

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KEITH D. GEARY  
(CRD No. 2996679),

Respondent.

Disciplinary Proceeding  
No. 2009020465801

Hearing Officer—LOM

**HEARING PANEL DECISION**

July 8, 2014

**Respondent twice permitted his Firm to operate a securities business while it lacked the required net capital. This misconduct violated FINRA Rule 2010. Respondent is separately sanctioned for the two violations. For the first violation, Respondent is fined \$10,000, suspended from association with a member firm in any capacity for 30 business days, and barred from acting in a principal or supervisory capacity with any FINRA member firm. For the second violation, Respondent is fined \$20,000, suspended from association with a member firm in any capacity for 60 calendar days, and barred from acting in a principal or supervisory capacity with any FINRA member firm. The suspensions are imposed consecutively. In addition, Respondent is ordered to pay costs.**

**Appearances**

Sarah B. Belter, Esq., Mark P. Dauer, Esq., and Mark J. Fernandez, Esq., New Orleans, Louisiana, for the Department of Enforcement.

Joe M. Hampton, Esq., A. Ainslie Stanford II, Esq., Oklahoma City, Oklahoma, for Respondent Keith D. Geary.

**I. INTRODUCTION**

Respondent, Keith D. Geary (“Respondent” or “Geary”), owned and ran a securities broker-dealer originally called Capital West Securities, which later became Geary Securities, Inc. (the “Firm”). He was chairman, chief executive officer (“CEO”), and president. For two days in May 2009, and again for 13 days across the course of three weeks in January-February 2010, the

Firm operated a securities business without having the required minimum net capital of \$250,000.

The only issue here is Geary's responsibility for the net capital violations and whether his involvement was sufficient to find him in violation of FINRA Rule 2010. FINRA Rule 2010 is an ethical rule that requires FINRA members and their associated persons to adhere to "high standards of commercial honor and just and equitable principles of trade."

The Hearing Panel concludes that Geary violated FINRA Rule 2010 in both instances. Although the two incidents involved different circumstances, in both cases Geary displayed a reckless, if not knowing, disregard for the net capital requirements. Enforcement proved, as charged, that Geary permitted the Firm to continue operating a securities business when it did not have the required minimum net capital.

In connection with the first violation, Geary caused the net capital violation. He acquired in the Firm's account almost \$77 million in collateralized mortgage obligations ("CMOs") without having a buyer for the CMOs, although the Firm did not have the money to pay for the CMOs. Geary did so despite having been warned by the Firm's financial and operations principal ("FINOP") that the Firm could not do such a transaction. The Firm, which generally made \$500,000 to \$600,000 per year, fell into a huge net capital deficit of \$11.5 million, but it continued conducting business. Although the violation was for only two days, if Geary had been permitted to implement his plan, it would have continued for weeks. Geary only remedied the deficiency at the FINOP's insistence.

In connection with the second violation, Geary knew in late January 2010 that the Firm's net capital was steadily declining and dangerously low. He was informed in early February 2010 that the Firm's net capital had fallen below the required minimum at the end of January.

Nevertheless, the Firm continued doing business without the required minimum net capital for 13 days, until February 26, 2010, while Geary struggled to find money to cover the shortfall.

During the period of the deficit, Geary was involved in discussions with the FINOP regarding what to do. He knew that the Firm should stop doing business if it did not have the minimum net capital. In fact, the Firm's written supervisory procedures ("WSPs") expressly provided that the Firm had to stop doing business if its net capital fell below the required minimum. Geary attempted to shift blame to the Firm's FINOP for the failure to stop doing business, but the decision was, ultimately, Geary's. Geary simply ignored the requirement to stop doing business.

The Hearing Panel imposes sanctions for each violation separately, as discussed below.

