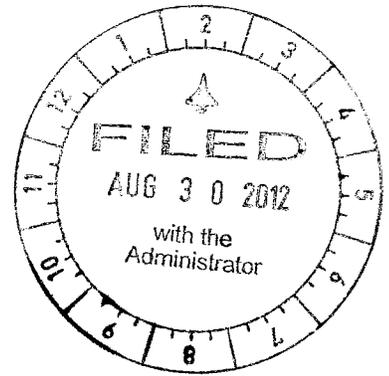


STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



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 TO AMEND ITS FINAL WITNESS LIST**

The Oklahoma Department of Securities ("Department") respectfully moves for leave of court to amend its final witness list to include Edward Banian, Vice President, Operations, Pershing, LLC.

On his amended final witness list filed on May 24, 2012, Respondent Norman Frager ("Frager") identified as a witness "An unknown representative of Pershing, LLC to be named following deposition." Upon the Department's motion to strike Frager's amended witness list and exclude the testimony of a Pershing representative, filed on May 24, 2012, the Hearing Officer suggested that the testimony of a Pershing representative would be helpful in determining the ultimate issue. In an Order dated June 1, 2012, and filed on June 7, 2012, the Hearing Officer permitted Frager until June 18, 2012, to amend his witness list to identify to the Department a representative of Pershing. On June 11, 2012, Frager amended his witness list to identify James Roth, Managing Director, Pershing LLC, to be called at hearing.

On July 26, 2012, the Department took the deposition of Mr. Roth in Oakbrook, Illinois. Mr. Roth testified that his job function is "supporting existing business and

pursuing new business opportunities for Pershing.” Roth Dep. 15:21-25. In other words, Mr. Roth is involved in sales and customer services. Roth Dep. 21:25-22:2. Mr. Roth is not involved in any operational aspect of Pershing and hasn’t been for approximately 20 years. Roth Dep. 22:3-25. Mr. Roth does not believe that Pershing ever “loaned” funds to Geary Securities to support the May 2009 transactions at issue. Roth Dep. 40:13-16. Yet, based on his role at Pershing, Mr. Roth does not know whether:

1. Pershing, in fact, paid funds in connection with the May 28, 2009, transactions at issue. Roth Dep. 44:10-18; 50:13-16; 71:21-25; 85:8-10.
2. Geary Securities owed Pershing any money as a result of the May 28, 2009, transactions. Roth Dep. 72:1-4; 85-13.
3. Pershing contacted Geary Securities regarding the negative balance in its proprietary account that resulted from the May 28, 2009, transactions. Roth Dep. 55:9-12.
4. Pershing treated Geary Securities as the owner of the securities at issue on May 31, 2009. Roth Dep. 85:25-86:12.

Further, Mr. Roth never had any conversations with Geary Securities regarding the May 28, 2009, transactions or the negative balance in its account that resulted therefrom, and he does not know how the negative balance was resolved. Roth Dep. 56:11-18.

Mr. Roth testified that someone from Pershing’s margin department, probably Edward Banian, would be able to answer those questions. Roth Dep. 44:17-18; 55:23-25; 72:5-

7. On Thursday, August 23, 2012, the Department was finally able to confirm that Mr. Banian is, in fact, the appropriate Pershing representative to answer those questions.

On its final witness lists filed on March 30, 2012, March 28, 2011, and March 25, 2011, the Department listed, "All witnesses needed to rebut the testimony of a witness or a document or exhibit identified on Respondents' final witness lists or exhibit lists or offered at hearing by Respondents." At the very least, the Department anticipates presenting Mr. Banian as a rebuttal witness and hereby gives notice thereof. The anticipated testimony of Mr. Roth that Pershing did not "loan" funds to Geary Securities in connection with the transactions at issue on May 28, 2009, will be misleading without the anticipated testimony of Mr. Banian, as to the questions set forth above.

Allowing the testimony of Mr. Banian at the hearing on the merits will not be unfairly prejudicial to Respondent Frager because Respondent Frager has endorsed the testimony of a representative of Pershing. In addition, a hearing date is not currently pending, and the Department has no reason to believe that Pershing would not cooperate with Frager in a request to interview or depose Mr. Banian. Pershing appears to be cooperating with Frager in connection with the anticipated testimony of Mr. Roth.

For the foregoing reasons, the Department respectfully requests permission to amend its final witness list to include Mr. Banian.

Respectfully,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing DEPARTMENT'S MOTION TO AMEND ITS FINAL WITNESS LIST was emailed and mailed, with postage prepaid, this 30<sup>th</sup> day of August, 2012, to:

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Terra Bonnell