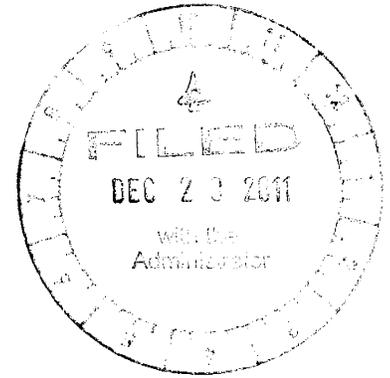


**STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102**



In the Matter of:

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

Respondents.

File No. 09-141

**DEPARTMENT'S MOTION FOR PARTIAL SUMMARY DECISION
AGAINST GEARY SECURITIES, INC., KEITH D. GEARY, AND CEMP, LLC,
AND BRIEF IN SUPPORT**

Respectfully submitted,

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INTRODUCTION

The Oklahoma Department of Securities (Department) hereby moves for a partial summary decision against Respondents Geary Securities, Inc. *aka* Capital West Securities, Inc. (Geary Securities), Keith D. Geary (Geary), and CEMP LLC, pursuant to 660:2-9-3(d) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Oklahoma Rules), Okla. Admin. Code, 660:1-1-1 through 660:25-7-1. A partial summary decision against Respondents Geary Securities, Geary, and CEMP LLC is appropriate because, as set forth below, there is no genuine issue as to the material facts raised by the substantive issues and the Department is entitled to prevail as a matter of law on those issues. If this motion is granted, the only issue to be heard with respect to Respondents Geary Securities, Geary, and CEMP LLC would be the sanctions to be imposed against them pursuant to the Oklahoma Uniform Securities Act of 2004 (OUSA), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2010).

STATEMENT OF UNDISPUTED MATERIAL FACTS

Background

1. Capital West Securities, Inc., an Oklahoma corporation, was registered as a broker-dealer under the Oklahoma securities statutes on May 25, 1995. At all times material hereto, the firm's principal business location has been at 211 North Robinson, Suite 200, Oklahoma City, Oklahoma. Answer by Respondents Geary Securities, Inc., Keith D. Geary, and CEMP, LLC (Geary Respondents' Answer) ¶ 1.

2. In August of 2007, Capital West Securities, Inc. became a wholly-owned subsidiary of The Geary Companies, Inc. (Geary Companies), a Delaware corporation. As of

December 1, 2009, Capital West Securities, Inc. changed its name to Geary Securities, Inc.¹
Geary Respondents' Answer ¶ 2.

3. Geary Securities has been a member of the Financial Industry Regulatory Authority, Inc. (FINRA), formerly known as the National Association of Securities Dealers, Inc., or NASD, since May of 1995. Geary Securities CRD Record, Organization Registration Status.

4. Geary, a resident of the state of Oklahoma, owns the Geary Companies equally with his wife. Geary is the Chief Executive Officer of the Geary Companies, and Chairman, Chief Executive Officer and President of Geary Securities. Geary has been registered under the OUSA as a broker-dealer agent of Geary Securities since April 25, 2007. Geary Respondents' Answer ¶ 3.

5. Norman Frager (Frager) was, at all times material hereto, the designated Financial Principal (FINOP) for Geary Securities. As the FINOP, Frager functioned as the firm's chief financial officer responsible for preparing and filing the firm's Financial and Operational Combined Uniform Single Report (FOCUS Report) to include net capital computations. Geary Respondents' Answer ¶ 4.

6. The CEMP Resecuritization Trust 2009-1 (CEMP 2009-1) is a statutory trust formed under Delaware law on August 13, 2009, at the direction of Geary. At times material hereto, the trust issued and sold its Mortgage Resecuritization Notes, Series 2009-1, Class A-1 and Class A-2 (the "CEMP A-1 Notes" and the "CEMP A-2 Notes") (collectively, the "CEMP 2009-1 Offering"). Geary Respondents' Answer ¶ 6.

7. CEMP LLC, a Delaware limited liability company formed on July 16, 2009, is wholly owned by the Geary Companies. CEMP LLC is a special purpose entity. The business

¹ With respect to all matters addressed herein, the broker-dealer will be referred to as Geary Securities. At all times material hereto, Geary Securities was also registered as an investment adviser under the OUSA.

address of CEMP LLC is 211 North Robinson, Suite 200, Oklahoma City, Oklahoma. CEMP LLC was not registered under the OUSA in any capacity at any time material hereto. Geary Respondents' Answer ¶¶ 5, 49.

8. One purpose of CEMP LLC is to “acquire, own, hold, sell, transfer, pledge or otherwise dispose of Permitted Investments.” Geary Dep., Ex. 11 (Limited Liability Company Agreement of CEMP LLC dated July 16, 2009), § 7(a). The term “Permitted Investments” means “cash and marketable securities, subordinate MBS [mortgage backed securities], Performing Mortgage Loans, Sub-Performing Mortgage Loans, Non-Performing Mortgage Loans, and Acquired Residuals.” Geary Dep., Ex. 11, Schedule A. Another purpose of CEMP LLC is to act as settler or depositor of one or more trusts to be formed to issue one or more series of trust certificates representing interests in Permitted Investments and/or to issue one or more series of bonds, notes or other evidences of indebtedness collateralized by Permitted Investments and/or other property. Geary Dep., Ex. 11, § 7(b).

9. CEMP LLC is the depositor of CEMP 2009-1. Confidential Private Placement Memorandum (Sept. 28, 2009) (CEMP PPM) at 35.

10. Geary Securities served as the placement agent for the CEMP 2009-1 Offering. Geary Respondents' Answer ¶ 6. In its capacity as the placement agent, Geary Securities purchased the CEMP A-1 and A-2 Notes from CEMP LLC for sale to third-party investors. Coker Dep. 50:9-52:7, Exs. 6-7; Goodman Dep. 58:3-10, 67:10-21, 68:13-69:25, 73:19-23, 75:4-8, Exs. 7-11; *see also* CEMP PPM at ii (page no. missing) (“The Placement Agent has no obligation to purchase any of the Notes unless all of them have been sold to third-party investors.”)

11. Geary Securities and CEMP LLC are under the common ownership and control of the Geary Companies. Geary Respondents' Answer ¶ 7.

12. Joseph D. McKean (McKean) is sole owner and Chairman of the Board of Directors of Frontier State Bank (Frontier) in Oklahoma City, Oklahoma, and an owner and the Chairman of the Board of Directors of Washita State Bank, another bank located in Oklahoma. Geary Respondents' Answer ¶ 8. McKean is also Chairman of The Eagle Sky Foundation, Inc. (Eagle Sky), a non-profit corporation. Eagle Sky, New Account Form, page 2 of 7.

13. At times material hereto, Geary recommended that certain Oklahoma financial institutions purchase certain private-label collateralized mortgage obligations (PL-CMOs), to wit: Washita State Bank, Yukon National Bank, and Bank of Union (collectively with Frontier, the "Banks"). Beginning in or around March of 2008, each of the Banks purchased multiple PL-CMOs through Geary Securities. Geary Respondents' Answer ¶ 12.

Development of CEMP Concept

14. On April 30, 2009, the Federal Deposit Insurance Corporation (FDIC) issued Financial Institution Letter 20-2009 (FIL-20-2009) addressing banks with portfolio holdings in structured credit investment products, to include collateralized mortgage obligations. Specifically, FIL-20-2009 notified FDIC-insured financial institutions of the agency's enhanced scrutiny of the institutions' risk management policies and procedures, and their investment portfolios' composition, performance and risks. Further, the FDIC warned that any weaknesses in these areas would be reflected in the supervisory ratings and capital requirements of the institution under review. FIL-20-2009 (April 30, 2009); Geary Respondents' Answer ¶ 14.

15. Based on the issuance of FIL-20-2009, Geary concluded that a unique secondary market would develop as a result of the expected liquidation of PL-CMOs by banks in response to regulatory concerns. Geary Respondents' Answer ¶ 15.

16. Geary further developed the concept of buying downgraded PL-CMOs, adding a credit enhancement to the pool of PL-CMOs, and selling the resulting "AAA" rated security as a way to eliminate the regulatory burden for the Banks. Geary Dep. 38:24-39:14.

Acquisition of PL-CMOs for Resecuritization

Frontier PL-CMOs

17. Geary became aware that Frontier intended to solicit bids for the purchase of certain PL-CMOs owned by the bank (the "Frontier PL-CMOs"). Geary Dep. 101:2-4.

18. On the morning of Frontier's release of the solicitations for bids, Geary and McKean met. McKean's summary of the discussions of that meeting was communicated, on McKean's behalf, to officers and directors of Frontier and Geary in an e-mail sent Tuesday, May 26, 2009, at 10:11 a.m., that stated in pertinent part as follows:

I met with Keith early this morning, Tuesday, May 26th.

Capital West can buy PL-CMOs as a Dealer. CW plans to bid on our package which goes out today. Keith will bid then in such a manner as to allow for a 1-5% GAIN on the sale, and will be the highest bidder of all the bids. These will be owned directly by CW. [McKean] & [Eagle Sky] will not be involved in these purchases. CW can fund these purchases via short term loans from Pershing/Mellon Bank.

Within about 2-4 weeks, CW will repackage these PL-CMOs into 1A1 PL-CMOs with a AAA Rating and into B1 PL-CMOs with a Sub Investment Grade Rating. [Frontier], [Washita State Bank], [McKean], and [Eagle Sky] will be allowed to purchase the AAA rated PL-CMOs at the same net rate that CW purchased them. [McKean] will be allowed to purchase the B1 PL-CMOs.....again at the same net rate that CW purchased them. No Fees. No Gain or Loss to CW.

CW will retain all coupon earnings pro rated to the number of days they own the securities.

* * *

CW will close on all of these purchases on Thursday, May 28th. Cash to be transferred to [Frontier] by wire transfer on the 28th.

Geary Dep., Ex. 1.

19. Geary had a specific purpose for buying the downgraded PL-CMOs at prices he expected would be higher than those of other bidders, *i.e.*, to purchase the PL-CMOs to be the underlying collateral for the CEMP 2009-1 Offering – an offering of securities that he intended to sell at a “meaningful” profit for Geary Securities. Geary Respondents’ Answer ¶ 22.

20. Bids were solicited by Frontier beginning on Tuesday, May 26, 2009. The deadline for submission of bids was the next day at noon (EST). Geary Dep., Ex. 2. The original face value of the Frontier PL-CMOs totaled \$118,801,150. Geary Respondents’ Answer ¶ 23.

21. The bids submitted by Geary Securities were accepted by Frontier on May 27th. The trades were entered on May 28th for same day settlement. Geary Respondents’ Answer ¶ 25; Geary Dep. 95:3-8, 107:14-25, Ex. 3.

22. Geary Securities committed to purchasing the Frontier PL-CMOs even though the firm did not have a paying customer as the contra party to the transactions and was unable to fund the purchases itself. Geary Respondents’ Answer ¶ 37.

23. At the time Geary Securities purchased the Frontier PL-CMOs, Geary intended for Geary Securities to hold the PL-CMOs for two to three weeks while they were resecuritized and enhanced. Geary Dep. 59:14-21, 60:5-10; Geary Respondents’ Answer ¶ 36. Geary anticipated that Geary Securities’ clearing firm would “hold” or “carry” the Frontier PL-CMOs for Geary Securities for two to three weeks and Geary Securities would “make a spread”

between the interest it had to pay its clearing firm and the coupon rate Geary Securities would earn on the PL-CMOs. Geary Dep. 59:19-60:14, 85:25-86:1, 91:19-20.

24. After the PL-CMO trades were entered, Geary learned that Geary Securities' clearing firm would not carry the Frontier PL-CMOs pending completion of the resecuritization and collateral enhancement processes. Geary Respondents' Answer ¶ 37. On the morning of Monday, June 1, 2009, Frager made it "abundantly" clear to Geary that Geary Securities could not own the Frontier PL-CMOs because it did not have adequate capital. Geary Dep. 73:9-14, 87:6-7, 88:21-23, 90:7-8.

25. Mid-day on June 1, 2009, Geary informed McKean that Geary Securities could not hold the Frontier PL-CMOs in its inventory account because it did not have adequate capital. McKean, individually and on behalf of Eagle Sky, agreed to purchase the Frontier PL-CMOs from the firm. The processing of the sales of the PL-CMOs from Geary Securities to the Geary Securities accounts of McKean and Eagle Sky began later that afternoon. Geary Dep. 73:9-74:15.

