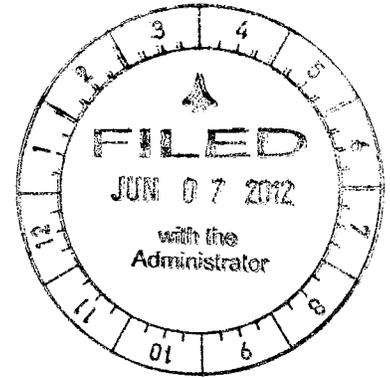


STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



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 OBJECTION TO ISSUANCE OF THE REQUESTED DEPOSITION  
SUBPOENA DUCES TECUM TO CAROL GRUIS**

The Oklahoma Department of Securities ("Department") respectfully objects to the issuance of the subpoena to Carol Gruis as requested by Respondent Norman Frager ("Frager") on June 7, 2012 ("Requested Subpoena").

The Requested Subpoena would require Carol Gruis to appear for deposition on Monday, June 11, 2012, at 9:00 a.m.<sup>1</sup> The Requested Subpoena states that the deposition is to be "continued from day to day at the same place and between the hours of 9:00 o'clock a.m. and 5:00 o'clock p.m., until completed." The Oklahoma Discovery Code applies to depositions taken pursuant to 660:2-9-3(b)(2) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities ("Rules"). See Okla. Stat. tit. 75, § 315(A)(2) (OSCN 2012) ("The agency, or any party to a proceeding before it, may take the depositions of witnesses, within or without the state, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record.") Under the Oklahoma Discovery Code, a deposition shall

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<sup>1</sup> Even after the June 1<sup>st</sup> hearing in which the Hearing Officer made it very clear that Ms. Gruis' deposition was to be taken on or before the Monday, June 11<sup>th</sup> discovery deadline, Respondent Frager's counsel did not attempt to schedule Ms. Gruis' deposition until Thursday, June 7<sup>th</sup>.

not last more than six hours unless agreed to by the parties or ordered by the court. Okla. Stat. tit. 12, § 3230(A)(3) (West 2012). A court may extend the time limit “if the court finds that the witness or counsel has been obstructive or uncooperative or if the court finds it to be in the interest of justice.” *Id.*

Respondent Frager has not stated any reason for the deposition of Carol Gruis to last more than six hours nor does any reason for an extension of the time limit exist. On that basis the Department objects to the wording of the Requested Subpoena to the extent it permits a deposition of Carol Gruis to continue for more than the statutory time limit of six hours.

In addition to requiring Ms. Gruis to appear for a deposition, the Requested Subpoena would require her to produce documents on Monday, June 11, 2012, at 9:00 a.m. The Requested Subpoena requests, *inter alia*, “All Documents, Writings or Communications in any way related to the testimony You anticipate providing at the hearing for this matter.” Although the phrase “related to” is not defined in the Requested Subpoena, the phrase “Relating to” is defined as follows:

A Document or Writing “Regarding” or “Relating to” a given subject means any Document or Writing constituting or comprising that subject, and any Document or Writing identifying, referring to, dealing with, commenting upon, describing, summarizing, analyzing, explaining, detailing, outlining, defining, interpreting or pertaining to that subject.

In light of the definition of “Relating to,” the above-referenced request is vague and ambiguous and subject to multiple interpretations. Based on the description of the expected testimony of Ms. Gruis on the *Department’s Second Amended Final List of Witnesses*, filed on March 30, 2012, the referenced request could be interpreted to require, among many other things, the production of every document obtained by the

Department from Respondents. If it is interpreted in that manner, the request is unreasonable and unduly burdensome given the June 11<sup>th</sup> deadline for production.<sup>2</sup>

Ms. Gruis has been identified as a witness for the Department since the filing of the Department's preliminary witness list in December of 2010. Unreasonable expectations and burdens should not be imposed on the Department as a result of Respondent Frager's failure to timely conduct discovery. The Department, and its representatives, should be provided the courtesy of more than one or two business days to comply with a subpoena duces tecum or a written request for production of documents.

For the foregoing reasons, the Department requests that the Hearing Officer deny Respondent Frager's request for issuance of the Requested Subpoena.

Respectfully,



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*Attorneys for Department*

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<sup>2</sup> Any documents relating to this matter that are desired from the Department or representatives thereof, should have been requested pursuant to 660:2-9-3(b)(2) of the Rules which provides a party fifteen (15) days to comply with a written request for production.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing objection was emailed and mailed, with postage prepaid, this 7th day of June, 2012, to:

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Terra Bonnell