this is what happened. We sent this closer in time to when this happened.

MS. BONNELL: Right.

JOAN SCHWATZ: Then we sort of decided that it was a one time thing that we would let it go and then we revisited it towards the end of the year. Now, I have some notes -- I am just thumbing through a file about speaking to Norm on the 20th of January of this year. We could go through -- I don't think that is the exact conversation. We have had a number of conversations where we let them know what our concerns were and we had follow-up. So I would say, you know, December, January, February time frame.

MS. BONNELL: Well, the time period that we're interested in is actually -- it goes --

JOAN SCHWATZ: It is when we spoke to him. That doesn't mean that is when it happened.

MS. BONNELL: Okay. Well, let me go back. The original private label CMOs (inaudible) account, that was May 28th?

JOAN SCHWATZ: Yeah, May of '08. That is what

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I'm saying. We looked at this closer in time to that time. So we looked at it, let's say last year around that time.

MS. BONNELL: Right.

JOAN SCHWATZ: And then we sort of did an internal review and concluded that, you know, we would -- we would keep an eye out, but there wasn't anything further that would happen. And a second transaction was attempted by Geary Securities as part of another re-remic.

MS. BONNELL: Okay.

JOAN SCHWATZ: And that is what sort of set off a whole nother review. But that second transaction, that CEMP II transaction was --

MS. BONNELL: September?

JOAN SCHWATZ: I was going to say it was like third quarter, end of third quarter of last year. And then we started looking at it basically the beginning of the fourth quarter last year, and then it just kind of took us through the end of the year and beginning of the following year.

MS. BONNELL: So for the CEMP II did they seek your -- you know, did they open communications with you before they tried it again or did they just try it again?

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JOAN SCHWATZ: Well, it was a little bit different because they knew that they were going to not -- they were, I think, more knowledgeable about not being able to bring them in the inventory account, but we had another issue that came out of it because they were looking -- we want everything to be free delivered directly to whoever was holding the assets for the dealer. There really was no need for them to come on Pershing's platform at all.

MS. BONNELL: Okay.

JOAN SCHWATZ: And if I remember -- and this is off the top of my head, but there was one account that was delivering in a position and we wound up having an issue with that. And then, because there are other downstream implications, we put that account on restriction and they didn't pay for it. Basically the idea that they were delivering the positions (inaudible) to whoever was closing the CEMP transaction. None of that was happening on Pershings' books and records. So the idea was to have them deliver it there. But something stopped here from another customer account, not the (inaudible) Geary. But then that causes -- you know, you need to pay for it. There is regulatory requirements. You don't need to pay on day one, but by (inaudible) three you need to pay.

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MS. BONNELL: Right.

JOAN SCHWATZ: So this account became restricted and we made it clear that none of these activities could be passing through Pershing's books.

MS. BONNELL: Okay.

JOAN SCHWATZ: And then subsequently, as we continued our review, we decided that, you know, we just weren't -- this is primarily where their business is looking, this is not where we are going.

MS. BONNELL: Is that -- the conversation that you had where they tried to -- that you wanted them to redeliver it to whoever to hold it and then they said they tried to bring one in to the proprietary account again, do you remember if that bond -- like who the seller was on the bond itself?

JOAN SCHWATZ: We can piece that together. I don't remember off the top of my head.

MS. BONNELL: I am wondering if it is a bond that they purchased from Mesirow Financial?

JOAN SCHWATZ: Yeah, that is it. It was Mesirow. Thank you.

MS. BONNELL: Okay.

JOAN SCHWATZ: That helps. Yeah, it was Mesirow because I remember that, because we don't normally have accounts from Mesirow in our books.

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MS. BONNELL: Okay. So the problem there was that you guys basically told them, no, you can't bring it in without paying for it?

JOAN SCHWATZ: Well, the rules are such that you have to pay for things once they are --

MS. BONNELL: Right. Right. I get it. I am just --

JOAN SCHWATZ: Yeah, yeah. No, I just want to make it clear. I mean, this isn't like just an internal policy.

MS. BONNELL: Right, right. Absolutely.

JOAN SCHWATZ: Yeah. That was my only point I am making.

MS. BONNELL: Okay.