Other PL-CMOs

26. On June 9, 2009, Geary, on behalf of Geary Securities, responded to a solicitation for bids made by Washita State Bank. Geary set forth the firm's bids on twenty-two (22) of the PL-CMOs. Geary Securities declined to bid on five of the PL-CMOs because the securities were still "AAA" rated. Although Geary Securities submitted bids in response to Washita State Bank's solicitation, Geary recommended that Washita State Bank not sell any of its PL-CMOs. Geary Respondents' Answer ¶ 42.

27. Washita State Bank decided to retain the securities in the bank's investment portfolio. Geary Dep. 137:19-23.

28. On July 16, 2009, the same date that CEMP LLC was formed, Geary advised Frontier that, on July 24, 2009, Geary Securities would be interested in bidding on a Banc of America PL-CMO that he had previously advised Frontier not to sell. Geary advised McKean that Geary Securities would be interested in bidding on the eight PL-CMOs personally owned by McKean and the ten (10) PL-CMOs owned by Eagle Sky. Geary advised Washita State Bank that Geary Securities would reaffirm the bids it submitted on June 9, 2009, on eighteen (18) of the bank's PL-CMOs – securities that he had previously advised Washita State Bank not to sell. Geary also advised Yukon National Bank that Geary Securities would be interested in bidding on three of the bank's four PL-CMOs, and advised Bank of Union that Geary Securities would be interested in bidding on six of Bank of Union's seven PL-CMOs. Geary Respondents' Answer ¶¶ 5, 49, 50.

29. Geary further advised that the proposed sales would have a trade date of July 27, 2009, for settlement on July 30, 2009. The scheduled closing date for the CEMP 2009-1 Offering was July 30, 2009. Geary Respondents' Answer ¶ 51.

30. McKean, individually and on behalf of Eagle Sky, accepted the bid prices submitted by Geary Securities for the 18 PL-CMOs. The prices were the same prices at which Geary Securities sold the securities to Eagle Sky and McKean in the previous month. Geary Respondents' Answer ¶ 53.

31. On or about July 24, 2009, Geary eliminated eleven (11) of the PL-CMOs owned by Washita State Bank from inclusion in the CEMP 2009-1 Offering. Washita State Bank eventually agreed to sell seven of the PL-CMOs to Geary Securities. Geary Respondents' Answer ¶ 54.

32. Yukon National Bank agreed to sell the three PL-CMOs at the bid prices submitted by Geary Securities. Geary Respondents' Answer ¶ 57.

33. Bank of Union solicited bids on its six PL-CMOs from four entities with the highest bidder being Geary Securities. Braun Dep. 18:4-18. Bank of Union accepted the bids to purchase submitted by Geary Securities. Geary Respondents' Answer ¶ 60; Braun Dep. 18:19-21.

34. On July 28, 2009, Geary advised Washita State Bank, Yukon National Bank, Bank of Union and McKean, individually and on behalf of Eagle Sky, that the CEMP 2009-1 Offering would not close on July 30th. As a result, Geary advised that the sales of the PL-CMOs would be closed in escrow on July 31, 2009. Geary advised each seller that the necessary paperwork, to include a customer agreement and a securities purchase agreement, would be forthcoming by email. Braun Dep., Ex. 1; email from Geary to McKean (JDM999@aol.com) (July 28, 2009, 12:05 p.m.); email from Geary to Eddie Peck, an employee of Washita State Bank, (July 28, 2009, 12:06 p.m.); email from Geary to Karen Hooley, an employee of Yukon National Bank, (July 28, 2009, 12:08 p.m.).

35. Each seller of the PL-CMOs entered into separate customer agreements with CEMP LLC and Bank of New York Mellon, effective July 31, 2009, (collectively, the "Customer Agreements") whereby each seller authorized Bank of New York Mellon to hold the PL-CMOs on its behalf until the closing of the CEMP 2009-1 Offering on August 11, 2009. Geary Respondents' Answer ¶ 65.

36. Each seller entered into a separate agreement with CEMP LLC, effective July 31, 2009 (the "Securities Purchase Agreements"), whereby CEMP LLC agreed to purchase:

- (a) ten PL-CMOs from Eagle Sky for \$57,765,115.30;
- (b) eight PL-CMOs from McKean for \$37,359,422.13;

- (c) seven PL-CMOs from Washita State Bank for \$15,585,869.99;
- (d) three PL-CMOs from Yukon National Bank for \$5,985,713.27; and
- (e) six PL-CMOs from Bank of Union for \$10,958,392.04.

Geary Respondents' Answer ¶ 66.

37. The Securities Purchase Agreements provided that on August 11, 2009, CEMP LLC would sell the PL-CMOs to Bank of New York Mellon, on behalf of CEMP 2009-1. Geary Respondents' Answer ¶ 67.

38. Each seller authorized the free delivery of the PL-CMOs to the CEMP 2009-1 Distribution Account at Bank of New York Mellon as of July 31, 2009. Geary Respondents' Answer ¶ 68.

39. Geary signed each of the Customer Agreements and Securities Purchase Agreements as Chairman of CEMP LLC. Geary Respondents' Answer ¶ 69.

40. The Customer Agreements and Securities Purchase Agreements were later amended and restated to reflect changes in the CEMP 2009-1 Offering closing date. Email from Geary to amy.kwok@bnymellon.com (Aug. 11, 2009, 10:39 a.m.), attachment; email from Geary to amy.kwok@bnymellon.com (Aug. 11, 2009, 3:51 p.m.), attachment; email from Geary to amy.kwok@bnymellon.com (Aug. 13, 2009, 7:52 a.m.), attachment; email from Geary to amy.kwok@bnymellon.com (Aug. 13, 2009, 8:14 a.m.), attachment; email from Geary to amy.kwok@bnymellon.com (Aug. 13, 2009, 9:19 a.m.), attachment; email from Geary to Keun Dong Kim (keundong.kim@kattenlaw.com) (Aug. 14, 2009, 8:04 a.m.), attachment; email from Mike Braun (mbraun@bankofunion.com) to Geary (Aug. 17, 2009, 3:24 p.m.), attachment; email from Geary to Paul Foster, Esq., counsel for Yukon National Bank, (Sept. 22, 2009, 1:36 p.m.).

Offer and Sale of CEMP 2009-1 Notes/ CEMP Closing

41. The CEMP 2009-1 Offering did not close on August 11, 2009. The closing was postponed until August 18th and then until August 21st. Geary Respondents' Answer ¶ 70.

42. On July 21, 2009, Geary recommended to McKean that Frontier and/or Washita State Bank purchase the "AAA" rated CEMP A-1 Notes. Email from Geary to McKean (July 21, 2009, 8:24 p.m.).

43. McKean did not ever commit to purchasing the CEMP A-1 Notes and/or CEMP A-2 Notes, personally or on behalf of Frontier, Washita State Bank, or Eagle Sky. Geary Dep. 148:1-12, 149:15-24.

44. On or about August 20, 2009, Geary learned that McKean, Frontier, Washita State Bank, and Eagle Sky were not interested in purchasing the CEMP A-1 and/or A-2 Notes. Geary Dep. 153:2-8; email from McKean (JDM999@aol.com) to Geary (Aug. 20, 2009, 6:46 a.m.); email from McKean (JDM999@aol.com) to Geary (Aug. 20, 2009, 7:00 a.m.)

45. On August 20, 2009, the closing date for the CEMP 2009-1 Offering was postponed to September 15th. Email from Geary to John Shelley (JShelley@BankofUnion.com) and Mike Braun (Aug. 21, 2009, 7:11 a.m.).

46. On September 14, 2009, Geary notified McKean, Eagle Sky and Washita State Bank that the CEMP 2009-1 Offering would not close the next day. Their twenty-five (25) PL-CMOs were returned to the Geary Securities accounts of McKean, Eagle Sky and Washita State Bank on September 15, 2009. Email from Geary to McKean (JDM999@aol.com) (Sept. 14, 2009, 12:13 p.m.); email from Geary to Debi Gordon, an employee of Washita State Bank, (Sept. 14, 2009, 12:05 p.m.).

47. On or about September 15, 2009, Geary solicited Bank of Union to purchase any or all of the CEMP A-1 Notes at a price of 98. Geary Dep. 146:14-147:22, Ex. 12; Braun Dep. 28:1-29:3, Ex. 2. Although the securities had not yet been rated by a rating agency, Geary represented the notes to be “AAA” rated and “above and beyond Examiner ‘issues’.” Geary Dep. 146:14-147:22, Ex. 12; Braun Dep., Ex. 2. At that time, Bank of Union was not interested in purchasing the CEMP A-1 Notes. Geary Dep. 147:21-22; Braun Dep. 29:20-30:1; Shelley Dep. 19:5-18.

48. On September 18, 2009, Geary again solicited Bank of Union to purchase the CEMP A-1 Notes at a price of 98. Shelley Dep., Ex. 3; Braun Dep., Ex. 3. Geary told Bank of Union that he was “certain” Bank of Union would have a “sizeable Unrealized Gain” and “could easily Sell any portion of it at any time,” if Bank of Union decided to purchase the CEMP A-1 Notes. Shelley Dep., Ex. 3; Braun Dep., Ex. 3.

49. Just after noon on September 23, 2009, Geary advised his team that Bank of Union “prefer[ed]” not to purchase the CEMP A-1 Notes and that “this afternoon, I’m finding a Buyer for them and still would like to Close tomorrow the 24th.” Email from Geary to Hays Ellisen, Esq., an attorney at Katten Muchin Rosenman, LLP, (Sept. 23, 2009, 12:35 p.m.).

50. At about the same time, Geary communicated via a chain of emails with a representative of Mesirow Financial (Mesirow) as to whether that firm had an interest in the CEMP A-1 Notes. Geary Respondents’ Answer ¶ 79.

51. After providing the information on the final structure and making repeated requests for an indication of interest from Mesirow, Geary asked the Mesirow representative to “guess” as to an acceptable pricing level for the CEMP A-1 Notes. The email chain, in pertinent part, follows:

Geary: "So, Meisrow [sic] (you) have any Interest in CEMP 09-1 A! [sic]?"

Mesirow: "We are looking and analyzing"

Geary: "and how long does that take for something 100% escrowed in Treas by the A2?"

Mesirow: "funny, showing it out to few acct internal, will be back"

Geary: "gimme a guess as to your Level"

Mesirow: "honestly dontknow [sic], below 100 fo rsure [sic]"

Email from James (Jim) Vlogianitis, an employee of Mesirow, to Geary (Sept. 23, 2009, 2:00 p.m.).

52. On or around the afternoon of September 23, 2009, Geary advised Bank of Union that he did not have a buyer for the CEMP A-1 and A-2 Notes. Braun Dep. 35:14-36:5; Geary Dep. 156:3-12. Until then, Geary had led officers of the Bank of Union to believe that he had buyers for the notes. Braun Dep. 35:14-36:5; Shelley Dep. 35:2-23. Without buyers for the notes, Bank of Union would not be paid for their PL-CMOs that had been in escrow for almost two months. Geary Dep. 157:8-11; Braun Dep. 34:23-35:2; Shelley Dep. 35:9-14. Bank of Union would face regulatory issues during its next examination if Bank of Union still owned its six PL-CMOs as of September 30, 2009. Geary Dep. 157:12-158:16; Shelley Dep. 23:7-23; Braun Dep. 19:23-20:1.

53. Early on the morning of September 24, 2009, Geary provided Mesirow with another opportunity to purchase the CEMP A-1 Notes. Email from Jim Vlogianitis to Geary (Sept. 24, 2009, 7:16 a.m.) ("Meisrow [sic] care for CEMP 09-1 A1?"). Mesirow did not submit an offer to purchase the notes. *See* Geary Dep. 152:13-17 (Geary testified that Mesirow was never interested in the CEMP A-1 or A-2 Notes and only gave them a "cursory look".)

54. At 7:25 a.m. on September 24, 2009, Geary advised Bank of Union as follows: “There is a Dealer interested in the A1’s above 98. Just need an A2 Buyer (to hold them for <3 Months).” Geary Dep. 169:6-16, Ex. 15. Geary did not have a dealer interested in the A1’s at a price above 98 at the time he made the statement. Geary Dep. 171:18-22.