## **II. PROCEDURAL HISTORY**

This is a Hearing Panel decision in a disciplinary proceeding brought by the Financial Industry Regulatory Authority ("FINRA").<sup>1</sup> FINRA's Department of Enforcement ("Enforcement") originally brought the proceeding against two Respondents, Geary and Norman Frager ("Frager"). Frager was registered as a FINOP, and in that capacity he was the person responsible for preparing and filing the Firm's Financial and Operational Combined Uniform Single Reports ("FOCUS Reports"). Frager settled the charges against him, and Geary was the only remaining Respondent by the time of the hearing. The Complaint contains five causes of action, of which only the First Cause and Fourth Cause are against Geary.

The first two days of the hearing were held in Oklahoma City, Oklahoma, on November 18 and 19, 2013. The third day was conducted by video-conference on January 14, 2014. Nine

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<sup>1</sup> FINRA is a self-regulatory organization that is responsible for regulatory oversight of securities firms and associated persons who do business with the public. Members and their associated persons agree to comply with FINRA's Rules, as well as the securities laws and other applicable regulations, and with FINRA's rulings, orders, directions, and decisions. By-Laws, Art. IV, Sec. 1(a)(1); Art. V, Sec. 2(a)(1); and FINRA Rule 140. FINRA's Rules are available at [www.finra.org/Rules](http://www.finra.org/Rules). Its By-Laws are available at [www.finra.org/By-Laws](http://www.finra.org/By-Laws).

witnesses testified during the first two days;<sup>2</sup> Frager, the FINOP, testified on the third day.<sup>3</sup> The parties also introduced documentary evidence.<sup>4</sup>

### **III. FINDINGS**

#### **A. RESPONDENT AND HIS FIRM**

Prior to acquiring the Firm in 2007,<sup>5</sup> Geary had a career in banking. He graduated from college with a finance degree in 1979 and immediately went into the banking industry, first as an employee and later as a consultant. While he was a consultant, he developed an interest rate risk model that assisted in the management of interest rate risk. A bank approached him in 1997 to join its investment banking division in order to incorporate his model into their correspondent investment banking division. He joined the bank but eventually became dissatisfied with his 30% share of the revenue he was bringing in. He generated revenues of two to three million dollars a year.<sup>6</sup>

Geary discussed his dissatisfaction with a business acquaintance, who suggested that Geary buy the Firm. Geary obtained bank loans from two of his long-time clients to finance

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<sup>2</sup> The witnesses the first two days were the following: Steven Decker, a Principal Examiner with FINRA (“Decker”); Susan Barbazon-Wallace, a principal regulatory coordinator with FINRA (“Barbazon-Wallace”); Chad Goodman, who had worked with Geary prior to joining him at the Firm as Geary’s assistant (“Goodman”); Edward Banian, an employee of the Firm’s clearing firm, Pershing Company (“Banian”); Victor Gonzalez, another Pershing employee (“Gonzalez”); Richard Closs, a third Pershing employee (“Closs”); Denise Hintze, a Firm employee who kept the books and prepared rough drafts of FOCUS reports (“Hintze”); Susan DeMando Scott, a FINRA Associate Vice President and Director of the Financial Operations Policy Group (“DeMando Scott”), and Geary.

<sup>3</sup> Frager, Geary, counsel for Respondent, and Enforcement were with the court reporter in St. Louis, Missouri. The three members of the Hearing Panel were together in Washington, DC, and participated by video-conference.

<sup>4</sup> Enforcement’s exhibits in support of its Complaint are referred to as “CX-\_\_.” Respondent’s exhibits are referred to as “RX-\_\_.” One of Enforcement’s proposed exhibits was offered into evidence by Respondent and is identified by the prefix “CX-RX.”

<sup>5</sup> Hearing Tr. (Decker) 96; Hearing Tr. (Geary) 370.

<sup>6</sup> Hearing Tr. (Geary) 370-73.