JOAN SCHWATZ: So some things are internal policies like we don't margin against private label CMO's. There is no regulation that says that. It's just our own credit decision. So we don't want to be in a position where -- you know, with margin, that someone would have to sell something and you wouldn't be able to sell it. That could expose us to risk.

MS. BONNELL: So --

JOAN SCHWATZ: Yeah, it absolutely was the Mesirow position, now that you mention it.

MS. BONNELL: Okay. So did they -- did they --

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even though they knew that these private label CMO's were not marginable, like how did they try to get around the fact that they knew that they weren't marginable, but they didn't have the money to pay for it? Like did they ask for any other sort of credit extension or --

JOAN SCHWATZ: No, not -- I don't think on that one. I think they knew -- I think they just screwed up on the timing because that deal wound up getting postponed several times, Terra, and then it actually, I don't think ever closed.

Part of the problem, if I am remembering as we are talking was, they -- in order -- they had a problem with the buyer because one of the banks that wanted to buy it -- and it is one of these like Bank of Union -- there is Washita Bank. There is a whole bunch that are related to, not just Joseph McKean, but the other guy, Chad Headington. I would have -- I am doing this off of my memory, but we could probably piece, Humpty-Dumpty together again.

MS. BONNELL: Sure. That is okay. I don't --

JOAN SCHWATZ: Yes. But what happened was they couldn't get the timing right and one of the banks that was going to be the purchaser of the Part A, you know --

MS. BONNELL: Right.

JOAN SCHWATZ: -- was going to need to get some,

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I guess, guidance from, I think it was the FDIC, but it could have been another government authority to say that they could put these on their books and records and not be violating the ratio.

And so until that -- well, I know what. They were waiting for the Federal Home Loan Bank of Topeka to give them guidance on whether or not they would value these assets as, you know, A, B, C, or D, E, F. And depending on that guidance, would determine whether or not that bank could take these assets on, because then that would throw their other ratios off for the FDIC.

MS. BONNELL: Okay.

JOAN SCHWATZ: So that -- I don't think that second deal ever closed. And so they -- like there were several stops and starts, but there was absolutely no request for margin on that because it was not even an issue anymore. They knew from last time it wasn't going to happen.

MS. BONNELL: Right. Okay. So let's go back for a minute to my other question about where I -- you were telling me it was trade, but in three days to pay for it.

JOAN SCHWATZ: Right.

MS. BONNELL: Okay. So what we're trying to figure out is the -- it was clearly the intent of

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Capital West to buy these private label CMO's in May, 2000 -- May 28th, 2009, from Frontier State Bank. That was their original -- do you believe that to be their original intent?

JOAN SCHWATZ: And we had interviews with people, Mr. Geary himself in the very beginning, who said that was their plan. Their plan, though, was not to leave them in their proprietary account, but rather to move them the same day or the next day over to an account for the IBD that was going to be helping them with the re-remic.

MS. BONNELL: Okay. What is IBD?

JOAN SCHWATZ: I am sorry. I apologize. We're a clearing firm, so everybody that is another broker dealer introduces to us, so we call them introducing --

MS. BONNELL: Oh, I gotcha.

JOAN SCHWATZ: So I apologize.

MS. BONNELL: Okay.

JOAN SCHWATZ: For moving the assets. So basically what Geary told us is, yeah, I wanted to buy these from Frontier State Bank, but I knew I did not have the cash to pay for them, so the theory was I was going to buy them, and then move them that day, the next day, basically journal them out to this other broker dealer, Braver Stern, who was involved with a re-remic

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

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

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

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

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if he didn't realize they weren't marginable, he may have been able to buy some time for coming up with money for it.

JOAN SCHWATZ: Yeah, I guess theoretically. I mean, I don't think we went into that much detail with him because we were more concerned about like, well, you know, why they wound up in a customer account. That was really our focus.

MS. BONNELL: Right.

JOAN SCHWATZ: I mean, how did you mark it off and how did you price this thing and like why isn't there a profit or why -- I forget what the numbers were right now, but we were looking for what made this an arm's length transaction and not something that was pre-arranged because it just didn't look right to us.