55. On or around September 24, 2009, Geary told the Bank of Union that if it purchased the CEMP A-1 Notes, it would only have to hold them for two or three days after settlement (or until October 2, 2009) because he had dealers lined up to purchase them from the bank at par or better. Braun Dep. 39:17-24, 40:19-41:24; Shelley Dep. 24:11-21, 25:15-23, 26:7-18; *see also* Geary Dep. 173:9-24; Frager Dep. 144:22-147:7, Ex. 4 at GSI/ODS 5/11/10 000402 (On September 25, 2009, Geary Securities represented to Pershing, its clearing firm, that Bank of Union would be buying the CEMP A-1 Notes, identified by cusip number, for settlement on September 28, 2009, and selling the CEMP A-1 Notes “to the street” to settle on September 29, 2009.).

56. On September 24 or 25, 2009, Bank of Union finally agreed to purchase the CEMP A-1 Notes in reliance on the representations made by Geary to officers of the bank in connection with the offer of the CEMP A-1 Notes and due to the bank’s impending deadline of September 30, 2009, to sell its PL-CMOs. Shelley Dep. 22:18-23:23, 24:15-25:14, 34:18-20; Braun Dep. 40:22-24.

57. On September 24, 2009, Geary Securities purchased the CEMP A-1 Notes at a price of 98 from CEMP LLC for a total cost of approximately \$19.6 million for settlement on September 28, 2009. Coker Dep. 50:9-51:3, Ex. 6; Goodman Dep. 68:13-22, Ex. 10.

58. On September 25, 2009, Bank of Union purchased the CEMP A-1 Notes at a price of 98 from Geary Securities for a total cost of approximately \$19.6 million for settlement on September 28, 2009. Coker Dep. 51:9-52:7, Ex. 7; Goodman Dep. 69:1-25, Ex. 11.

59. Geary testified Headington did not want to own the CEMP A-2 Notes. Geary Dep. 188:1-4. Geary promoted the purchase of the CEMP A-2 Notes by Headington as a way for him to assist Bank of Union in divesting itself of its six PL-CMOs and eliminating regulatory issues. Geary Dep. 49:15-50:16, Ex. 15 (email from Geary to Headington and Chris Martin, a representative of Headington, (Sept. 16, 2009, 8:13 a.m.)). Geary represented that Headington would have to own the CEMP A-2 Notes for less than 90 days. Geary Dep. 168:4-22, 169:6-16, Ex. 15; Shelley Dep. 31:5-10, 37:13-25, Ex. 4. Geary represented that if Headington purchased the CEMP A-2 Notes, he (Headington) would be able to sell them at a profit. Geary Dep. 173:7-15; Shelley Dep. 37:13-38:7; Braun Dep. 50:23-51:2; Pettijohn Dep. 25:10-17, 28:24-29:17; Earl D. Mills, Ray Evans, Jeff Wills, Eldon R. Ventris, Steve Ketter, David Tinsley, and John Shelley Aff. ¶ 4. Headington agreed to purchase the CEMP A-2 Notes. Shelley Dep. 36:21-37:6.

60. On September 24, 2009, Geary Securities purchased the CEMP A-2 Notes at a price of 65 from CEMP LLC at a cost of approximately \$12.8 million for settlement on September 28, 2009. Goodman Dep. 58:3-10, 67:10-21, 73:19-23, 75:4-8, Exs. 7-9.

61. On September 24, 2009, Headington purchased the CEMP A-2 Notes at a price of 65 from Geary Securities at a cost of approximately \$12.8 million for settlement on September 28, 2009. Goodman Dep. 76:6-78:17, Exs. 13-15; Geary Respondents' Answer ¶ 87.

62. Geary signed a written "Guaranty Agreement," dated September 25, 2009. Geary Dep. 184:11-24, Ex. 19. The Guaranty Agreement stated, in part:

In the approximate amount of Twelve Million Eight Hundred Thousand Dollars (\$12,800,000.00) related to the A2 Class of the CEMP 2009-1 Pool. **The A2 Class will be sold within ninety (90) days with no renewals.** This Guaranty will be extinguished upon the sale of the A2 Class.

(Emphasis added.) Geary Dep., Ex. 19.

63. Prior to signing the Guaranty Agreement, Geary instructed that he, personally, be listed as the “Debtor” on the Guaranty Agreement. Pettijohn Dep., Ex. 3. After Geary misplaced the original draft of the Guaranty Agreement, he asked an employee of Bank of Union to send a replacement draft. Pettijohn Dep., Ex. 4.

64. On September 28, 2009, DBRS, a credit rating agency, assigned a rating of “AAA” to the CEMP A-1 Notes but only with respect to the ultimate payment of principal. The “AAA” rating by DBRS did not apply to the payment of interest. Geary Dep., Ex. 14; Geary Respondents’ Answer ¶ 88.

65. On September 28, 2009, Geary received the final offering document, with exhibits, for distribution to the purchasers of the CEMP A-1 Notes and the CEMP A-2 Notes. Geary Respondents’ Answer ¶ 89.

66. The CEMP 2009-1 Offering closed on September 28, 2009. The offering was made up of the three PL-CMOs purchased from Yukon National Bank and the six PL-CMOs purchased from Bank of Union, totaling \$26,238,500 in original face value. Geary Respondents’ Answer ¶ 90.

67. Geary intended to close the CEMP 2009-1 Offering by effecting a net settlement with Bank of Union, that is, Bank of Union would only pay the difference between the price of the CEMP A-1 Notes and the amount of the proceeds due from the bank’s sale of the six PL-CMOs. However, the clearing firm for Geary Securities did not permit a net settlement. Geary Respondents’ Answer ¶ 91.

68. In order for CEMP LLC to have the necessary cash flow to pay Yukon National Bank and Bank of Union for their PL-CMOs, the funds for the purchase of the CEMP A-1 Notes by Bank of Union and the CEMP A-2 Notes by Headington were wired to and received by CEMP LLC before the sales proceeds for the PL-CMOs were wired by CEMP LLC to Yukon National Bank and Bank of Union. Geary Dep. 99:3-7; email from Geary to Paul Foster, Esq., counsel for Yukon National Bank, (Sept. 30, 2009, 10:38 a.m.).

Post CEMP Closing

69. Geary Securities first distributed the CEMP PPM to Bank of Union and Headington after the trade and settlement dates of the CEMP A-1 and A-2 Notes and after the closing of the CEMP 2009-1 Offering. Braun Dep. 44:25-48:13, Ex. 5; email from Geary to Mike Braun (MBraun@BankofUnion.com) (Sept. 30, 2009, 3:28 p.m.); email from Geary to Chris Martin (Sept. 29, 2009, 7:36 a.m.). The CEMP PPM disclosed, *inter alia*, that the CEMP A-1 Notes were “AAA” rated as to principal payment only and that the “AAA” rating did not address payment of interest. CEMP PPM at v and vii.

70. The CEMP PPM also disclosed the following:

There is currently no secondary market for the Notes. As a result of the foregoing restrictions on transfer and other factors, it is doubtful that a secondary market for the Notes will develop or, if a secondary market does develop with respect to the Notes, that it will provide the holders of the Notes with liquidity of investment or that it will continue for the life of the Notes. If a trading market does not develop, holders of Notes may be unable to resell the Notes for an extended period of time, if at all. In addition, the Notes will not be listed on any securities exchange. As a result, investors must be prepared to bear the risk of holding the Notes to maturity. . . The limited nature of such information regarding the Notes may adversely affect the liquidity of the Notes, even if a secondary market for the Notes becomes available.

CEMP PPM at 18-19.

71. Bank of Union was unable to sell the CEMP A-1 Notes within a few days of purchasing them. Braun Dep. 43:12-19. Headington was unable to sell the CEMP A-2 Notes within 90 days. Shelley Dep. 48:15-24. Bank of Union and Headington still own the CEMP A-1 and A-2 Notes, respectively. Braun Dep. 43:18-19; Shelley Dep. 48:15-24; Geary Dep. 159:5-6.

72. CEMP LLC realized a net profit of approximately \$800,000 from the CEMP 2009-1 Offering that was distributed to Geary Securities. After Geary Securities paid a commission in connection with Headington's purchase of the CEMP A-2 Notes, the Geary Companies ultimately netted approximately \$750,000. Geary Dep. 55:5-19.

73. The CEMP 2009-1 Offering would not have closed if Bank of Union and Headington did not agree to purchase the CEMP A-1 and A-2 Notes, respectively, at the end of September 2009. Geary Dep. 157:8-11, 176:24-177:2. Had the CEMP 2009-1 Offering not closed, the Geary Companies, through CEMP LLC, would have owed approximately \$300,000 in expenses and would not have made a profit. Geary Dep. 177:24-178:8.

False Press Release

74. On or about July 28, 2009, Geary directed the issuance of a press release on Capital West Securities, Inc.'s letterhead announcing the creation of CEMP LLC. Geary Dep. 179:2-13, Ex. 17; email from Geary to Zack Robinson, an employee of Geary Securities, (July 28, 2009, 8:59 a.m.); email from Geary to Don Mecoy, a writer for *The Oklahoman*, (July 28, 2009, 12:55 p.m.), attachment; email from Geary to Debbie Schramm, an employee of Saxum PR, (July 28, 2009, 2:31 p.m.); email from Geary to Debbie Schramm (July 30, 2009, 10:53 a.m.). The press release stated in part as follows:

The first re-mic security *was* CEMP 09-1, which *was* comprised of 28 different [mortgage-backed securities] from [six] different sources that totaled \$203 million original face with \$164 million current face." (Emphasis added.)

Geary Dep., Ex. 17; email from Frager to sierano@pershing.com (July 31, 2009, 2:24 p.m.).

75. The press release also referenced a rating of “AAA” for the newly created security. Geary Dep., Ex. 17; email from Frager to sierano@pershing.com (July 31, 2009, 2:24 p.m.).

76. At the time the press release was issued, the CEMP 2009-1 Offering had not closed and was not comprised of any securities; the notes had not been rated. *See supra* ¶¶ 64, 66. When the CEMP 2009-1 Offering finally closed at the end of September 2009, CEMP 2009-1 was comprised of nine different PL-CMOs from two different sources that totaled approximately \$26 million original face. *See supra* ¶ 66. When the CEMP A-1 Notes were rated at the end of September 2009, they were rated “AAA” with respect to payment of principal only. *See supra* ¶ 64.

77. Geary knew as early as July 27, 2009, that the CEMP 2009-1 Offering would not close as planned on July 31, 2009. Geary Dep. 182:5-16, Ex. 18. Geary proceeded with the issuance of the press release in an effort to generate interest in the marketplace for CEMP and find a buyer for the CEMP A-1 or A-2 Notes. Geary Dep. 178:16-18, 182:17-22.

Second CEMP Offering

78. On or around September 25, 2009, Geary began promoting a second CEMP offering to be collateralized by PL-CMOs owned by McKean and others. In doing so, Geary falsely told McKean that he had completed a “smaller” CEMP 2009-1 offering with “AAA” rated CEMP A-1 securities that were sold to the street at par. Email from McKean (JDM999@aol.com) to Geary (Sept. 25, 2009 1:28 a.m.). The second CEMP offering has at times been referred to as “CEMP 2009-2” and “CEMP 2010-1.” Geary Dep. 46:25-47:16.

79. Geary intended for CEMP LLC to play the same role in the second CEMP offering that it played in connection with the CEMP 2009-1 Offering. Geary Dep. 43:25-44:4, 46:18-20. That role included buying securities, supporting them with a credit enhancement, creating a new security to be resold, and finding buyer(s). Geary Dep. 44:5-21.

80. In December 2009, Geary Securities, through Geary, entered into a transaction to purchase a PL-CMO from Mesirow for purposes of resecuritizing it in connection with the second CEMP offering. Geary Respondents' Answer ¶ 114. Geary Securities agreed to purchase the PL-CMO from Mesirow at a specific price and on a specific date. Geary Dep. 203:12-204:20.

81. On the settlement date agreed upon by Geary Securities and Mesirow, Geary Securities did not accept delivery of the PL-CMO for settlement because it could not pay for the security. Geary Respondents' Answer ¶ 116; Geary Dep. 204:8-12.