100% of the \$5 million purchase price for the Firm. As part of his due diligence, Geary first spent two months as an employee of the Firm. He then decided to go forward and closed on the transaction on August 9, 2007.<sup>7</sup>

Geary hoped that the Firm would provide additional revenue while he continued to work with the banks that had been his customers throughout his career.<sup>8</sup>

When he acquired the Firm, Geary became its chairman, CEO, and president.<sup>9</sup> During his time with the Firm, Geary held several licenses. His Central Registration Depository (“CRD”) record shows the following exam history: passed Series 7 in February 1998; passed Series 63 in March 1998; passed Series 24 in August 2007; passed Series 66 in March 2009. While he was at the Firm, his Series 53 and Series 65 licenses expired.<sup>10</sup>

Geary kept existing employees in place, including Frager, the FINOP responsible for the FOCUS Reports.<sup>11</sup> The Firm had roughly 50 employees, with 40 in its main office in Oklahoma City.<sup>12</sup> It was making around \$500,000 to \$600,000 per year.<sup>13</sup> It was subject to a \$250,000

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<sup>7</sup> Hearing Tr. (Geary) 370, 373-74, 379.

<sup>8</sup> Hearing Tr. (Geary) 375.

<sup>9</sup> Hearing Tr. (Geary) 374.

<sup>10</sup> CX-2, at 28.

<sup>11</sup> Hearing Tr. (Geary) 374-75.

<sup>12</sup> Hearing Tr. (Geary) 495.

<sup>13</sup> Hearing Tr. (Geary) 374.

minimum net capital requirement because it regularly received customer checks payable to the broker-dealer.<sup>14</sup>

Fragger was on-site at least two days a month to finalize and submit the FOCUS Reports.<sup>15</sup> Another employee, Hintze, prepared a rough draft of the FOCUS report for Frager with month-end numbers. She acted as the Firm's bookkeeper. She was responsible for accounting and human resources and held an associate's degree in accounting but no other professional degrees or licenses.<sup>16</sup> Hintze communicated with Geary daily, either face to face or by email.<sup>17</sup> The Firm also had a chief compliance officer ("CCO") named AR,<sup>18</sup> who was on-site. AR had a FINOP license and was responsible for the operations part of the FINOP duties.<sup>19</sup>

## **B. JURISDICTION**

Geary first became registered with the Firm on June 5, 2007, when he was doing his due diligence. He remained registered with the Firm until April 30, 2012, when it closed its doors.<sup>20</sup> Geary has been registered with another FINRA member firm since February 2012.<sup>21</sup> FINRA's By-Laws specify that a person registered with a FINRA member remains subject to FINRA's

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<sup>14</sup> Hearing Tr. (Barbazon-Wallace) 36-37; CX-15; CX-17. The Firm made a number of regulatory filings that all indicated that the Firm understood that it was subject to a minimum net capital amount of \$250,000. Hearing Tr. (Barbazon-Wallace) 138-42; CX-37.

<sup>15</sup> Hearing Tr. (Frager) 512-13.

<sup>16</sup> Hearing Tr. (Hintze) 283-86.

<sup>17</sup> Hearing Tr. (Hintze) 284-85.

<sup>18</sup> AR made a statement during the course of the investigation that became part of the record. AR's initials are used here, however, because AR did not testify.

<sup>19</sup> Hearing Tr. (Frager) 512.

<sup>20</sup> Hearing Tr. (Barbazon-Wallace) 126; CX-2.

<sup>21</sup> Hearing Tr. (Barbazon-Wallace) 127; CX-2.

jurisdiction for alleged misconduct occurring while registered until at least two years after the person's registration has been terminated, revoked, or canceled.<sup>22</sup>

### **C. THE CEMP PROGRAM**

Geary had a plan to create a security to sell to banks and other institutions that would be backed by a pool of CMOs coupled with treasury bonds. He called it "CEMP" (Credit Enhanced Mortgage Pool). CMOs were being downgraded, the market was flooding with sellers, and prices were dropping. Geary thought he could buy CMOs cheaply and increase their credit rating by mixing them with the steady returns of treasury bonds. Geary intended that the CEMP security would be created and sold almost simultaneously as buyers were found, but, at least in connection with the May 2009 events, the CMOs had to be held because Geary had no identified buyers at the time of purchase.<sup>23</sup>

