

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



In the Matter of: Geary Securities, Inc., fka Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

ODS File No. 09-141

**REPLY OF RESPONDENT, NORMAN FRAGER, IN SUPPORT OF HIS
CROSS MOTION FOR SUMMARY DECISION**

COMES NOW the Respondent, Norman Frager (“Frager”), and respectfully submits his Reply in support of his Cross Motion for Summary Decision. In support hereof, Frager presents the following for consideration by the Hearing Officer.

INTRODUCTION

In his Cross Motion for Summary Decision (the “Cross Motion”), Frager asked for summary decision in his favor on the Oklahoma Department of Securities’ (the “Department”) claims of net capital violations during February 2010. Specifically, Frager demonstrated that Geary Securities, Inc. (“Geary Securities”), was subject to a net capital requirement of \$100,000 by virtue of SEC Rule 15(a)(2)(ii) which sets a \$100,000 net capital requirement for any broker/dealer that is exempt from SEC Rule 15c3-3 (the “Customer Protection Rule”) by virtue of subsection (k)(2)(i) thereof. Furthermore, Frager showed that Geary Securities never dropped below \$100,000 in net capital during the relevant period.

In response, the Department makes two principal arguments (1) that Frager has not shown that Geary met all of the requirements for exemption under 15c3-3(k)(2)(i) and (2) that on its FOCUS report for February 2010, Geary Securities stated that it was exempt from the Customer Protection Rule by virtue of subsection (k)(2)(ii) not (k)(2)(i). Based upon the following, including

the Affidavit of Norman Frager, attached hereto as Exhibit "A," Geary Securities clearly met all of the prerequisites for exemption under (k)(2)(i). Furthermore, the fact that Geary Securities' FOCUS Report for February 2010 may have listed (k)(2)(ii) as a basis for exemption from the Consumer Protection Rule has no bearing on whether Geary Securities also qualified for exemption under (k)(2)(i).

ADDITIONAL UNDISPUTED FACTS

1. During the month of February 2010, Geary Securities did not carry any margin accounts. *See* Exhibit "A" at ¶ 3.

2. During the month of February 2010, Geary Securities promptly transmitted all customer funds and securities it received to its carrying firm, Pershing LLC ("Pershing"). Such transmittal was made either by noon of the next business day after receipt, or by noon of the next business day following the settlement date as required by Rule 15c3-1(c)(9) and 15c3-1(c)(10). *See* Exhibit "A" at ¶ 4.

3. During the month of February 2010, Geary Securities did not otherwise hold funds or securities for customers. *See* Exhibit "A" at ¶ 5.

4. During the month of February 2010, Geary Securities did not otherwise owe money or securities to customers. *See* Exhibit "A" at ¶ 6.

5. Geary Securities did maintain a bank account designated as "Special Account for the Exclusive Benefit of Customers of Geary Securities;" however, as is not uncommon, the account was not needed and therefore, not used,¹ *See* Exhibit "A" at ¶ 7.

6. During the month of February 2010, Geary Securities qualified for exemption from the Customer Protection Rule under both subsection (k)(2)(i) and (k)(2)(ii); however, Geary Securities had agreed in its membership agreement with FINRA to operate under

¹ See SEC no action letter, *Hill-Grow Company*, August 9, 1983.

subsection (k)(2)(ii). Accordingly, the February 2010 FOCUS Report indicated that Geary Securities was exempt under (k)(2)(ii). *See* Exhibit "A" at ¶ 9. Nothing precludes a broker-dealer from relying on alternative provisions of 15c3-1 and 15c3-3 and it is in fact recommended by the SEC where applicable.²

ARGUMENT AND AUTHORITY

The main thrust of the Department's opposition to Frager's Cross Motion is that there was insufficient evidence submitted to show that Geary Securities met the requirements of 15c3-3(k)(2)(i). More particularly, SEC Rule 15c3-1(a)(2)(ii) provides for a \$100,000 net capital requirement of a broker/dealer exempt from the Customer Protection Rule by virtue of subsection (k)(2)(i) thereof. In turn, subsection (k)(2)(i) requires the following conditions be met: (1) the firm must carry no margin accounts; (2) the firm must promptly transmit all customer funds and deliver all securities received in connection with its activities as a broker or dealer; (3) the firm must not otherwise hold funds or securities for, or owe money or securities to, customers; and (4) the firm must effectuate all financial transactions between it and its customers through one or more bank accounts, each to be designated as a "Special Account for the Exclusive Benefit of Customers of (name of the broker or dealer)."

In the present case, it is clear that all of these requirements are met. The Affidavit of Norman Frager, a registered Financial and Operations Principals of Geary Securities, clearly establishes that, during the month of February 2010, Geary Securities did not carry any margin accounts; transmitted all customer funds and securities it received to Pershing by either noon of the next business day after receipt, or noon of the next business day after the settlement date; and did not otherwise hold funds or securities for customers, or owe money or securities to customers. *See* Exhibit "A." Furthermore, while Geary Securities maintained an account designated as a "Special

² See the SEC no action letter Hill-Grow, *supra*.