82. Based on Geary's representations that Geary Securities had a buyer for the bond, Mesirow extended settlement 2 or 3 times. Email from James (Jim) Vlogianitis, an employee of Mesirow, to Geary (Jan. 22, 2010, 10:10 a.m.); email from James (Jim) Vlogianitis to Geary (Jan. 22, 2010, 9:39 a.m.); Geary Dep. 204:24-205:3.

83. On January 20, 2010, when Geary Securities was still unable to settle the purchase from Mesirow because the Class A-1 notes in the second CEMP offering had not been sold, Geary offered Mesirow the opportunity to purchase the second CEMP offering notes. Email from Geary to James (Jim) Vlogianitis (Jan. 20, 2010, 3:36 p.m.). Geary suggested a net settlement with Mesirow in which Mesirow would pay the difference between the price of the Class A-1 notes and the PL-CMO to be sold to Geary Securities and/or CEMP LLC. Email from Geary to James (Jim) Vlogianitis (Jan. 20, 2010, 4:32 p.m.). Geary knew, however, that net

settlement had failed during the closing of the CEMP 2009-1 Offering. Geary Dep. 142:12-143:1.

84. The transaction to purchase the PL-CMO from Mesirov, as part of the second CEMP offering, never settled. Geary Dep. 204:8-15; email from James (Jim) Vlogianitis to Geary (Jan. 22, 2010, 2:04 p.m.). The second CEMP offering never closed. Geary Dep. 47:9-16.

Net Capital Issues

May 2009

85. At all times material hereto, the minimum net capital requirement for Geary Securities was \$250,000. Geary Respondents' Answer ¶ 95.

86. When Geary Securities purchased the Frontier PL-CMOs on May 28, 2009, Geary intended for Geary Securities to hold the PL-CMOs for two to three weeks. Geary Dep. 60:5-10; Geary Respondents' Answer ¶ 36. The PL-CMOs were purchased in Geary Securities' proprietary inventory account for mortgage-backed securities and collateralized mortgage obligations (MBO/CMO Inventory Account) where they remained until McKean agreed, individually and on behalf of Eagle Sky, to purchase the PL-CMOs on June 1, 2009. Geary Dep. 59:6-11, 60:5-10, 73:9-74:15, 85:19-86:1; Goodman Dep. 33:10-17, Exs. 1-5.

87. When Geary Securities purchased the Frontier PL-CMOs on May 28, 2009, it effectively borrowed the funds necessary to pay for the securities from Pershing, its clearing firm. Paulukaitis Aff. ¶ 13, Oct. 17, 2011 (First Paulukaitis Aff.); *see* Paulukaitis Aff., Dec. 6, 2011 (Second Paulukaitis Aff.); Hintze Dep. 37:5-25; Frager Dep. 122:24-123:9. Geary Securities paid interest to its clearing firm to "carry" the PL-CMOs on its behalf from May 28, 2009, through June 1, 2009. Geary Dep. 85:22-86:1, 91:19-20; Hintze Dep. 35:6-20.

88. As a result of its purchase of the Frontier PL-CMOs on May 28, 2009, Geary Securities was obligated to remit payment for those securities to Pershing. Until such time as payment was made, Geary Securities was required to record on its books and records a liability to Pershing in the amount of the cost of those securities. First Paulukaitis Aff. ¶¶ 10-11.

89. When Geary Securities acquired the Frontier PL-CMOs, it was also required to record as an asset on its books and records the value of those securities. First Paulukaitis Aff. ¶ 13.

90. The *Settlement Date Inventory Recap* report for Geary Securities' MBO/CMO Inventory Account reflected an inventory balance in excess of \$79.3 million as of May 29, 2009. Hintze Dep. 27:7-28:1, 34:6-21, Ex. 1; Frager Dep., Ex. 5 at ODS 09-141/CW 2610.

91. Geary Securities' FINOP, Frager, marked through the \$79.3 million balance indicated on the inventory report, replaced that figure with a zero, and made the following notation: "Zero Balance resulting from a/o Billing to McKean Accts & receipt of \$30+ Million cash from McKean." Hintze Dep. 34:6-21, Ex. 1; Frager Dep. 78:1-14, 79:24-80:15, Ex. 5 at ODS 09-141/CW 2610.

92. Geary Securities did not reflect the value of the Frontier PL-CMOs as an asset of Geary Securities and did not concurrently reflect the same amount as a liability to Pershing on its balance sheet as of May 31, 2009. Frager Dep., Ex. 5 at ODS 09-141/CW 2596-2598; First Paulukaitis Aff. ¶ 20.

93. In the calculation of its net capital after the acquisition of the Frontier PL-CMOs, Geary Securities would have been required to take a "haircut" on the value of those securities had they been recorded as an asset. First Paulukaitis Aff. ¶ 14.

94. The “haircut” on the Frontier PL-CMOs would have been 100% of the value of the Frontier PL-CMOs because there was no readily identifiable secondary market for those securities. First Paulukaitis Aff. ¶ 14; *see* Frager Dep. 59:14-16 (“There is no central marketplace for private label CMOs. There is no exchange that [sic] I can go buy them.”). This would have resulted in a \$79.3 million charge against the net capital of Geary Securities. First Paulukaitis Aff. ¶ 14.

95. Frager testified that the required “haircut” on liquid securities is 40% of the value of the securities. Frager Dep. 54:16-18.

96. The reduction in Geary Securities’ net capital after a 40% “haircut” on the Frontier PL-CMOs would have been more than \$31.7 million. *See* First Paulukaitis Aff. ¶ 15.

97. According to the FOCUS Report filed by Geary Securities as of May 31, 2009, Geary Securities’ net capital was \$1,026,261. Frager Dep., Ex. 5 at ODS 09-141/CW 2594; First Paulukaitis Aff. ¶ 16.

98. Had the acquisition of the Frontier PL-CMOs been reflected on the books and records of Geary Securities, the firm would not have had sufficient net capital to comply with the SEC’s net capital rule. First Paulukaitis Aff. ¶ 16.

99. Frager advised Geary that for purposes of the firm’s FOCUS Report dated May 31, 2009, Geary Securities would treat the Frontier PL-CMOs as if they were in the accounts of McKean and Eagle Sky. Geary Dep. 84:24-85:9.

100. Geary Securities did not account for the Frontier PL-CMOs in its net capital computation for purposes of its FOCUS Report dated May 31, 2009. Geary Dep. 84:24-85:2; Frager Dep. 68:25-69:4.

101. Although Geary Securities did not include the Frontier PL-CMOs as an asset or the corresponding Pershing debt as a liability in the net capital computation for its FOCUS Report dated May 31, 2009, Geary Securities included the accrued interest on the Frontier PL-CMOs as an asset of the Firm as of May 31, 2009. Frager Dep., Ex. 5, ODS 09-141/CW 2587, 2597, 2603, 2610; Frager Answer ¶ 16.

102. If Geary Securities would have treated the Frontier PL-CMOs as being in its MBO/CMO Inventory Account in the calculation of its net capital for its FOCUS Report dated May 31, 2009, the FOCUS Report would have revealed that the firm was undercapitalized. Hintze Dep. 38:4-7, 39:4-7.

103. Geary Securities did not file a notice disclosing its net capital deficiency for the time period May 28, 2009, through June 1, 2009, with the U.S. Securities Exchange Commission (SEC) or FINRA. Frager Dep. 82:2-83:25.

104. Geary Securities did not stop writing trade tickets to buy securities or accepting customer checks during the time period May 28, 2009, through June 1, 2009. Coker Dep. 42:24-43:3; Geary Dep. 115:25-116:3; Frager Dep. 160:2-14.

105. In November 2009, a representative of the New Orleans office of FINRA advised Frager that Geary Securities had a net capital violation in May 2009 resulting from the purchase of the Frontier PL-CMOs. Frager Dep. 83:5-25. The FINRA representative also advised Frager to file a notice reporting the net capital deficiency. Frager Dep. 83:11-15.

106. Geary Securities still did not file a notice of deficiency. Frager Dep. 83:24-25.

107. On November 12, 2009, at the direction of Frager, Karen Coker, who is Geary Securities' Operations Manager, cancelled the June 1st trades between Geary Securities and McKean and Eagle Sky and re-billed the trades with trade and settlement dates of May 28, 2009,

rather than the original trade and settlement dates of June 1, 2009. Coker Dep. 34:21-36:5, 38:11-13, Ex. 4. The settlement date was changed back to June 1, 2009, by Geary Securities' clearing firm on November 12, 2009. Coker Dep. 36:13-38:6, Ex. 5; Goodman Dep. 49:10-51:1, Ex. 5.

108. Prior to November 12, 2009, the trades between Geary Securities and McKean and Eagle Sky were not cancelled and rebilled to reflect a change in trade or settlement date. Coker Dep. 39:13-15.

January and February 2010

109. From January 31, 2010 through at least February 25, 2010, the net capital of Geary Securities fell below the minimum net capital requirement. Frager Dep., Ex. 4 at ODS 09-141/Frager 365-366, 369-370, 373-374; Coker Dep. 43:15-17; Hintze Dep. 40:21-41:1, 45:13-19.

110. Geary Securities knew that its net capital position was getting low in the middle or end of January 2010. Frager Dep. 153:24-154:8; Hintze Dep. 41:11-16.

111. Geary Securities discovered that its net capital was under the net capital requirement on February 10, 2010. Frager Dep., Ex. 4 at ODS 09-141/Frager 365-366; Hintze Dep. 41:3-5, 44:1-13.

112. After discovering the deficiency on February 10, 2010, Geary Securities began calculating its net capital position on a daily basis. Hintze Dep. 20:17-21:1, 44:9-45:5. The firm was undercapitalized every day beginning January 31, 2010, through February 26, 2010. Hintze Dep. 45:13-19. On each day between February 10, 2010, through February 26, 2010, Frager and Geary were informed that the firm was undercapitalized. Hintze Dep. 45:17-46:2.

113. On February 10, 2010, Geary Securities filed a notice with FINRA for the net capital deficiencies occurring January 31, 2010 through February 4, 2010. The notice reflected a

\$55,714 deficiency on the most current date of deficiency. Frager Dep., Ex. 4 at ODS 09-141/Frager 365-366.

114. On February 12, 2010, Geary Securities filed a notice with FINRA for the net capital deficiencies occurring February 5, 2010, through February 10, 2010. The notice reflected a \$65,000 deficiency on the most current date of deficiency. Frager Dep., Ex. 4 at ODS 09-141/Frager 369-370.

115. On February 26, 2010, Geary Securities filed a notice with FINRA for the net capital deficiencies occurring February 11, 2010 through February 25, 2010. The notice reflected a \$30,733 deficiency on the most current date of deficiency. Frager Dep., Ex. 4 at ODS 09-141/Frager 373-374. Geary Securities intentionally waited until it was back in compliance with the net capital requirement before it filed its notification on February 26, 2010. Hintze Dep. 47:5-17; Frager Dep. 168:4-7.

116. The notices filed by Geary Securities on February 10, 12, and 26, 2010, each stated that the firm conducted a securities business on the dates of the deficiency. Frager Dep., Ex. 4 at ODS 09-141/Frager 366, 370, 374.

117. During the time that Geary Securities was undercapitalized, Geary Securities continued writing tickets to buy securities and continued accepting customer funds with the knowledge that it was undercapitalized. Roberts Dep. 33:10-34:16, 35:19-23; Hintze Dep. 46:20-25; Frager Dep. 160:2-14; Coker Dep. 45:6-16.

Excessive Mark-up on a PL-CMO Unrelated to CEMP

118. On Saturday, May 30, 2009, McKean sent an email to approximately twenty (20) other persons including Geary. In the email, McKean commented on the state of the PL-CMO

market and stated his intention to buy a certain Banc of America PL-CMO (the “BOAMS”).

Specifically, McKean stated, *inter alia*:

Attached is a Security (BOAMS 2007-3 1A2) originally issued by Bank of America in 2007. . . The seller is asking 44. I declined. Late yesterday the seller offered to sell at 40. I have decided to buy at 40.

\$13,748,585 current par value (face value) is available. The purchase price will be 40% of this amount. I hav (sic) told Capital West we will purchase all of this security. I will purchase \$10,000,000 of the Face Value for a Market Price of \$4,000,000. That leaves \$3,748,585 available for other investors to buy at 40% of the face value. This is offered on a first come basis. It will settle on Wednesday, June 3rd. IF there are not enough buyers for the remaining amount, then I will purchase it.