MS. BONNELL: Okay. And there -- the reason I'm going down that line is because I know that he did not have money at Braver Stern to pay for them. Like there wasn't -- he had no money to pay for them. They were going to be able to pay for them through Braver Stern basically.

JOAN SCHWATZ: Okay. And that -- and we wouldn't have known that.

MS. BONNELL: Right.

JOAN SCHWATZ: But he sort of said that it was

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just not -- Braver said that it just wasn't going to happen because, frankly, I think they knew they were going to take a capitalist charge. It is a very significant amount of money you would have to come up with for the $40 million in securities.

MS. BONNELL: Do you think that it is feasible that he knew that these were not marginable?

JOAN SCHWATZ: It would be hard for me to guess. I will tell you this. This is just my Joan Schwatz opinion.

MS. BONNELL: Right. Well, and I am just giving you my opinion, Terra Bonnell's opinion.

JOAN SCHWATZ: Yeah. I think had he consulted better with Norm Frager, he would have known. I think he was sort of out there. He does the CEMP transaction thing. He has a separate business that was affiliated with Geary Securities, the broker dealer. And I think he sort of did his own thing without really checking with Norm, who does not sit on site, and Norm was really pissed when Norm realized that they were in the proprietary account.

MS. BONNELL: Right.

JOAN SCHWATZ: So I think that it is possible, because Geary does not really understand the broker dealer world and those rules, he may not have understood

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whether or not it was marginable and was (inaudible) because he kept saying, well, this is a customer that has, you know, hundreds of millions of dollars and they have this much in the account. We only need it for two weeks. I think he is used to like a bank system of borrowing and lending and a credit assessment and not the securities rule.

MS. BONNELL: Right.

JOAN SCHWATZ: So I certainly think it is possible he did not understand the marginal requirements. And he certainly wouldn't have known what our firm policy was unless he asked about the, you know, private label CMOs.

MS. BONNELL: Right. Okay. So let's say that -- okay. So he buys them basically into the inventory account and he realizes that he can't hold them there, so he then states then that he transferred -- or they are sold to Dr. McKean and Eagle Sky Foundation.

JOAN SCHWATZ: Yeah.

MS. BONNELL: So then -- okay. At that point --

JOAN SCHWATZ: And I would say sold, but transferred might make me comfortable because I can't remember.

MS. BONNELL: Well, they were -- the reason I'm using the word sell is because they were actually trade

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tickets.

JOAN SCHWATZ: I know it says sell, I know it says buy, but our position was, just to share with you honestly, where was the money that he paid them?

MS. BONNELL: Well, that is what I was getting at.

JOAN SCHWATZ: I don't think he ever gives them. So sell, to me, just -- you know, we're just talking here and I would have to go back and read my notes, but so if I sell you -- so let's say I bring in my personal account and I sell it to you, Terra, then theoretically maybe I bought them from Sam. So theoretically, I would give Sam the dollar for what I bought her. I would then become the owner, and then I would give you the dollar -- I am sorry. And then I would sell them to you, so you would give me the dollar.

MS. BONNELL: Right.

JOAN SCHWATZ: And theoretically, I should be making something when I sell it to you from what I paid for it. So maybe you're giving me a dollar and a quarter.

MS. BONNELL: But if they were just -- okay. Let's say --

JOAN SCHWATZ: I don't know that he ever gave me -- I don't know that he ever gave Frontier State Bank

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

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

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

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

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

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JOAN SCHWATZ: I think it was the other way. I would have to go back and look, but I think the point was they were trying to buy themselves more time to have to come in with the money.
MS. BONNELL: Okay.
JOAN SCHWATZ: I think that was it.
MS. BONNELL: Okay.
JOAN SCHWATZ: But we can go back and check because I wouldn't swear right now, having not looked at it in many months.
MS. BONNELL: Right. Well -- let's see, it's okay. I think I have it.
JOAN SCHWATZ: And we definitely do, but I -- you know, I can go back and look. Let me just -- I am just trying to --
MS. BONNELL: Actually, I have it right here.
JOAN SCHWATZ: [redacted]
MS. BONNELL: [redacted]
JOAN SCHWATZ: Yeah. I'm just going to look quickly to see if there is something that refreshes my recollection in there because I can't get through the account statements that quickly.

