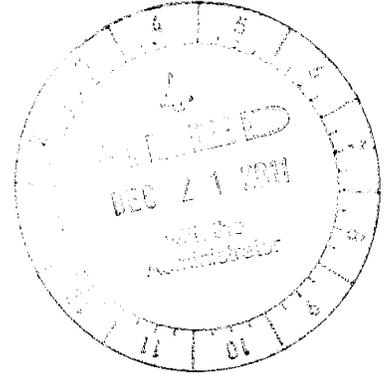


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

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

Respondents.

ODS File No. 09-141

**RESPONDENTS' MOTION
TO BIFURCATE AND STAY NET CAPITAL CLAIMS**

Respondents Keith D. Geary, Geary Securities, Inc. (formerly known as Capital West Securities, Inc.), CEMP, LLC (the "Geary Respondents") respectfully request that the Hearing Officer enter an Order as follows: (A) bifurcating the two categories of claims and issues contained in the Department's Recommendation for purposes of conducting hearings on the merits on such issues and claims (the "Net Capital Claims" and the "CEMP Claims"); and (B) staying further proceedings on the Net Capital Claims pending issuance of a final decision in a FINRA enforcement proceeding that involves and addresses the identical Net Capital Claims. The Geary Respondents respectfully show the Hearing Officer the following in support of their request:

1. This enforcement action was initiated in September 2010. As has been previously stated on multiple occasions, the Department's allegations against the Respondents fall into two separate and distinct categories: (1) the "Net Capital Claims" asserted against all Respondents (except CEMP, LLC) based on two alleged violations of the SEC's net capital rule in May 2009 and February 2010; and (2) the "CEMP Claims" asserted only against the Geary Respondents based on a 2009 resecuritization project that resulted in the sale of two securities to two investors (Bank of Union and Timothy Headington).
2. This enforcement action has been plagued by numerous delays due to discovery disputes attributable to the Department, Bank of Union and Mr. Headington. These ongoing discovery disputes relate only to the CEMP Claims, but continue to be an obstacle to scheduling and conducting a hearing on the merits in this enforcement action as a whole.¹
3. FINRA is pursuing an enforcement action against Respondent Frager on the identical Net Capital Claims the Department is pursuing in this action. The Department and Frager have debated the issue of preemption in the context of the Department's pending Motion for Summary Decision and Frager's Response. The relief requested by this Motion does not require the Hearing Officer to decide

¹ Several Motions are currently pending concerning the Geary Respondents' requests for preclusion orders related to the CEMP Claims. *See, Geary Respondents' Motion for Preclusion Order and Order Striking Department Witnesses (Bank of Union Directors) and Exhibit (Bank of Union Directors' Affidavit)* (filed November 9, 2011); *Geary Respondents' Motion for Preclusion Order and Order Striking Department's Exhibit 26 (Purported Headington Guaranty)* (filed November 14, 2011). In addition, an unresolved discovery dispute – also related to the CEMP Claims – is awaiting decision. *See, E-mail dated October 31, 2011 from counsel for the Geary Respondents to the Hearing Officer and counsel* (following up on two unresolved discovery issues from the May 6, 2011 discovery hearing) (copy enclosed as Exhibit 1 for reference).

the preemption issue. Rather, this Motion is based, in large part, on the principles of judicial economy and the avoidance of duplication of time, effort, expense, and the risk of conflicting decisions on the same issues.²

4. Granting the relief requested by this Motion is consistent with the analogous principle of judicial economy. Regardless of the Hearing Officer's ultimate decision on the preemption issue, the practical fact remains that two different decision-makers – a FINRA Panel and this Hearing Officer – will be called on to examine and evaluate the identical facts, decide whether a net capital violation occurred under the identical rule, and, if so, what discipline is appropriate under the identical circumstances. Consequently, a significant risk exists of conflicting decisions on the same facts and under the same rule. This risk can and should be avoided by the Hearing Officer's exercise of sound discretion.
5. Granting the relief requested by this Motion is consistent with the convenience of the parties and economy of time and expense. All of the Respondents are faced with limited resources in terms of the expense that has been incurred and continues to be incurred in the course of this protracted enforcement action. For example, Mr. Frager – Geary Securities' former FinOp – lives in the St. Louis area and no longer has a role or relationship with Geary Securities. The Department has made no allegations or claims against Mr. Frager in the context of the CEMP Claims. Nevertheless, Mr. Frager will be required to participate, with

² Oklahoma law specifically recognizes that matters may be separated and issues bifurcated at trial in order to affect judicial economy or to prevent prejudice. Title 12 Okla. Stat. § 2108 specifically allows for separate proceedings for “convenience or to avoid prejudice or when separate trials will be conducive to expedition and economy”

his counsel, in the eventual hearing on the merits on all issues unless bifurcation is granted. Likewise, granting the relief requested by this Motion will spare Mr. Frager the cost associated with two separate hearings on the merits of the Net Capital Claims, as well as spare the Geary Respondents the expense associated with a hearing on the Net Capital Claims in this action.