Geary Respondents’ Answer ¶ 101; Frager Dep., Ex. 4 at ODS 09-141/Frager 18-19.

119. Later on May 30th, Geary forwarded McKean’s email to Frager and told Frager that the security referred to by McKean “was Bought (sic) at the end of the day Friday at 37. Tickets will be written Monday morn (sic) with [McKean] taking \$10 Mill and his friends \$3.749 Mill at 40. A nice \$412,440 start for June’s Net Income.” Geary Respondents’ Answer ¶ 102; Frager Dep., Ex. 4 at ODS 09-141/Frager 18.

120. On Sunday, May 31, 2009, McKean informed Geary Securities, and Geary personally, that: Eagle Sky would buy \$5,000,000 face value of the BOAMS at 40, McKean would buy \$5,000,000 face value of the BOAMS at 40, and “McKean will also buy any of the remainder of these CMO [sic] which is not purchased by others before the deadline.” Geary Respondents’ Answer ¶ 103.

121. With third-party investors already committed to purchase the BOAMS, Geary Securities purchased the BOAMS at a price of 37 on Monday, June 1, 2009. Geary Respondents’ Answer ¶ 104; Geary Dep. 196:25-197:14.

122. On June 1, 2009, Geary Securities, acting in a principal capacity, sold the BOAMS to nine customer accounts including, but not limited to, the accounts of McKean and Eagle Sky, at a price of 40 for a markup of 8.1 percent. Geary Respondents' Answer ¶ 105. Geary determined that the sales price would be 40. Geary Dep. 197:15-17. Geary's stated basis for the mark-up was the fact that Geary "offered it to them at that price and they said yes. [Geary] was able to negotiate a lesser cost for [Geary Securities] and [they] made the deal." Geary Dep. 197:18-22.

123. The trade confirmations for sale of the BOAMS to the nine customer accounts did not disclose the 8.1 percent mark-up charged by Geary Securities. Geary Respondents' Answer ¶ 106.

ARGUMENTS AND AUTHORITIES

I. STANDARD OF REVIEW

Rule 660:2-9-3(d) of the Oklahoma Rules authorizes the Hearing Officer to issue a summary decision as to any substantive issue in the case if he finds that "there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law." This standard is similar to the standard for summary judgment provided under the Oklahoma Pleading Code. *See* Okla. Stat. tit. 12, § 2056(C) (OSCN 2011) (Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."). Accordingly, Oklahoma case law is instructive when interpreting the standard for summary decision provided in Rule 660:2-9-3(d) of the Oklahoma Rules.

Under Oklahoma law, the requirement of "no genuine issue of any material fact" has been equated to "no substantial controversy as to any material fact." *See* Okla. Stat. tit. 12, Ch.

2, App. (Rule 13(a) and (e)) (OSCN 2011); *Flanders v. Crane Co.*, 693 P.2d 602, 605 (Okla. 1984). There is no “substantial controversy as to any material fact raised by the issues” if it appears “not only that there is no dispute as to such facts themselves, but also that reasonable people exercising fair and impartial judgment could not reach differing conclusions upon the undisputed facts.” *Flanders*, 693 P.2d at 605 (citing *Northrip v. Montgomery Ward & Co.*, 529 P.2d 489, 493 (Okla. 1974)). “[A]ll inferences and conclusions to be drawn from the undisputed facts must be viewed in the light most favorable to the party opposing the motion.” *Id.* (citing *Northrip*, 529 P.2d at 496-97.) Summary judgment should be granted “where it is ‘perfectly clear’ that there are no issues of material fact in a case[.]” *Id.* (citing *Northrip*, 529 P.2d at 497). However, “[a] party resisting a motion for summary judgment may not rely on allegations of its pleadings or bald contentions that facts exist to defeat the motion for summary judgment.” *Roberson v. Jeffrey M. Waltner, M.D., Inc.*, 108 P.3d 567, 569 (Okla. Civ. App. 2005) (citing *Gonser v. Decker*, 814 P.2d 1056 (Okla. Civ. App. 1991)).

A partial summary decision against Respondents Geary Securities, Geary, and CEMP LLC is appropriate because there is no genuine controversy as to the material facts raised by certain substantive issues, and as set forth below, the Department is entitled to prevail as a matter of law.

II. THE DEPARTMENT SHOULD BE GRANTED A SUMMARY DECISION FINDING THAT RESPONDENTS GEARY SECURITIES AND GEARY MADE UNTRUE STATEMENTS OF MATERIAL FACT AND OMITTED TO STATE MATERIAL FACTS IN CONNECTION WITH THE OFFER, SALE AND PURCHASE OF SECURITIES IN VIOLATION OF SECTION 1-501 OF THE OUSA.

Section 1-501(2) of the OUSA makes it unlawful for a person, directly or indirectly, “to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not

misleading,” in connection with the offer, sale, or purchase of a security. Okla. Stat. tit. 71, § 1-501(2) (OSCN 2011). The Department does not have to prove culpability or scienter for purposes of Section 1-501(2). See Unif. Securities Act 2002, § 501, Official Comments, n. 6; *Aaron v. SEC*, 446 U.S. 680, 702 (1980); *Trivectra v. Ushijima*, 144 P.3d 1, 12-16 (Haw. 2006) (citing numerous decisions of other states); *Fibro Trust, Inc. v. Brahman Financial, Inc.*, 974 P.2d 288, 294 (Utah 1999).²

For purposes of Section 1-501(2), the standard of materiality set forth by the U.S. Supreme Court in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976), is applicable. See *Basic Incorporated v. Levinson*, 485 U.S. 224, 231-32 (1988).³ “The question of materiality, it is universally agreed, is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor.” *TSC Industries*, 426 U.S. at 445. A fact is material if there is a “substantial likelihood” that a reasonable investor would consider it important. *TSC Industries*, 426 U.S. at 449; *Levinson*, 485 U.S. at 231. “[T]here must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” *TSC Industries*, 426 U.S. at 449; *Levinson*, 485 U.S. at 231-32. The issue of materiality is appropriately resolved as a matter of law by summary judgment when the misrepresentations or omissions are “so obviously important to an investor, that reasonable minds cannot differ on the question of

² In an effort to achieve coordination with federal law and uniformity in state securities regulation, the OUSA was modeled on the Uniform Securities Act of 2002, promulgated by the National Conference of Commissioners on Uniform State Laws (with some distinctions mostly related to oil, gas and other mineral production). Okl.St. Ann. tit. 71, Ch. 1, Refs & Annos. The particular section of the OUSA involved here, Section 1-501, is identical to Section 501 of the 2002 Uniform Securities Act. Section 501 of the 2002 Uniform Securities Act was modeled on Rule 10b-5 adopted under the federal Securities Exchange Act of 1934 and on Section 17(a) of the federal Securities Act of 1933, although it is not identical to either Rule 10b-5 or Section 17(a). Unif. Securities Act 2002, § 501, Official Comments, n. 1. The Supreme Court of Oklahoma has used federal cases as instructive to interpret the State’s securities laws that are uniform to the federal securities laws. See *State ex rel. Day v. Southwest Mineral Energy, Inc.*, 617 P.2d 1334 (Okla. 1980).

³ See *supra* note 2.

materiality.” *TSC Industries*, 426 U.S. at 450 (quoting *John Hopkins University v. Hutton*, 422 F.2d 1124, 1129 (4th Cir. 1970)).

A. Geary Securities and Geary made untrue statements of material fact in connection with the offer and sale of securities.

Geary Securities and Geary, directly and/or indirectly, made the following untrue statements of fact in connection with the offer and sale of the CEMP A-1 and A-2 Notes: (1) there is a dealer interested in the CEMP A-1 Notes at a price above 98 (*see supra* ¶ 54), (2) if Bank of Union purchased the CEMP A-1 Notes, it would have a “sizable Unrealized Gain” and “could easily Sell any portion of it at any time” (*see supra* ¶ 48), (3) if Bank of Union purchased the CEMP A-1 Notes, it would only have to hold them for two or three days after settlement because Geary had dealers lined up to purchase them from the bank at par or better (*see supra* ¶ 55), and (4) if Headington purchased the CEMP A-2 Notes, he would be able to sell them within 90 days and at a profit (*see supra* ¶ 59, 62).

Contrary to Geary Securities and Geary’s representations, there was no dealer interested in the CEMP A-1 Notes at a price above 98 (*see supra* ¶ 54); Bank of Union was unable to sell the CEMP A-1 Notes within two or three days at par or better (*see supra* ¶ 71); and Headington was unable to sell the CEMP A-2 Notes within 90 days at a profit (*see supra* ¶ 71). Due to the lack of a secondary market for the CEMP A-1 and A-2 Notes, Geary did not have a reasonable basis for his representations to Bank of Union and Headington regarding their ability to sell the CEMP A-1 and A-2 Notes, respectively, and the potential for profit and preservation of principal. *See supra* ¶ 70. Bank of Union and Headington still own the illiquid CEMP A-1 and A-2 Notes, respectively, for which they each paid millions of dollars over two years ago. *See supra* ¶ 71.

Not only is there a substantial likelihood that a reasonable investor would consider these untrue statements of fact to be important in making his investment decision, these misrepresentations are so obviously important to an investor that reasonable minds cannot differ on the question of materiality. Bank of Union certainly considered Geary's representations to be important in making its decision to purchase the CEMP A-1 Notes. Shelley Dep. 24:15-25:14; Braun Dep. 43:23-44:5. A summary decision that Geary Securities and Geary made untrue statements of material fact in connection with the offer and sale of securities in violation of Section 1-501 of the OUSA should be granted.

B. Geary Securities and Geary omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offer, sale, and purchase of securities in violation of Section 1-501 of the OUSA.

Geary Securities and Geary, directly and/or indirectly, omitted to state the following facts in connection with the offer and sale of the CEMP A-1 and A-2 Notes: (1) At the time the CEMP A-1 and A-2 Notes were offered and sold to the Bank of Union and Headington, there was no secondary market for the CEMP A-1 and A-2 Notes and the holders of the notes may be unable to resell the notes for an "extended period of time, if at all" (*see supra* ¶¶ 69, 70), and (2) the CEMP A-1 Notes were not "AAA" rated as to payment of interest (*see supra* ¶ 69). In connection with the sale of the PL-CMOs to CEMP LLC, Geary Securities and Geary, directly and/or indirectly, omitted to tell the Bank of Union that Geary did not have a committed buyer for the CEMP A-1 or A-2 Notes until Bank of Union and Headington agreed to purchase them, respectively, around September 24 or 25, 2009 (*see supra* ¶ 52). In connection with the offer and sale of the BOAMS to nine customer accounts on June 1, 2009, Geary Securities and Geary,

directly and/or indirectly, omitted to state that the BOAMS was being sold at a price that was 8.1 percent higher than the price Geary Securities paid to purchase the BOAMS (*see supra* ¶ 123).

The facts omitted by Geary Securities and Geary were material. The fact that there was no secondary market for the CEMP A-1 and A-2 Notes and the holders of the notes may be unable to resell the notes for an “extended period of time, if at all” was material because there is a substantial likelihood that the disclosure of this information, prior to the closing of the CEMP transactions, would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. The disclosure of this information, prior to closing, was necessary in order to make Geary’s statements that if Bank of Union purchased the CEMP A-1 Notes, it would have a “sizable Unrealized Gain” and “could easily Sell any portion of it at any time,” not misleading. The disclosure of this information was also necessary in order to make Geary’s promises that Bank of Union would only have to hold the CEMP A-1 Notes for two or three days and would be able to sell them at par or better and Headington would be able to sell the Class A-2 Notes within 90 days at a profit, not misleading.

Likewise, the fact that the CEMP A-1 Notes were not “AAA” rated as to payment of interest was material because there is a substantial likelihood that the disclosure of this information, prior to closing, would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. This information is especially important to a bank whose assets are subject to regulatory oversight. *See Braun Dep. 44:6-15.* The disclosure of this fact was necessary in order to make Geary’s statements that the CEMP A-1 Notes were “AAA” rated and “above and beyond Examiner ‘issues’,” not misleading (*see supra* ¶ 47).