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

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

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

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

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

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

93800aec-4af4-443b-a1fc-029b56fff9b8

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look it up. Thanks. Yeah. No. And I -- that was what was, you know, sometimes confusing is that there is all of these pieces moving. But I know that we did recently, more recently look at this November transaction. So I think Jim had pulled the ticket. Yeah. And then we'll pull them and we'll have a conversation with Michelle.

MS. BONNELL: Thank you, because we really appreciate you helping us out.

JOAN SCHWATZ: Oh, not a all.

UNKNOWN SPEAKER: So I guess when all is said and done, Terra, is there still the need to interview Jim and Ed?

MS. BONNELL: Maybe not.

JOAN SCHWATZ: See, I was thinking that we --

MS. BONNELL: Joan, were you or Sam, were you guys present on the conversation with -- between Jim and Keith Geary?

JOAN SCHWATZ: NO, not back in -- back in May of '09, no.

MS. BONNELL: All right.

JOAN SCHWATZ: No. I was going to say we were present for things where we asked Geary questions where there were subsequent conversations where Jim was present, but they were after that time.

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MS. BONNELL: Okay.

JOAN SCHWATZ: But no one -- I think it was like him calling Jim. And I think Jim's recollection was he didn't really deal with him. He just kind of sent him to Claus or Ed and said, you need to deal with them. You know, I don't override their policy. I've let them know you want them to look at it.

MS. BONNELL: Okay. Well, I tell you what, I will -- how about I doublecheck here and decide how we want to proceed with that.

JOAN SCHWATZ: That is fair. And I would just offer this, too. I mean, we -- I would be happy to, you know, do sort of a declaration or accusation, or whatever you want to call it, and we could provide some documentary support for the statements that might be helpful about the fact that we, you know, never meet any margins, loans to this firm for this account, whatever we specifically want to get down to, and that it has been our position that we don't, you know, provide margin.

MS. BONNELL: Okay. That actually might be a really good way to proceed.

JOAN SCHWATZ: Yeah. I mean, it is up to -- I understand that you have other needs, but I guess what I am offering is, if we can accommodate -- I will say

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this. Ed is really good at what he does. He is not a good witness.

MS. BONNELL: Okay.

JOAN SCHWATZ: He is really, really nice, but he is probably one of the worst people I have had to prepare and that you will ever -- I mean, if you are going to put him on the stand, it is not going to go well.

MS. BONNELL: Okay.

JOAN SCHWATZ: And he is not a guilty guy by like a million miles. He is like the most honest, hard working guy. He has been here for like 30 years. He was like sick for days at the FDIC call and it went really poorly. You can ask. And then I sort of jumped in and started asking questions.

And in fairness, you know, the agent is an agent for the bank-related things, you know. It is over the phone. He's out in L.A. So I said to her, like I know that you are frustrated, but he wasn't trying to be difficult. And then he comes -- they came out in person, the supervisor and the agent, and, you know, Ed was better in person, but I guess I am just thinking of myself. You know, between the two of us as a witness choice I would go with me instead of him or just about anyone else. And lawyers are the worst witnesses, I

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think, so... I think we were able to get the information out, but it is like a difficult go of it.

MS. BONNELL: Okay.

JOAN SCHWATZ: So you know, Claus is a better witness, frankly. Not that I am offering up any one of our people. And we're happy to have you on the phone with whomever you want, so please don't mistake what I am saying as being, you know, in any way trying to be difficult because we will get Ed on the phone and we'll have him walk you through the e-mails. If we need to get Michelle Malvonavo on the phone, we'll get her on the phone. We're certainly not going to give you a hard time with that.

I am just trying to think -- you know, some of this is road well traveled and, you know, Sam and I have been present for conversations and can attest to them. I would certainly be happy to do it from my perspective, if you think counsel would be helpful.

MS. BONNELL: Okay. That is great.

JOAN SCHWATZ: But it's just a consideration in your strategy.

MS. BONNELL: Thank you. I appreciate that. Now, Jim Ross, is he in Illinois?

JOAN SCHWATZ: He is in -- yeah. He is located in our Illinois office, yes.