6. In an effort to move this enforcement action along in an expeditious and logical manner, the Geary Respondents respectfully request the Hearing Officer take the following action:

- Grant this Motion, bifurcating and staying the Net Capital Claims pending issuance of a final decision in the FINRA net capital proceeding³;
- Schedule a hearing and issue rulings on the pending motions that relate to the CEMP Claims⁴; and
- After ruling on the pending motions related to the CEMP Claims, schedule a conference with counsel to create and enter a revised scheduling order to control the future course of the CEMP Claims, including the hearing on the merits.⁵

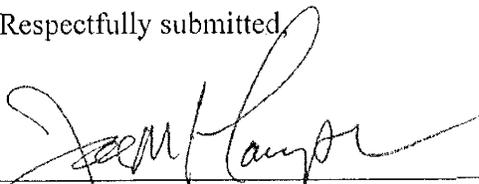
³ If the Hearing Officer elects to exercise his discretion and bifurcate and stay the Net Capital Claims, the Department's pending Motion for Summary Decision – which relates solely to the Net Capital Claims – can also be stayed until the FINRA decision is rendered.

⁴ The pending motions related to the CEMP Claims consist of the following: *Geary Respondents' Motion for Preclusion Order and Order Striking Department Witnesses (Bank of Union Directors) and Exhibit (Bank of Union Directors' Affidavit)* (filed November 9, 2011); *Geary Respondents' Motion for Preclusion Order and Order Striking Department's Exhibit 26 (Purported Headington Guaranty)* (filed November 14, 2011). See also, *E-mail dated October 31, 2011 from counsel for the Geary Respondents to the Hearing Officer and counsel* (following up on two unresolved discovery issues from the May 6, 2011 discovery hearing) (copy enclosed as Exhibit 1 for reference).

⁵ Counsel for the Geary Respondents anticipates that he and counsel for the Department will be able to create an agreed scheduling order for the CEMP Claims, taking into consideration discovery that remains to be conducted and completed prior to the hearing on the merits.

Based on the foregoing discussion, the Geary Respondents respectfully request that the Hearing Officer issue an Order granting this Motion as follows: (A) bifurcating the Net Capital Claims and CEMP Claims for purposes of conducting hearings on the merits; and (B) staying further proceedings on the Net Capital Claims pending issuance of a final decision in a FINRA enforcement proceeding that involves and addresses the identical Net Capital Claims.

Respectfully submitted,



Joe M. Hampton, OBA No. 11851

Amy J. Pierce, OBA No. 17980

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**ATTORNEYS FOR RESPONDENTS
GEARY SECURITIES, INC., KEITH D.
GEARY, AND CEMP, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2011, a copy of the foregoing document was served on the following by e-mail:

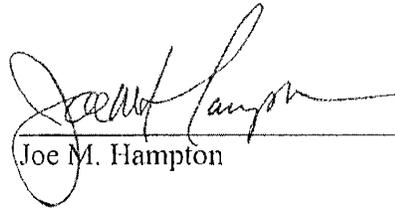
Mr. Bruce R. Kohl
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Brenda London, Oklahoma Department of Securities
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Joe M. Hampton

EXHIBIT

1

Joe M. Hampton

Subject: FW: In the Matter of Geary Securities, Inc., et al, ODS Case No. 09-141

From: Joe M. Hampton
Sent: Monday, October 31, 2011 9:23 AM
To: Bruce Kohl (bruce.kohl09@gmail.com)
Cc: 'Terra Bonnell' (tbonnell@securities.ok.gov); 'Melanie Hall' (mhall@securities.ok.gov); 'Donald A. Pape' (don@dapape.com); 'Susan Bryant' (sbryant@bryantlawgroup.com); Ainslie Stanford
Subject: In the Matter of Geary Securities, Inc., et al, ODS Case No. 09-141

Dear Mr. Kohl:

Counsel for the parties are in receipt of your Ruling on Discovery Objections dated October 27, 2011 ("Discovery Ruling"). We appreciate your time and effort in preparing and sending the Discovery Ruling to us.

Prior to sending this e-mail to you I have provided it in draft form to counsel for all parties, have incorporated their changes, and have their consent to send to you.

The Geary Respondents would like to respectfully bring to your attention two additional discovery issues that were included in the previously-filed discovery motions and discussed in the course of the hearing conducted on May 6, 2011. These two issues were not included in the scope of the *in camera* review you conducted prior to issuance of the Discovery Ruling; rather, they were issues you indicated you would defer ruling on for reasons you stated in the course of the May 6th hearing.

1. The first unresolved discovery issue concerns the Department's objection to producing draft affidavits that were attachments to e-mails between counsel for the Department and counsel for Bank of Union. The draft affidavits were prepared by counsel for the Department for Directors of the Bank of Union. In the course of the May 6th hearing you stated you would defer ruling on such issue until you had an opportunity to review the cases cited in the parties' briefs. You also indicated you would defer ruling until the depositions of the Bank of Union Directors were completed. In terms of the Directors' depositions, those have not occurred and counsel for Bank of Union has now advised counsel for the Geary Respondents that the Directors will not be produced for depositions. The Geary Respondents respectfully request that you proceed to address and rule on this pending discovery issue (production of the draft affidavits withheld by the Department).
2. The second unresolved discovery issue concerns the Department's objection to production of contemporaneous notes created by Department's counsel in the course of their interviews with representatives of the Bank of Union. In the course of the May 6th hearing you indicated you would defer ruling on such issue until you had an opportunity to review the case law cited by the parties. The Geary Respondents respectfully request that you proceed to address and rule on this pending discovery issue (production of the interview notes withheld by the Department).

Thank you for your attention to this request.

Joe Hampton, Counsel for the Geary Respondents