Geary explained that on April 30, 2009, the FDIC had issued a warning to banks that if they had private label CMOs in their inventory the bank examiners might downgrade the CMOs and then require the banks to inject more capital. In particular, one of Geary's customers, Frontier State Bank ("Frontier Bank"), had received a letter on May 1, 2009, saying that the bank would have to adjust its positions in private label securities. As a result, the bank would then have to inject more capital. Geary himself had sold the bank such securities.<sup>24</sup>

One of the owner-members of Frontier Bank, a wealthy doctor and businessman who had been Geary's customer for more than 15 years, was taking various steps to prepare for the upcoming bank examination. In May 2009, the doctor began moving his personal funds out of

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<sup>22</sup> FINRA By-Laws, Art. V, Sec. 4(a).

<sup>23</sup> Hearing Tr. (Geary) 384-87, 497-500.

<sup>24</sup> Hearing Tr. (Geary) 384-87.

the bank and into his accounts at Geary's Firm. Geary testified that this was intended to strengthen the bank's equity-to-asset ratio.<sup>25</sup> Geary's actions in May both implemented his CEMP plan and enabled Frontier Bank to dispose of the CMOs before the bank examiners arrived and downgraded the securities.

#### **D. MAY 2009 EVENTS**

In early May 2009, Geary discussed his CEMP plan with Frager, the FINOP responsible for the Firm's FOCUS Reports. Frager had previous experience relating to the resecuritization of fixed income instruments. Frager prepared a bullet point presentation explaining what Geary should do. Most relevant here, Frager told Geary that he would have to create a special purpose entity to implement the CEMP plan.<sup>26</sup> Frager testified, "Geary Securities didn't want to be the issuer, and basically we, we didn't have the capital to create it."<sup>27</sup> Frager said that capital was the primary issue, but also that the Firm's expertise was in municipal bonds, not mortgage backed securities. Geary was the only person in the Firm dealing with mortgage backed securities.<sup>28</sup>

Geary acknowledges that Frager told him that he needed to create a separate entity to do the CEMP transactions.<sup>29</sup> Frager made it plain to Geary that the CEMP plan had to be implemented through an entity other than the broker-dealer.<sup>30</sup>

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<sup>25</sup> Hearing Tr. (Geary) 391-93.

<sup>26</sup> Hearing Tr. (Frager) 513-18, 530; Hearing Tr. (Geary) 388.

<sup>27</sup> Hearing Tr. (Frager) 515.

<sup>28</sup> Hearing Tr. (Frager) 517.

<sup>29</sup> Hearing Tr. (Geary) 388.

<sup>30</sup> Hearing Tr. (Frager) 551.

Geary does not concede, however, that he understood the net capital problem that would be created if the Firm itself implemented the CEMP program. He testified that he does not remember Frager telling him that using the Firm in the CEMP transactions would create a net capital problem.<sup>31</sup> He also claimed that he did not know that taking the CMOs into the Firm's proprietary account would create a net capital problem. He said, "I didn't have the knowledge base that it was going to trigger a net capital violation."<sup>32</sup>

The record is hazy on whether Frager specifically explained to Geary, in early May, the risk of a net capital violation if Geary ran the CEMP program through the Firm and the implications for the Firm of such a violation. Frager testified at the hearing that the CEMP program presented no net capital issue for the Firm if the Firm did not take securities into its inventory, and Frager was advising that Geary use a separate entity to implement the CEMP program.<sup>33</sup> Accordingly, if a separate entity was to be established to handle the CEMP transactions, it would have been unnecessary to point out that a net capital deficiency could require the Firm to stop doing customer business. In connection with later events, Frager also testified that he thought that Geary understood the implications of a net capital problem because Geary had taken the Series 24 examination within the last two years.<sup>34</sup> This would have been an additional reason that Frager might not have thought it necessary to point out the consequences

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<sup>31</sup> Hearing Tr. (Geary) 388.

<sup>32</sup> Hearing Tr. (Geary) 389.