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

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

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

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CERTIFICATE

STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

I, Jodi D'voree Horvath, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the foregoing transcript consisting of 49 pages transcribed from the provided audio tapes is true and correct to the best of my ability based on the condition of the audio tapes.

I am not an attorney for or a relative of any party.

IN WITNESS WHEREOF, I have hereunto set my hand and stamp this 1st day of March, 2012.

Jodi Horvath, CSR, RPR
License # 1410

My Commission Expires:
December 31, 2012

070610 SAM & JIM AUDIO

WORD FOR WORD REPORTING, LLC
100 NORTH BROADWAY, SUITE 3250
OKLAHOMA CITY, OK 73102
(405) 232-9673

REPORTED BY: JODI D'VOREE HORVATH, CSR, RPR

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

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SAM: Right.
JIM: Exactly.
MS. BONNELL: Okay. So then --
JIM: We never cut to the (inaudible) here.
SAM: Right.
MS. BONNELL: Okay.
JIM: Somewhere else.
MS. BONNELL: So when we're talking about the cash, they -- let's see, so the negative -- the -- okay. The -- when you are looking at the sale, they would have received 8.4 million for the sale?
SAM: If we -- the position is delivered in to flatten the position. It goes flat. The position goes flat and the dollar amount goes flat.
MS. BONNELL: So there is no cash that was put into this account for the sale?
JIM: Correct, because it is position net.
MS. BONNELL: Right.
JIM: Right.
MS. BONNELL: Okay. Okay. So I guess it would make sense to me if the buyer and the seller were the same people. Like -- well, but here they are technically two different entities. Okay. The security was received, I believe, from UMB.
JIM: Okay.

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

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SAM: I don't think we would know to confirm or deny what you are alleging. I don't know how we would know that.
MS. BONNELL: Well, I guess what I am thinking is -- and I think it is just my knowledge. So excuse me for being frustrating here, because I am sure I am. But anytime that you have a security come into the account, you sell a security from the account, let's say the security was already in the account and they just sold it to someone, you would expect a credit for the sale, right? Like a cash credit? Because don't you usually get money for the securities you sell?
SAM: Yeah.
MS. BONNELL: So let's say that the security is already in the account.
SAM: Right.
MS. BONNELL: You don't have the security received.
SAM: Right. So the position would go flat.
MS. BONNELL: But you would get --
SAM: With the credit remaining. That is not a COD account, though. That is not the way a COD account works.
MS. BONNELL: But -- okay. So even on a COD, cash on delivery, so wouldn't you get cash when it was

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delivered? Oh, I gotcha.
JIM: See, right here is what I -- you just gave us a piece of information that might -- if you let us research this a little bit, maybe we can walk you through this step by step.
MS. BONNELL: Okay. And I am sorry. I am sorry. I am trying to understand it. It is just --
JIM: It's confusing. Yeah, exactly. But what you're saying is that an entity involved in this purchase was also the McKean or Eagle Sky account at Geary Securities?
MS. BONNELL: Right.
JIM: So you think they were involved in this transaction.
MS. BONNELL: So I think when you look at their -- one of their accounts -- I am not sure which one, because they kind of -- so you will see that that same security went to their account next.
JIM: Yeah, okay.
MS. BONNELL: So then you would assume that there would be cash coming from one or both accounts into here, but what you're saying is, there wasn't any cash, it was just netted?
JIM: Correct.
SAM: Yes.

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MS. BONNELL: Okay. Then I'm really confused. Okay.
JIM: Let us find that other leg of the trade --
MS. BONNELL: Okay.
JIM: -- you are referring to and maybe we will be able to better explain it, because they should be on the same page.
SAM: If her theory is correct.
JIM: But it --
MS. BONNELL: Well, I have trade tickets. Let me double check. Maybe by some chance I picked up a security that did not end up there. But I have Capital West trade tickets.
JIM: Yes.
MS. BONNELL: This isn't like a random --
JIM: No. I hear you.
MS. BONNELL: The only -- yeah, the only way that this theory is wrong is if I happened to pick up a security that was on the same day that wasn't part of all of these transactions.
JIM: Sure. We'll find the other leg in that trade --
MS. BONNELL: Okay.
JIM: -- and we'll give you a call back.
MS. BONNELL: Okay. Thank you. Bye.