The total mix of information regarding the purchase of the PL-CMOs from Bank of Union would have been significantly altered by a disclosure, prior to late September 2009, that Geary had not found a purchaser for the CEMP A-1 or A-2 Notes because neither Geary Securities nor CEMP LLC had the means to purchase the PL-CMOs from Bank of Union without a purchaser for the CEMP A-1 and A-2 Notes. *See Braun Dep. 34:23-35:2; 35:24-36:9; Shelley Dep. 35:9-23.* This information was necessary in order to make Geary's statements that the PL-CMOs sales would settle on July 30, 2009 (*see supra* ¶ 29) or on August 11, 2009, August 18, 2009, August 21, 2009, and September 15, 2009 (*see supra* ¶¶ 41, 45), not misleading. The fact that Bank of Union would have millions of dollars in securities in limbo for almost two months with the real possibility that the sales would never settle due to the lack of demand for the CEMP A-1 and A-2 Notes should not have been concealed, misrepresented, or understated in any way.

The fact that the nine purchasers of the BOAMS on June 1, 2009, were purchasing the BOAMS at an excessive mark-up of 8.1 percent was also material. There is a substantial likelihood that the disclosure of this information would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available. Further, a broker-dealer has an "implied duty to disclose excessive markups." *Starr ex rel. Estate of Sampson v. Georgeson Shareholder, Inc.*, 412 F.3d 103, 110-11 (2d Cir. 2005).

The foregoing omissions are so obviously important to an investor that reasonable minds cannot differ on the question of materiality. A summary decision that Geary Securities and Geary omitted to state material facts necessary in order to make the statements made, in light of the circumstances under they were made, not misleading in connection with the offer and sale of securities in violation of Section 1-501 of the OUSA should be granted.

III. THE DEPARTMENT SHOULD BE GRANTED A SUMMARY DECISION FINDING THAT RESPONDENT GEARY SECURITIES CONTINUED OPERATING ITS SECURITIES BUSINESS WHILE IT MAINTAINED LESS NET CAPITAL THAN REQUIRED BY 17 C.F.R. §240.15C3-1 DURING THE TIME PERIODS MAY 28, 2009 THROUGH JUNE 1, 2009, AND JANUARY 31, 2010 THROUGH FEBRUARY 25, 2010, IN VIOLATION OF OKLAHOMA RULE 660:11-5-17.

A. The Net Capital Rule

Pursuant to its authority under the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78a *et seq.*, the SEC adopted a rule to establish minimum net capital requirements and the methodology for calculating net capital (the “Net Capital Rule”). *See* 17 C.F.R. § 240.15c3-1 (Westlaw eff. June 5, 2008 and current through Sept. 8, 2011). The purpose of the Net Capital Rule is to require a broker-dealer to always have “sufficient assets that are readily convertible to cash to cover its indebtedness to customers and other broker-dealers in case of financial difficulty.” *James S. Pritula*, Exchange Act Release No. 40647, 1998 WL 774688, at *2 (Nov. 9, 1998); *see Lowell H. Listrom*, Exchange Act Release No. 30497, 1992 WL 58904, at *3 (March 19, 1992). More simply put, the net capital requirements are intended to be “an early warning system” of potential financial problems at a broker-dealer. *William H. Gerhauser*, Exchange Act Release No. 40639, 1998 WL 767091, at *3 (Nov. 4, 1998). Because the Net Capital Rule imposes financial responsibility on broker-dealers, it is one of the most important tools used by securities regulators to protect investors. *Fox & Co. Inv., Inc.*, Complaint No. C3A030017, 2005 WL 3054152, at *6 (N.A.S.D.R. Feb. 24, 2005) (quoting *Inv. Mgmt. Corp.*, Complaint No. C3A010045, 2003 NASD Discip. LEXIS 47, at *14 [2003 WL 23104683, at *5] (N.A.S.D.R. Dec. 15, 2003)); *see Gerhauser*, 1998 WL 767091, at *3. The computation of a broker-dealer’s net capital at any given time is fundamental to investor protection. *See Touche Ross & Co. v. Redington*, 442 U.S. 560, 570 (1979). It is therefore essential that a firm evaluate

its net capital position on a continuing basis. *Hutchison Fin. Corp.*, Exchange Act Release No. 32215, 1993 WL 138533, at *4 (Apr. 26, 1993). Violations of the Net Capital Rule are serious. *Gerhauser*, 1998 WL 767091, at *8; *Pritula*, 1998 WL 774688, at *5.

A broker-dealer calculates its net capital by “deducting illiquid assets from the firm’s net worth, as determined under GAAP, adding to that amount properly subordinated debt and further deducting certain percentages (known as ‘haircuts’) of the market value of the securities held in the firm’s proprietary accounts.” *Harrison Sec., Inc.*, Release No. 256, 2004 WL 2109230, at *5 (ALJ Sept. 21, 2004) (initial decision) (affirmed by *Harrison Sec., Inc.*, Exchange Act Release No. 50614, 2004 WL 2434257 (Oct. 29, 2004)). In calculating its net worth, a broker or dealer must use the accrual method of accounting, “pursuant to which the firm must recognize revenues when earned and liabilities when incurred.” *Id.*; see *Pritula*, 1998 WL 774688, at *3.

At any time a broker or dealer’s net capital falls below the minimum amount required, the broker or dealer must give notice, that same day, of such deficiency to the SEC and to the firm’s designated examining authority of which it is a member. 17 C.F.R. § 240.17a-11(b)(1) (Westlaw eff. June 5, 2008 and current through Sept. 8, 2011); see *Pritula*, 1998 WL 774688, at *5. Further, the broker or dealer may not conduct its securities business while its net capital is below the required minimum. 15 U.S.C.A. § 78o(c)(3)(A) (Westlaw eff. Sept. 29, 2006 through July 21, 2010); 17 C.F.R. § 240.15c3-1; *Fox & Co. Inv., Inc.*, 2005 WL 3054152, at *6. By engaging in business when not in net capital compliance, a broker-dealer subjects its customers to undue risks. *Gerhauser*, 1998 WL 767091, at *8. To operate while under net capital is a violation of Exchange Act Rule 15c3-1 and the mandate of FINRA Rule 2010 to observe high standards of commercial honor and just and equitable principles of trade. *Fox & Co. Inv., Inc.*, 2005 WL

3054152, at *9. Intent is irrelevant. *Litwin Sec., Inc.*, Exchange Act Release No. 38673, 1997 WL 274926, at *4 (May 27, 1997).

As part of this state's regulatory scheme, the OUSA authorizes rulemaking by the Administrator of the Department to establish minimum financial requirements for registered broker-dealers. Okla. Stat. tit. 71, §1-410(A) (OSCN 2011). Accordingly, Oklahoma Rule 660:11-5-17 provides as follows:

(a) General requirement. All broker-dealers registered under the Securities Act shall at all times have and maintain net capital of no less than the highest minimum requirement applicable to each broker-dealer as established by the SEC in 17 CFR 240.15c3-1.

(b) Calculation of "net capital." As used in this subchapter, net capital shall mean the net worth of a broker-dealer calculated according to the formula established by the SEC.

In establishing the minimum financial requirements for registered broker-dealers, the Administrator of the Department has simply adopted the SEC's net capital requirements.

B. Geary Securities violated Oklahoma's Net Capital Rule from May 28, 2009, through June 1, 2009.

The acquisition of the Frontier PL-CMOs by Geary Securities on May 28, 2009, caused Geary Securities to maintain less net capital than it was required to maintain under Oklahoma Rule 660:11-5-17. When Geary Securities acquired the Frontier PL-CMOs, it should have recorded the value of those securities as an asset on its books and records. *See supra* ¶ 89. Because Geary Securities did not pay for those securities, it effectively borrowed from Pershing the funds necessary to do so as evidenced by the fact that Geary Securities paid interest to Pershing for the days Pershing "carried" the Frontier PL-CMOs. *See supra* ¶ 87. As such, Geary Securities should have recorded on its books and records a liability to Pershing in the amount of the cost of those securities. *See supra* ¶ 88.

In the calculation of its net capital after the acquisition of the Frontier PL-CMOs, Geary Securities would have been required to take a haircut on the value of those securities had they been recorded as an asset. *See supra* ¶ 93. Arguably, the haircut would have been 100% of the value of the Frontier PL-CMOs because there was no readily identifiable secondary market for those securities. *See supra* ¶ 94. Geary Securities' FINOP testified that the required haircut on liquid securities is 40% of the value of the securities. *See supra* ¶ 95. Assuming, *arguendo*, the required haircut on the Frontier PL-CMOs was only 40%, the resulting reduction in the net capital of Geary Securities would have been more than \$31.7 million. *See supra* ¶ 96. Geary Securities' net capital was only \$1,026,261 as of May 31, 2009; therefore, a reduction of \$31.7 million would have clearly made Geary Securities undercapitalized. *See supra* ¶¶ 97-98.

Instead of acknowledging the firm's net capital deficiency, Geary Securities' FINOP altered the firm's records to eliminate the inventory balance reflecting its ownership of the Frontier PL-CMOs and then failed to recognize the securities and the corresponding debt to Pershing on the books and records of Geary Securities. *See supra* ¶¶ 90-92. Geary Securities did not account for the Frontier PL-CMOs in its net capital computation for purposes of its FOCUS Report dated May 31, 2009. *See supra* ¶ 100. With Geary's knowledge, the firm simply pretended that the Frontier PL-CMOs were in the accounts of McKean and Eagle Sky prior to June 1, 2009. *See supra* ¶¶ 99-100. Geary Securities did, however, include accrued interest on the Frontier PL-CMOs as an asset of the firm for purposes of its May 2009 FOCUS Report. *See supra* ¶ 101. Geary Securities failed to acknowledge the Frontier PL-CMOs as being in its inventory account as of May 31, 2009, and failed to disclose that its net capital was overstated by at least \$30 million from May 28, 2009, through June 1, 2009.

While its net capital position was under the net capital requirement set forth by the Administrator in Oklahoma Rule 660:11-5-17 by tens of millions of dollars from May 28, 2009 through June 1, 2009, Geary Securities continued to conduct its securities business by continuing to effect transactions to purchase securities on behalf of its customers and accept customer funds. *See supra* ¶ 104. In doing so, Geary Securities violated Oklahoma Rule 660:11-5-17.

C. Geary Securities violated Oklahoma's Net Capital Rule from January 31, 2010, through February 25, 2010.

As acknowledged by Geary Securities in the notices it filed pursuant to Rule 17a-11 promulgated under the Exchange Act (Rule 17a-11 Notices), Geary Securities failed to maintain the net capital required by 17 C.F.R. § 240.15c3-1, and correspondingly Oklahoma Rule 660:11-5-17, during the time period January 31, 2010, through February 25, 2010. *See supra* ¶¶ 113-115. While Geary Securities was undercapitalized from January 31, 2010, through February 25, 2010, Geary Securities continued to conduct its securities business by continuing to effect transactions to purchase securities on behalf of its customers and accept customer funds. *See supra* ¶¶ 116-117. In doing so, Geary Securities violated Oklahoma Rule 660:11-5-17.

For the foregoing reasons, the Department should be granted a summary decision finding that Geary Securities continued operating its securities business while it maintained less net capital than required by 17 C.F.R. § 240.15c3-1 during the time periods May 28, 2009 through June 1, 2009, and January 31, 2010 through February 25, 2010, in violation of Oklahoma Rule 660:11-5-17.

IV. THE DEPARTMENT SHOULD BE GRANTED A SUMMARY DECISION FINDING THAT RESPONDENTS GEARY SECURITIES AND GEARY HAVE ENGAGED IN UNETHICAL PRACTICES IN THEIR SECURITIES BUSINESS IN VIOLATION OF OKLAHOMA RULE 660:11-5-42.

Broker-dealers and their agents are subject to standards of ethical practice in connection with their activities in this state. *See* Oklahoma Rule 660:11-5-42. Subsection (a) of 660:11-5-42 of the Oklahoma Rules states, in part:

Purpose. This rule is intended to set forth the standards of ethical practices for broker-dealers and their agents. Any noncompliance with the standards of ethical practices specified in this section **will constitute unethical practices in the securities business**; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices.

(Emphasis added.)

Subsection (b) of the rule provides a listing of specific events or conditions that constitute ethical practices in the conduct of a securities business. Among the standards of import to this matter is the following:

A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and his agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

Oklahoma Rule 660:11-5-42(b)(1).