<sup>33</sup> Hearing Tr. (Frager) 532-33. Frager testified, "Well, there really was no net capital implications, you know, because I knew he knew and we knew that we weren't buying this for our own, for our own inventory. We were, we were creating a product as a placement agent only."

<sup>34</sup> Hearing Tr. (Frager) 522. Geary's CRD shows that he passed the Series 24 examination in August 2007. CX-2, at 28.

of a net capital violation. Frager was certain, however, that Geary understood that it would be inappropriate for the broker-dealer to acquire the CMOs.<sup>35</sup>

In any event, the parties agree that Geary acted contrary to what Frager, the FINOP, had advised him about using a special purpose entity. On Thursday, May 28, 2009, Geary had the Firm acquire for its own account 13 private label CMOs from Frontier Bank<sup>36</sup> for close to \$77 million.<sup>37</sup> The CMOs were taken into a proprietary Firm account at Pershing, the Firm's clearing firm. Pershing paid Frontier Bank, on Thursday, May 28, 2009. On Friday, May 29, 2009, in the normal course of reviewing accounts, Pershing discovered that it had paid the seller but had not received any payment from the Firm. Pershing issued a margin call and sought payment from the Firm. The Firm did not have the money to pay, and Geary had talked to no one prior to the transaction about obtaining funding to keep the Firm in net capital compliance.<sup>38</sup>

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<sup>35</sup> Hearing Tr. (Frager) 551.

<sup>36</sup> Hearing Tr. (Geary) 384-87.

<sup>37</sup> Hearing Tr. (DeMando Scott) 325.

<sup>38</sup> Hearing Tr. (Geary) 51. The Firm's purchase of the CMOs came to the attention of Edward Banian, Pershing's Director of Operations in Los Angeles, who was responsible for margin services. It was brought to his attention because the transactions were large and resulted in a "fairly large" margin call. He also noted that the price at which the Firm purchased the CMOs was higher than the price at which Pershing carried the CMOs on its books, resulting in a "deficit equity in the account." Hearing Tr. (Banian) 234, 236-37.

The CMO transactions only came to Pershing's attention on Friday, May 29, 2009, because that was the way Pershing's system worked. Banian said that there was nothing for Pershing to do on May 28 other than settle the trades with the seller. Then, the next day, Pershing looked at the buyer's situation. Hearing Tr. (Banian) 237-39; Hearing Tr. (Gonzalez) 262-64. Pershing personnel called the Firm and issued an official notice of a margin call. The margin call was for close to \$32 million. Hearing Tr. (Gonzalez) 262-69.

Victor Gonzalez, Banian's subordinate at Pershing, first contacted a Firm employee named KC regarding the margin call. She said she would "get back to him." Hearing Tr. (Gonzalez) 263. KC's initials are used here because she did not testify.

Geary asked Pershing to extend credit to the Firm for the CMOs. Pershing personnel declined because Pershing had a policy against extending credit for CMO purchases.<sup>39</sup>

Geary did not consult Frager before purchasing the \$77 million in CMOs.<sup>40</sup> Nor is there any evidence that Geary informed Frager of the transaction on the Thursday or Friday, May 28 and 29, 2009. Frager first learned about the purchase from others.<sup>41</sup>

Geary testified that on Monday, June 1, 2009, Frager called and told him, “[Y]ou can’t have those bonds in the [F]irm’s – you know, they can’t be in the [F]irm’s account.” Geary testified that he said in response, “[O]kay, I’ll move them.”<sup>42</sup>

Geary spoke with his doctor friend at Frontier Bank and told him that the Firm could not hold the CMOs in its account. The doctor then personally purchased some of the CMOs on Monday, June 1, 2009.<sup>43</sup> He did not have the funds available to buy them all, however, and

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<sup>39</sup> Hearing Tr. (Banian) 241-42; Hearing Tr. (Closs) 273-74.

<sup>40</sup> Hearing Tr. (Geary) 451. Frager testified that he had no knowledge of the transaction before it occurred. Hearing Tr. (Frager) 533, 547-48.