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(End of audio.)

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CERTIFICATE

STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

I, Jodi D'voree Horvath, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the foregoing transcript consisting of nine pages transcribed from the provided audio tapes is true and correct to the best of my ability based on the condition of the audio tapes.

I am not an attorney for or a relative of any party.

IN WITNESS WHEREOF, I have hereunto set my hand and stamp this 1st day of March, 2012.

Jodi Horvath, CSR, RPR
License # 1410

My Commission Expires:
December 31, 2012

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
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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

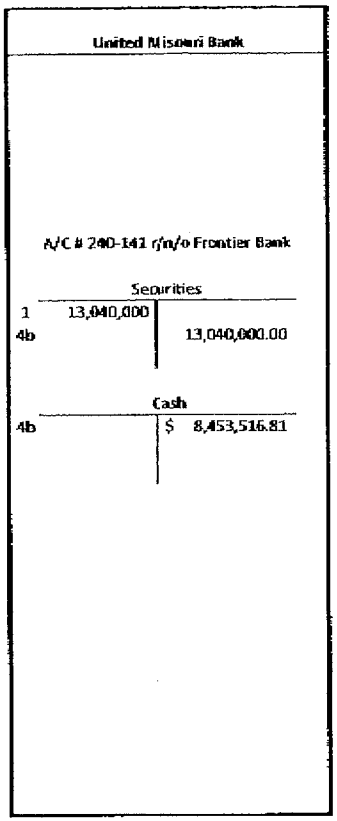
Carol Gruis

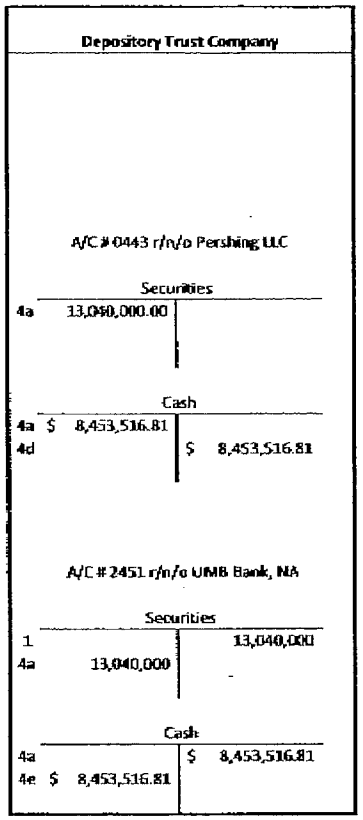
Subscribed and sworn to before me this 5th day of March, 2012.

BRENDA LONDON
Notary Public
State of Oklahoma
Commission # 05009046 Expires 09/28/13

Brenda London

Notary Public


United Missouri Bank
A/C # 240-141 r/n/o Frontier Bank
Securities
1 13,040,000
4b 13,040,000.00
Cash
4b $ 8,453,516.81