Based on the provision cited above, rules promulgated by the SEC and/or FINRA become extremely relevant in the Oklahoma regulatory scheme. Further, Section 1-608 of the OUSA encourages the Administrator to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, and other states by *inter alia*, “maximizing uniformity in federal and state regulatory standards”. Okla. Stat. tit. 71, §1-608 (OSCN 2011).

It follows that interpretations of the SEC and FINRA rules are particularly instructive when interpreting the Oklahoma Rules that are duplicative thereof.

As set forth below, Geary Securities and Geary have engaged in unethical practices in the securities business in violation of Oklahoma Rule 660:11-5-42.

A. Geary Securities and Geary failed to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

As explained above, it is an unethical practice in the securities business for a broker-dealer or an agent of a broker-dealer to fail to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of his business or to violate “any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.” Oklahoma Rule 660:11-5-42(b)(1).

Similar to Oklahoma Rule 660:11-5-42(b)(1), FINRA Rule 2010 states, “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” FINRA Rule 2010 (amended by SR-FINRA-2008-028 eff. Dec. 15, 2008) (formerly, NASD Rule 2110). The SEC has consistently maintained that a violation of another SEC or NASD rule or regulation constitutes a violation of the requirement to adhere to “just and equitable principles of trade” and does not require a finding of intent or scienter. *William H. Gerhauser*, Exchange Act Release No. 40639, 1998 WL 767091, at *5 (Nov. 4, 1998).

- i. *Geary Securities attempted to conceal its May 2009 net capital deficiency by filing an inaccurate FOCUS Report and not filing a Rule 17a-11 Notice.*

Pursuant to its authority under the Exchange Act, the SEC, by rule, prescribed the reporting requirements for brokers and dealers. The required reports are critical to the regulatory oversight of brokers and dealers, allowing for a proactive, rather than reactive, approach to investor protection. *See Touche Ross & Co., v. Redington*, 442 U.S. 560, 569-70 (1979). As with the records on which they are based, the reports must be true and correct. *Inv. Mgmt. Corp.*, Complaint No. C3A010045, 2003 WL 23104683, at *7 (N.A.S.D.R. Dec. 15, 2003).

One of the principal reports and regulatory tools required by the SEC is the FOCUS Report. In addition to general information about the broker or dealer, each FOCUS Report contains the firm's financial statements and net capital computation. *Wall Street Access*, Decision 06-83, 2006 WL 2237526, at *3 n.1 (N.Y.S.E. June 23, 2006). The failure to file an accurate FOCUS Report is a violation of Exchange Act Rule 17a-5 and FINRA Rule 2010 (formerly, NASD Rule 2110). *Fox & Co. Inv., Inc.*, Complaint No. C3A030017, 2005 WL 3054152, at *9-10 (N.A.S.D.R. Feb. 24, 2005) (citing *Christopher M. Block*, Complaint No. C05990026, 2001 WL 991569 (N.A.S.D.R. Aug. 16, 2001)).

Another reporting requirement imposed on brokers and dealers is the requirement to file a Rule 17a-11 Notice with the SEC and FINRA any time a broker or dealer's net capital falls below the minimum amount required. 17 C.F.R. § 240.17a-11(b). This notice is to be given on the same date of the deficiency. *Id.* "If a broker or dealer is informed by its designated examining authority or the [SEC] that it is, or has been, in violation of Rule 15c3-1 [Net Capital Rule] and the broker or dealer has not given notice of the capital deficiency under this Rule 17a-11, the broker or dealer, even if it does not agree that it is, or has been, in violation of Rule 15c3-

1, shall give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement." *Id.* The failure to notify the SEC and FINRA of a net capital deficiency as required by Exchange Act Rule 17a-11 is a violation of FINRA Rule 2010. *Litwin Sec., Inc.*, Exchange Act Release No. 38673, 1997 WL 274926, at *4 and n.2 (May 27, 1997); *Fox & Co. Inv., Inc.*, Exchange Act Release No. 52697, 2005 WL 2848468 n.29 (Oct. 28, 2005) ("We have held previously that a violation of a Commission rule is a violation of NASD Conduct Rule 2110.") (citations omitted). Intent is irrelevant. *Litwin Sec., Inc.*, 1997 WL 274926, at *4.

Geary Securities attempted to conceal its May 2009 net capital deficiency by filing an inaccurate FOCUS Report and not filing a Rule 17a-11 Notice. Geary Securities filed an inaccurate FOCUS Report for May 2009. *See supra* ¶¶ 100, 102. The inaccurate information contained in such report was particularly material because it masked the fact that Geary Securities' net capital was millions of dollars below the required minimum. By filing an inaccurate FOCUS Report for May 2009 in violation of Exchange Act Rule 17a-5 and FINRA Rule 2010, Geary Securities failed to observe high standards of commercial honor and just and equitable principles of trade in violation of Oklahoma Rule 660:11-5-42(b)(1) and, therefore, engaged in an unethical practice in the securities business.

Geary Securities did not file a Rule 17a-11 Notice when its net capital fell below the required minimum on May 28, 2009, through June 1, 2009. *See supra* ¶ 103. Even after FINRA told Geary Securities in November 2009 that it was undercapitalized at the end of May 2009 and to file a notice reporting the deficiency, Geary Securities did not file a Rule 17a-11 Notice. *See supra* ¶¶ 105-106. Geary Securities cannot excuse its failure to file a Rule 17a-11 Notice on the grounds that it did not believe that it had any net capital deficiencies. *Harrison Sec., Inc.*, Release No. 256, 2004 WL 2109230, at *35 (ALJ Sept. 21, 2004) (initial decision) (affirmed by

Harrison Sec., Inc., Exchange Act Release No. 50614, 2004 WL 2434257 (Oct. 29, 2004)). After the FINRA representative informed Geary Securities that a net capital violation had occurred, Geary Securities was required to give immediate notice of the claimed deficiencies even if it did not agree. *Id.* Geary Securities could have explained its disagreement in the notice. *Id.* However, Geary Securities was not free to refuse to send the notice. *Id.* By not filing a Rule 17a-11 Notice, Geary Securities failed to observe high standards of commercial honor and just and equitable principles of trade in violation of Oklahoma Rule 660:11-5-42(b)(1) and, therefore, engaged in an unethical practice in the securities business.

After FINRA told Geary Securities to file a Rule 17a-11 Notice in November 2009, Geary Securities attempted to cure its May 2009 net capital deficiency by cancelling the June 1st purchases of the Frontier PL-CMOs by McKean and Eagle Sky and rebilling the trades with trade and settlement dates of May 28, 2009, rather than the original trade and settlement dates of June 1, 2009. *See supra* ¶¶ 107-108. On the same day as the cancel and rebill to reflect a trade and settlement date of May 28, 2009, the settlement date was changed back to June 1, 2009, by Geary Securities' clearing firm. *See supra* ¶ 107. Therefore, even if changing the trade and settlement dates some months later could have cured the May 2009 net capital deficiency, it did not because the settlement date ultimately remained June 1, 2009.

Geary Securities' attempt to conceal its net capital violation by filing an inaccurate FOCUS Report and its failure to file a Rule 17a-11 Notice does not conform to high standards of commercial honor and just and equitable principles of trade and is a violation of Oklahoma Rule 660:11-5-42(b)(1).

ii. Geary Securities failed to timely file Rule 17a-11 Notices for January and February 2010 net capital violations.

As explained above in the immediately preceding subsection, a Rule 17a-11 Notice is required to be filed by a broker-dealer on the same day of the net capital deficiency. 17 C.F.R. § 240.17a-11(b). When Geary Securities was undercapitalized from January 31, 2010 through February 25, 2010, Geary Securities filed only three Rule 17a-11 Notices disclosing that its net capital was below the minimum amount required. *See supra* ¶¶ 113-115. Although Geary Securities' capital was below the required minimum on each day during the time period January 31, 2010, through February 25, 2010, Geary Securities timed the filing of their three Rule 17a-11 Notices so that each notice was filed for a prior period of time. With the filing of each Rule 17a-11 Notice, Geary Securities created the appearance that it had been undercapitalized during the prior period of time specified but was currently in compliance.

To clarify, on February 10, 2010, Geary Securities filed the first of the three Rule 17a-11 Notices disclosing that its net capital was below the minimum amount required for January 31, 2010 through February 4, 2010. *See supra* ¶ 113. Not until February 12, 2010, did Geary Securities file a Rule 17a-11 Notice disclosing a net capital violation for February 5, 2010, through February 10, 2010. *See supra* ¶ 114. Not until February 26, 2010, did Geary Securities file a Rule 17a-11 Notice disclosing a net capital violation for February 11, 2010, through February 25, 2010. *See supra* ¶ 115. Despite the timing of its Rule 17a-11 Notices, Geary Securities first discovered that it was undercapitalized on February 10, 2010, and calculated its net capital position on a daily basis each day thereafter. *See supra* ¶¶ 111-112. Geary Securities intentionally filed each Rule 17a-11 Notice late and intentionally waited until it was back in compliance with the Net Capital Rule before it filed its final Rule 17a-11 Notice on February 26, 2010. Geary Securities' timing of the Rule 17a-11 Notices was designed to conceal the fact that

Geary Securities was knowingly operating its securities business while undercapitalized. Regardless of intent, Geary Securities' failure to timely file the Rule 17a-11 Notices constitutes an unethical practice in the securities business in violation of Oklahoma Rule 660:11-5-42(b)(1) because it does not conform to the high standards of commercial honor and just and equitable principles of trade.

iii. Geary Securities and Geary sold PL-CMOs with an undisclosed, excessive mark-up.

A markup of 5% on a bond sale is "acceptable in only the most exceptional cases." *Andrew P. Gonchar*, Exchange Act Release No. 60506, 2009 WL 2488067, at *9 (Aug. 14, 2009) (quoting *Inv. Planning, Inc.*, Exchange Act Release No. 32687, 51 S.E.C. 592, 594, 1993 WL 289728 (July 28, 1993)). Any markup in excess of 5% is generally considered to be excessive. *See* NASD IM-2440-1; *Inv. Planning, Inc.*, 1993 WL 289728, at *2. The charging of excessive markups is a breach of FINRA Rule 2010 which requires a member to "observe high standards of commercial honor and just and equitable principles of trade" and NASD Rule 2440 which is still in effect and requires a member firm to sell at a fair price any securities it sells to a customer for its own account. *Gonchar*, 2009 WL 2488067, at *9; *See* FINRA Rule 2010 (amended by SR-FINRA-2008-028 eff. Dec. 15, 2008); NASD Rule 2440 (amended by SR-NASD-2006-005 eff. June 13, 2008); IM-2440-1 (amended by SR-NASD-2006-005 eff. June 13, 2008). "[T]he charging of excessive markups [i]s a serious breach of [a broker-dealer's] obligation to deal fairly with its customers." *Gonchar*, 2009 WL 2488067, at *13 (quoting *Nicholas A. Codispoti*, 48 S.E.C. 842, 845 (1987)).

All relevant factors are to be taken into consideration when determining if a price is "fair." NASD Rule 2440. Such factors include, but are not limited to, the type of security involved, the availability of the security in the market, the price of the security, and the amount

of money involved in a transaction. *Id.* A broker-dealer has an “implied duty to disclose excessive markups.” *Starr ex rel. Estate of Sampson v. Georgeson Shareholder, Inc.*, 412 F.3d 103, 110-11 (2d Cir. 2005)

On Saturday, May 30, 2009, McKean told his friends and Geary that McKean would purchase \$10,000,000 at a price of 40 and any remaining portion of the BOAMS that his friends did not purchase. *See supra* ¶ 118. McKean confirmed that representation to Geary on Sunday, May 31, 2009. *See supra* ¶ 120. With that knowledge, Geary Securities purchased the BOAMS at a price of 37 on Monday, June 1, 2009. *See supra* ¶ 121. On the same date, Geary Securities sold the BOAMS in a principal capacity to nine customer accounts at a price of 40, for a markup of 8.1 percent. *See supra* ¶ 122. The trade confirmations for sale of the BOAMS did not disclose the 8.1 percent mark-up charged by Geary Securities. *See supra* ¶ 123. Yet, Geary bragged to Geary Securities’ FINOP that the transaction provided, “[a] nice \$412,440 start for June’s Net Income.” *See supra* ¶ 119.