<sup>41</sup> Hearing Tr. (Decker) 111. Frager had a conversation with a Firm employee, KC, regarding the CMOs and the FOCUS Report. He believed the conversation occurred on Friday, May 29, 2009. When FINRA staff first investigated the May events, Frager took the position that the CMOs were for the account of Geary’s doctor friend at Frontier Bank and that the CMO transaction should have been identified as a customer transaction as of May 29 or 30, 2009. Hearing Tr. (Frager) 557-58. That view, however, is inconsistent with the record. In hearing testimony, Geary specifically denied that he had a pre-arrangement with his doctor friend at Frontier Bank to buy the CMOs once they were out of the Bank’s inventory and held by Geary’s Firm. Hearing Tr. (Geary) 444-45.

<sup>42</sup> Hearing Tr. (Geary) 392. Geary confirmed the accuracy of prior testimony before the State of Oklahoma securities regulator in which he described the June 1, 2009 telephone call with Frager. Geary said he told Frager that he had acquired the CMOs as part of the CEMP program. Hearing Tr. (Geary) 454-57. Geary had sent Frager an email on the preceding Saturday afternoon, asking to talk to Frager that Monday, June 1. Geary told Frager in the email that they needed to talk as to how the Firm could carry the group of CMO securities for 10-15 days, with “Pershing’s help.” Hearing Tr. (Geary) 453-54.

<sup>43</sup> Hearing Tr. (Geary) 392-93.

Geary pleaded with Pershing to extend credit to the doctor for the remainder. Pershing again refused.<sup>44</sup>

The most senior person at Pershing to consider the request testified that Frontier Bank had a high troubled asset ratio, so Pershing was concerned that the bank might be selling distressed assets. Pershing personnel became even more concerned about the transaction when they noticed that the purchaser of the CMOs was one of the controlling members of Frontier Bank. They speculated that some sort of “financial accounting” was taking place, and so filed an internal incident report.<sup>45</sup>

On Wednesday, June 3, 2009, the doctor deposited funds sufficient to purchase the remainder of the CMOs.<sup>46</sup> The Firm did not report the CMOs as an inventory position on its FOCUS Report.<sup>47</sup>

FINRA’s staff later calculated that by acquiring the CMOs for the account of the Firm,

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<sup>44</sup> Hearing Tr. (Banian) 242-46; Hearing Tr. (Closs) 279-81; Hearing Tr. (Geary) 392-93.

<sup>45</sup> Hearing Tr. (Closs) 281-82.

<sup>46</sup> Hearing Tr. (Geary) 393.

<sup>47</sup> Hearing Tr. (Decker) 59; CX-49.

Geary plunged the Firm into a net capital deficiency of approximately \$11.5 million for the two business days at the end of May, May 28 and 29, 2009.<sup>48</sup> On both of those days, the Firm conducted a securities business, writing order tickets and taking in customer checks.<sup>49</sup>

In light of these facts and circumstances, the Hearing Panel finds that Geary knew that he should not take the CMOs into the Firm's proprietary account and that it would negatively affect the Firm's net capital position, but he did it anyway. Frager, the FINOP, had expressly told him not to use the Firm in connection with CEMP transactions. Since Frager's duties were largely limited to reporting the Firm's net capital position each month, Geary had to know that Frager's instruction was linked to net capital concerns even if Frager did not expressly state the net capital ramifications. Geary's failure to consult Frager before doing the transaction suggests that he purposely avoided talking to Frager because he knew Frager would tell him not to do it. Even without Frager's warning, Geary had reason to know that the acquisition of the CMOs in the Firm's proprietary account would affect the Firm's net capital position, because the \$77 million

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<sup>48</sup> FINRA staff conducted an on-site examination in November 2009 and looked at the Firm's net capital position at the end of May 2009. The staff prepared a separate net capital calculation for each of the two days that the Firm held the CMOs in its proprietary account. The staff determined that the Firm had a deficit net capital position of roughly \$11.5 million each day. Hearing Tr. (Decker) 44-55; CX-60; CX-61.