Account for the Exclusive Benefit of Customers of Geary Securities.”³ Accordingly, Frager has clearly established that Geary Securities was entitled to exemption from the Customer Protection Rule by virtue of section (k)(2)(i) and therefore subject to a \$100,000 net capital requirement.

The Department also points to a notation contained in Geary Securities’ February 2010 FOCUS Report as evidence that Geary Securities did not qualify for exemption under (k)(2)(i). In particular, this notation indicates that Geary Securities was exempt from the Customer Protection Rule by virtue of (k)(2)(ii) instead of (k)(2)(i). However, the Department fails to grasp that this notation on the FOCUS Report is not determinative of whether Geary Securities also qualified for exemption under (k)(2)(i). During February 2010, Geary Securities qualified for exemption from the Customer Protection Rule under both (k)(2)(i) and (k)(2)(ii). The notation on the FOCUS Report was not an indication that Geary Securities only qualified for exemption under (k)(2)(ii) but was simply because, pursuant to Geary Securities’ Membership Agreement with FINRA, Geary Securities had agreed to operate under (k)(2)(ii). Accordingly, the Department’s argument in this regard is wholly without merit.

CONCLUSION

Based on the evidence set forth above, it is apparent that Geary Securities qualified for exemption under 15c3-3(k)(2)(i) as well as 15c3-3(k)(2)(ii) and therefore was subject to only a \$100,000 net capital requirement during February 2010. For these reasons, Frager would respectfully ask that the Hearing Officer grant summary decision in his favor on the Department’s February 2010 Net Capital claims.

³ The Department has argued that the fact that no activity occurred in this account is evidence that Geary Securities did not transact business with its customers through this account in accordance with subsection (k)(2)(i). This is a faulty proposition. As is clear from a reading of (k)(2)(i), this subsection only requires use of this special account if the broker/dealer transacts business directly with its customers that requires funds to be held with the firm. See no action letter Hill-Grow Company, *supra*.

Respectfully Submitted,



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Attorneys for Respondent Norman Frager

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2012, a copy of the foregoing document was served on the following via electronic mail:

Hearing Officer:

Mr. Bruce R. Kohl
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Oklahoma Department of Securities

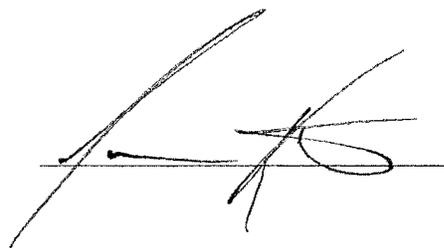
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A handwritten signature in black ink, appearing to be 'T. Bonnell', is written over a horizontal line. The signature is stylized and cursive.

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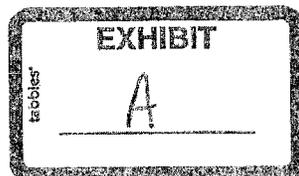
Respondents.

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AFFIDAVIT OF NORMAN FRAGER

I, Norman Frager, being of lawful age and being duly sworn, depose and state as follows:

1. From 1995 through 2011, I was registered through the Financial Industry Regulatory Authority (*FINRA*) as a Limited Principal - Financial and Operations (*FinOP*) of Geary Securities, Inc. and its predecessor, Capital West Securities, Inc. (hereinafter, collectively, *Geary Securities* or the *Firm*)
2. I have personal knowledge of the information set forth in this affidavit.
3. Geary Securities and Pershing LLC (*Pershing*) executed a clearing agreement (*Clearing Agreement*) as of May 15, 2008.
4. Geary Securities effected all transactions with customers as an introducing broker through Pershing as clearing broker under the terms of the Clearing Agreement from May 15, 2008 through and after February 2010.
5. During the month of February 2010, Geary Securities did not carry any margin accounts.
6. During the month of February 2010, Geary Securities promptly transmitted all customer funds and securities it received to its carrying firm, by noon of the next business day after receipt, or by noon of the next business day following the settlement date, whichever was later.
7. During the month of February 2010, Geary Securities did not otherwise hold funds or securities for customers.
8. During the month of February 2010, Geary Securities did not otherwise owe money or securities to customers.
9. Geary Securities maintained a bank account designated as "Special Account for the Exclusive Benefit of Customers of Geary Securities" as contemplated by Section 15c3-3(k)(2)(i); however, Geary Securities did not use the account because Geary Securities



did not ever deposit checks from customers to its account, but instead delivered checks directly to Pershing.

10. During the month of February 2010, the membership agreement between Geary Securities and FINRA referenced the exemption from the Customer Protection Rule under 15c3-3(k)(2)(ii) and therefore, Geary Securities cited that section in its February 2010 Focus Report; however, the citing of the exemption in its filing with FINRA, did not mean that Geary Securities was not also relying on other applicable exemptions under the SEC rules.



By: *Norman Frager*
Norman Frager

Subscribed and Sworn to before me this 27th day of August 2012.

By: *Gerald Wayne Eastman*
Notary Public