The BOAMS transaction did not involve an “exceptional” case that justified a mark-up exceeding 5%. Geary Securities’ risk was minimal because it had buyers committed to buy the BOAMS at the time Geary Securities purchased the bonds. Geary’s basis for the mark-up was merely the fact that the buyers of the BOAMS were willing to purchase the bonds at a price of 40. *See supra* ¶ 122. The 8.1% markup was clearly excessive and unethical under Rule 660:2-5-42 in that it violated FINRA Rule 2010 and NASD Rule 2440 and did not conform to the requirement of observing high standards of commercial honor and just and equitable principles of trade.

iv. Geary Securities and Geary caused the issuance of a false press release.

On or around July 28, 2009, Geary directed the issuance of a press release to generate interest in the marketplace for CEMP and to try to find a buyer for the CEMP A-1 and A-2 Notes. *See supra* ¶¶ 74, 77. The press release was on Capital West Securities, Inc.'s letterhead and implied that the CEMP 2009-1 Offering had been completed. *See supra* ¶ 74. The press release represented that CEMP 2009-1 was comprised of 28 different mortgage-based securities from six different sources and totaled \$203 million original face with \$164 million current face. *See supra* ¶ 74. The press release further referenced a rating of "AAA" for the newly created security. *See supra* ¶ 75.

At the time the press release was issued, the CEMP 2009-1 Offering had not closed and had not been rated. *See supra* ¶¶ 64, 66, 76. At the time Geary directed the issuance of the press release, he knew it was false. *See supra* ¶ 77. In causing the issuance of the false press release, Geary Securities and Geary failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Oklahoma Rule 660:11-5-42(b)(1).

For the foregoing reasons, a summary decision that Geary Securities and Geary engaged in unethical practices in their securities business in violation of Oklahoma Rule 660:11-5-42 by failing to observe high standards of commercial honor and just and equitable principles in the conduct of their business should be granted.

B. Geary Securities, through Geary, made offers to buy securities at stated prices and on stated dates without being prepared to purchase the securities at the stated prices on the stated dates.

Under Oklahoma Rule 660:11-5-42(b)(6), it is an unethical practice in the securities business for a broker-dealer or an agent of a broker-dealer to "make an offer to buy from . . . any

person any security at a stated price unless such broker-dealer or agent is prepared to purchase . . .
. . . at such price and under such conditions as are stated at the time of such offer to buy”

In July 2009, Geary caused Geary Securities to bid on, or otherwise offer to purchase, PL-CMOs owned by McKean, Eagle Sky, Washita State Bank, Yukon National Bank, and Bank of Union at specific prices for settlement on July 30, 2009. *See supra* ¶¶ 28-34. At the time Geary Securities offered to purchase such PL-CMOs, Geary Securities was not prepared to purchase the PL-CMOs under such conditions as were stated at the time of such offer to buy. *See supra* ¶¶ 29, 34.

Geary also caused Geary Securities to offer to purchase a PL-CMO from Mesirow at a specific price on a specific date for the purpose of resecuritizing it in connection with the second CEMP offering. *See supra* ¶ 80. On the settlement date agreed upon by Geary Securities and Mesirow, Geary Securities did not accept delivery of the PL-CMO for settlement because it could not pay for the security. *See supra* ¶ 81. Mesirow extended settlement two or three times before it finally cancelled the trade. *See supra* ¶¶ 82, 84.

For the foregoing reasons, a summary decision that Geary Securities and Geary engaged in unethical practices in their securities business in violation of Oklahoma Rule 660:11-5-42 by making an offer to buy a security at a stated price without being prepared to purchase at such price and under such conditions as are stated at the time of such offer to buy should be granted.

V. THE DEPARTMENT SHOULD BE GRANTED A SUMMARY DECISION FINDING THAT RESPONDENT CEMP LLC TRANSACTED BUSINESS IN THIS STATE AS AN UNREGISTERED BROKER-DEALER, IN VIOLATION OF SECTION 1-401 OF THE OUSA.

Section 1-401 of the OUSA makes it unlawful for a person to transact business in Oklahoma as a broker-dealer, unless the person is registered under the OUSA as a broker-dealer

or is exempt from registration. Okla. Stat. tit. 71, § 1-401 (OSCN 2011). The term “broker-dealer” means “a person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account.” *Id.* § 1-102(4). The term does not include an agent, an issuer, certain banks, or persons excluded by a rule adopted or order issued under the OUSA. *Id.* A person claiming an exemption, exception, preemption, or exclusion from registration under the OUSA has the burden to prove the applicability of the exemption, exception, preemption, or exclusion. *Id.* § 1-503; *see Musson v. Rice*, 739 P.2d 1004, 1005 (Okla. 1987).

“The phrase ‘engaged in the business’ connotes a certain regularity of purchasing and selling securities.” *Musson*, 739 P.2d at 1005 (citing *Ufitec v. Carter*, 571 P.2d 990 (Cal. 1977)). The nexus between regularity and acts by a potential broker-dealer revolve around whether performance of the acts “occupy the time, attention, and labor of persons for the purpose of livelihood, profit, or pleasure.” *Id.* While a single act of purchasing or selling securities may not be enough to establish the “engaged in the business” requirement, the intent to participate in future transactions of a similar nature should be considered. *See id.* at 1006 (“The doing of a *single act* pertaining to one particular business will not be considered carrying on, transacting, or doing business as contemplated in the statutes.” (emphasis in original)); *Heligman v. Otto*, 411 N.W.2d 844, 847 (Mich. Ct. App. 1987) (The Court considered the defendant’s lack of intention to participate in similar transactions in the future in its determination that the defendant was not engaged in the business of effecting transactions in securities or commodity contracts); *Inland Realty Inv., Inc.*, SEC No-Action Letter, 1973 WL 6959 (May 20, 1973) (A company’s potential involvement in future offerings of multiple issuers was a factor in the determination that the company was required to register as a broker or dealer). “The unregistered broker who sets up

shop and is busted when he makes his first sale to an undercover securities investigator should not be able to escape because it was his first transaction.” Joseph C. Long, *Blue Sky Law* vol. 12A, § 10:24 (West 2010).

CEMP LLC was created for the purpose of buying and selling securities, among other things. *See supra* ¶ 8. CEMP LLC is the “depositor” of CEMP 2009-1 which issued the CEMP A-1 and A-2 Notes. *See supra* ¶¶ 6, 9. In its role as the “depositor” of CEMP 2009-1, CEMP LLC purchased securities in the nature of PL-CMOs from Yukon National Bank and Bank of Union for its own account pursuant to certain Securities Purchase Agreements. *See supra* ¶¶ 36, 66. CEMP LLC then sold the PL-CMOs to CEMP 2009-1. *See supra* ¶ 37. After CEMP 2009-1 issued the CEMP A-1 and A-2 Notes, CEMP LLC sold the CEMP A-1 and A-2 Notes to Geary Securities for purchase by Bank of Union and Headington. *See supra* ¶¶ 57-58, 60-61. CEMP LLC realized a net profit of approximately \$800,000 from the CEMP 2009-1 Offering. *See supra* ¶ 72. Geary intended for CEMP LLC to participate in future transactions of a similar nature. *See supra* ¶¶ 8, 79. Acting upon such intent, CEMP LLC, through Geary, attempted to purchase additional PL-CMOs in connection with a second CEMP offering. *See supra* ¶ 80. It cannot be disputed that CEMP LLC was engaged in the business of effecting transactions in securities.

CEMP LLC transacted business in Oklahoma as an unregistered broker-dealer in violation of Section 1-401 of the OUSA. *See supra* ¶ 7. A summary decision on this substantive issue should be granted.

VI. RESPONDENTS GEARY SECURITIES AND GEARY SHOULD BE DISCIPLINED UNDER SECTION 1-411(A)-(C) OF THE OUSA BECAUSE THEIR VIOLATIONS OF THE OUSA AND OKLAHOMA RULES WERE WILLFUL (AND WITHIN THE PREVIOUS TEN YEARS).

Respondents Geary Securities and Geary should be disciplined under Section 1-411 of the OUSA for their violations of the OUSA and Oklahoma Rules. Section 1-411(D) of the OUSA states in pertinent part:

A person may be disciplined under subsections A through C of this section if the person:

* * *

2. Has willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or ordered issued under this act or the predecessor act within the previous ten (10) years[.]

Okla. Stat. tit. 71, § 1-411(D) (OSCN 2011).

The term “willfully” means “that a person acted intentionally in the sense that the person was aware of what he or she was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.” Unif. Securities Act 2002, § 508, Official Comments, n. 2; *see id.* § 412, Official Comments, n. 6 (“The term ‘willfully’ in Section 412(d)(2) and (11)(A) is discussed in Comment 2 to Section 508.”).

As described above, Respondents Geary and Geary Securities were aware of the activities that constitute the violations of the OUSA and Oklahoma Rules set forth above. As such, the violations were willful. Because the violations also occurred within the previous 10 years, Respondents Geary and Geary Securities should be disciplined under subsections A through C of Section 1-411 of the OUSA.

VII. RESPONDENT GEARY SHOULD BE DISCIPLINED UNDER SECTION 1-411(A)-(C) OF THE OUSA FOR GEARY SECURITIES' VIOLATIONS OF THE OUSA AND OKLAHOMA RULES IN ADDITION TO HIS OWN VIOLATIONS OF THE OUSA AND OKLAHOMA RULES.

Respondent Geary should be disciplined for Geary Securities' violations of the OUSA and Oklahoma Rules pursuant to Section 1-411(H) of the OUSA which states in pertinent part:

A person who controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the Administrator under subsections A through C of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is the basis for discipline under this section.

Okla. Stat. tit. 71, § 1-411(H) (OSCN 2011). Section 1-411(H) conforms to the industry principle that officers of broker-dealers “bear a heavy responsibility in ensuring that the firm complies with all applicable rules and regulations . . . [including] the net capital requirements.” *William H. Gerhauser*, Exchange Act Release No. 40639, 1998 WL 767091, at *6 (Nov. 4, 1998).

As an indirect owner, Chief Executive Officer, and President of Geary Securities, Respondent Geary, directly or indirectly, controlled Geary Securities at all times material hereto. As described above, Geary knew, or in the exercise of reasonable care could have known, of the existence of the conduct that is the basis for discipline under Section 1-411 of the OUSA. Respondent Geary should be disciplined under Section 1-411 of the OUSA for Geary Securities' violations of the OUSA and Oklahoma Rules to the same extent as Geary Securities.

VIII. AN ORDER SHOULD BE ISSUED PURSUANT TO SECTION 1-604 OF THE OUSA AGAINST RESPONDENT CEMP LLC BECAUSE CEMP LLC HAS ENGAGED IN AN ACT, PRACTICE, OR COURSE OF BUSINESS CONSTITUING A VIOLATION OF THE OUSA.

An order should be issued under Section 1-604 of the OUSA against Respondent CEMP LLC. Section 1-604 authorizes the Administrator to issue certain orders “[i]f the Administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation” of the OUSA or Oklahoma Rules. Okla. Stat. tit. 71, § 1-604 (OSCN 2011). Unlike Section 1-411 of the OUSA, Section 1-604 does not require that the violation be willful. *Id.* Cease and desist orders are among the orders that may be issued under Section 1-604. *Id.*

As set forth above, CEMP LLC has engaged in an act, practice, or course of business constituting a violation of Section 1-401 of the OUSA. An order to cease and desist should be issued against CEMP LLC under Section 1-604 of the OUSA.

CONCLUSION

A partial summary decision determining that Respondents Geary Securities and Geary violated Section 1-501 of the OUSA and Oklahoma Rules 660:11-5-17 and 660:11-5-42 and Respondent CEMP LLC violated Section 1-401 of the OUSA should be granted. There is no genuine issue as to the material facts relating to the substantive matters set forth above. The Department is entitled to prevail on those issues as a matter of law. An order to cease and desist should be issued against CEMP LLC pursuant to Section 1-604 of the OUSA. A hearing and/or briefing deadline should be set on the issue of what sanctions should be imposed against Geary Securities and Geary pursuant to Section 1-411 of the OUSA.

Respectfully,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing motion was mailed and email this 23rd day of December, 2011, with postage prepaid, to:

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The undersigned further certifies that a true and correct copy of the above and foregoing motion was emailed and hand-delivered this 23rd day of December, 2011, with postage prepaid, to:

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