The Firm did not file a notice of net capital deficiency at the time of the late May events. When FINRA staff contacted Frager in connection with its November examination and requested that a net capital deficiency notice be filed, Frager told the staff that he did not believe a net capital deficiency had occurred. He argued that the CMOs had been purchased for a customer (Geary's doctor friend who was connected to Frontier Bank) and not for the Firm. Hearing Tr. (Frager) 535-41; Hearing Tr. (Decker) 99-104, 120.

Geary, however, testified at the hearing that the CMOs were not purchased for a customer and that he did not have a pre-arranged agreement with the doctor at Frontier Bank about purchasing them. He testified that he had the Firm purchase the CMOs in order to put them into a CEMP transaction. Hearing Tr. (Geary) 387, 444-45. Pershing personnel likewise treated the purchase on May 28, 2009, as a purchase by the Firm, and sought payment from the Firm. Hearing Tr. (Gonzalez) 262-67.

<sup>49</sup> Hearing Tr. (Decker) 45-52, 60-62; CX-50.

transaction was so large and the Firm needed financing to pay for it.<sup>50</sup>

#### **E. JANUARY-FEBRUARY 2010 EVENTS**

In January 2010, while Geary was working on a CEMP transaction that had failed to close in December, Frager warned him that the Firm was dangerously low on capital. Its net capital had been in continuous decline due to operating losses.<sup>51</sup> Frager suggested that one alternative would be to drop the Firm's membership level so that the net capital requirement would fall to \$100,000, but that was not done.<sup>52</sup> Frager told Geary that he needed to close the CEMP transaction so that he could acquire funds to infuse into the Firm or he needed to obtain capital from another source. Frager told Geary that the Firm needed at least \$500,000 in additional capital.<sup>53</sup>

Geary testified that Frager told him in January that the Firm was "getting close" to a net capital violation, and Frager "generally spoke about, you know, a net capital violation."<sup>54</sup> When asked whether Frager told him "basically if you violate the net capital rule you have to stop writing tickets," Geary testified, "I can recall that, along with other things that he mentioned."<sup>55</sup>

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<sup>50</sup> Pershing issued a margin call notice on May 29, 2009, for the Firm's proprietary account for almost \$32 million. Hearing Tr. (Gonzalez) 266-67.

<sup>51</sup> Hearing Tr. (Frager) 518-19.

<sup>52</sup> Hearing Tr. (Frager) 520, 552-53. Later, Geary did pursue the process of changing the Firm's membership level to decrease its minimum net capital to \$100,000. That process can take as long as 180 days, but typically takes 30-60 days. The Firm transitioned to the \$100,000 level in mid-2010. Hearing Tr. (Frager) 559-63.

<sup>53</sup> Hearing Tr. (Frager) 520-21.

<sup>54</sup> Hearing Tr. (Geary) 416.

<sup>55</sup> Hearing Tr. (Geary) 416. In earlier on-the-record testimony ("OTR"), Geary similarly acknowledged that Frager had told him "net capital violations means you don't write tickets, you know, you just quit doing business in the [F]irm." Hearing Tr. (Barbazon-Wallace) 176-77.

Despite the warning, Geary did nothing immediately to shore up the Firm's net capital position. He hoped to close a CEMP transaction, and he thought perhaps the Firm would have additional business at the end of the month.<sup>56</sup>

On January 20, 2010, Frager sent an email to the person at FINRA who was then the regulatory coordinator for the Firm. The email reflected that Geary was informed in January that he needed to provide funds to increase the Firm's capital level. Frager wrote,

On Friday the 22<sup>nd</sup>, Geary Securities currently plans on the closing of CEMP 2010-1 resecuritization trust, which in and of itself will restore significant capital to the broker-dealer entity. If for some reason the closing is delayed, I have received assurances that the parent company [owned by Geary and his wife] will arrange to infuse additional capital into the BD next week.<sup>57</sup>

At the hearing, Frager confirmed prior testimony he had given stating that he had informed Geary that the Firm would have to stop doing business if it fell into a net capital violation. In that prior testimony, Frager said,

Well, I told him, I said, basically under the rule you can violate the capital rule, but if you violate, you have to cease doing business. So he knew we were, obviously, if we went under that, you could be, we're suppose[d] to stop taking orders, but if you do that with a retail type business that we have, you might as well go out of business.<sup>58</sup>

Frager also testified that he had talked with Geary about "the ramifications" of violating the net capital rules "on numerous occasions."<sup>59</sup>

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<sup>56</sup> Hearing Tr. (Geary) 496-97.