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

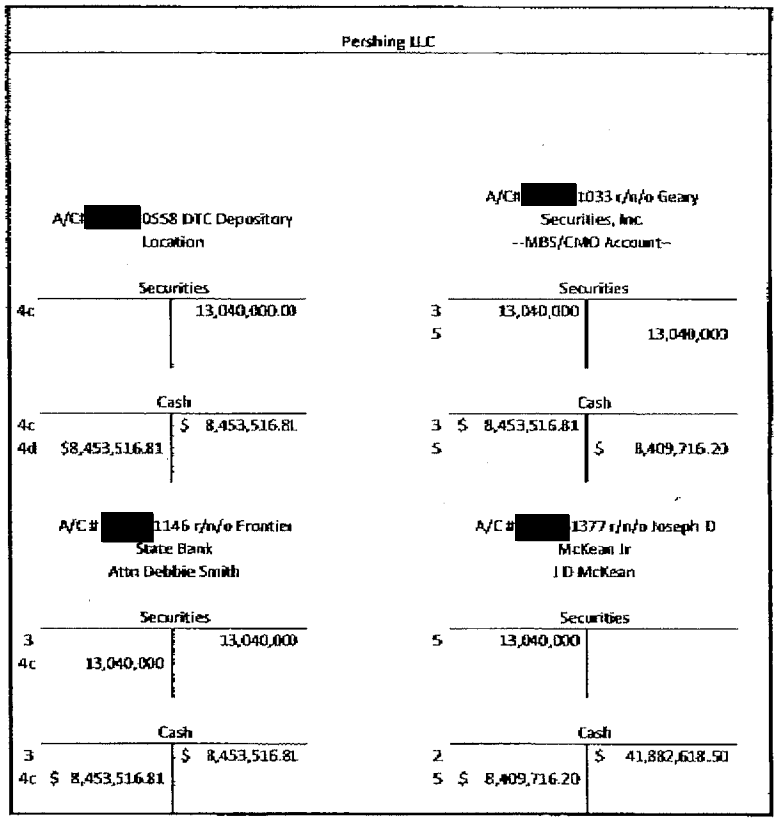
Pershing LLC
A/C [redacted] 0558 DTC Depository Location
Securities
4c 13,040,000.00
Cash
4c $ 8,453,516.81
4d $8,453,516.81
A/C [redacted] 1033 r/n/o Geary Securities, Inc --MBS/CMO Account--
Securities
3 13,040,000
5 13,040,000
Cash
3 $ 8,453,516.81
5 $ 8,409,716.20
A/C # [redacted] 1146 r/n/o Frontier State Bank Attn Debbie Smith
Securities
3 13,040,000
4c 13,040,000
Cash
3 $ 8,453,516.81
4c $ 8,453,516.81
A/C # [redacted] 1377 r/n/o Joseph D McKean Jr JD McKean
Securities
5 13,040,000
Cash
2 $ 41,882,618.50
5 $ 8,409,716.20

EXHIBIT 1

#	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: FT020 ACCOUNT=> [redacted]1033 CAPITAL WEST SECURITIES INC FOR: 05/29/09 PAGE: 32
RUN DATE: 090529-21540621 --MBS/CMO ACCOUNT--
SETTLEMENT DATE INVENTORY RECAP

SECURITY	TOTAL POSITION	BOOK COST AVERAGE PRICE	MARKET VALUE CURRENT PRICE	CPN INT/DIV TRADE INT	ACC INT - SDV MTD INT - CDV	PROFIT/LOSS-UNREALIZED M-T-D REAL	MTD SALES CRED FERSHING CHG	TICKETS YESTDAY M-T-D
ACCOUNT 5KV-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	
SHORT	0	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	
NET	0	0.00	0.00	0.00	0.00	0.00	0.00	0
				0.00	0.00	0.00	0.00	0
OPTIONS TOTALS								
LONG	0	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	
FLAT	0	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
				0.00	0.00	0.00	0.00	0
FIXED INCOME TOTALS								
LONG	118,801,150	76,727,470.63	37,210,162.22	0.00	498007.28-	39517308.41-	0.00	
				448206.61	49800.67-	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	
FLAT	0	0.00	0.00	0.00	0.00	0.00	199507.71	
				12.70-	12.70-	198138.79	30.00	
NET	118,801,150	76,727,470.63	37,210,162.22	0.00	498007.28-	39517308.41-	199507.71	0
				448193.91	49813.37-	198138.79	30.00	25
TOTAL-ALL SECURITIES								
LONG	118,801,150	76,727,470.63	37,210,162.22	0.00	498007.28-	39517308.41-	0.00	
				448206.61	49800.67-	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	
FLAT	0	0.00	0.00	0.00	0.00	0.00	199507.71	
				12.70-	12.70-	198138.79	30.00	
NET	118,801,150	76,727,470.63	37,210,162.22	0.00	498007.28-	39517308.41-	199507.71	0
				448193.91	49813.37-	198138.79	30.00	25
TOTAL-ACCOUNT:								
5KV-891033		76,727,470.63	37,210,162.22	0.00	498007.28-	39517308.41-	199507.71	0
				448193.91	49813.37-	198138.79	30.00	25

S/D BOOKKEEPING BALANCE = 79,385,481.82

-0-

Zero Balance resulting from H/O Billing to McKean Accts & receipt of $30+ Million Cash from McKean.

EXHIBIT
E

ODS 09-141/CW 2610