<sup>57</sup> Hearing Tr. (Barbazon-Wallace) 128-29; CX-41.

<sup>58</sup> Hearing Tr. (Frager) 523-25.

<sup>59</sup> Hearing Tr. (Frager) 522.

The anticipated CEMP transaction mentioned in the email to the FINRA regulatory coordinator did not close at the end of January.<sup>60</sup>

On Thursday, February 4, 2010, in the late afternoon, Hintze called Geary to tell him that she thought from her preliminary work on the January FOCUS Report that they were going to “come up short.” She told Geary she thought the Firm would be around \$20,000 short. The next morning, Friday, February 5, 2010, Geary transferred \$75,000 from a personal account to the Firm. He thought that would put the Firm back into compliance until he could get additional funding. He also called his banker to ask for a loan of \$750,000 to shore up the broker-dealer Firm.<sup>61</sup>

The loan from the bank was not immediately forthcoming, although the bank reassured Geary that it would loan him the money. Geary testified that he worked hard to obtain additional funds to put into the Firm.<sup>62</sup> He said, “That’s all I worked on. That’s all I was consumed with.”<sup>63</sup>

Around February 10, 2010, Frager learned from Hintze that the Firm had fallen below its required minimum net capital. He was surprised because he knew that Hintze had daily discussions with Geary regarding net capital, and, even though Frager also was having daily discussions with Hintze by telephone, Frager had not known the Firm was approaching the

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<sup>60</sup> Hearing Tr. (Geary) 481-82.

<sup>61</sup> Hearing Tr. (Geary) 403-06; Hearing Tr. (Frager) 527-28.

<sup>62</sup> Hearing Tr. (Geary) 406-12.

<sup>63</sup> Hearing Tr. (Geary) 408.

reporting threshold so fast.<sup>64</sup> Within 24 hours of learning of the net capital deficit, Frager filed the Firm's first net capital deficiency notice.<sup>65</sup>

From February 10, 2010, onward, Hintze prepared daily net capital computations that she sent to Frager.<sup>66</sup> She also had daily communications with Geary, either in person or by email.<sup>67</sup> She confirmed the accuracy of a prior statement she made that Geary "routinely came in my office most mornings to review the numbers from our clearing firm, Pershing, and the net capital calculation."<sup>68</sup>

Frager spoke with Geary on multiple occasions. Geary made "repeated assurances" that he was going to obtain additional funding for the Firm. He told Frager that he was negotiating for the bank loan and gave Frager contact information so that Frager could contact the bank himself to confirm that it was going to lend Geary the money.<sup>69</sup>

Sometime between February 10 and February 12, 2010, Frager called Geary about the Firm's net capital situation. Geary confirmed that Frager had made Geary aware that "you can't do this." Geary confirmed that Frager said something like, "You have to correct this. And the firm is going to be out of business" if you don't. Geary concluded with respect to the possibility

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<sup>64</sup> Hearing Tr. (Frager) 525-26.

<sup>65</sup> Hearing Tr. (Frager) 543-44; CX-37, at 2-3.

<sup>66</sup> Hearing Tr. (Frager) 527-28.

<sup>67</sup> Hearing Tr. (Hintze) 284-85.

<sup>68</sup> Hearing Tr. (Hintze) 296-97; CX-47.

<sup>69</sup> Hearing Tr. (Frager) 527-29.

that the Firm would have to go out of business if the net capital violation were not fixed, “I certainly had an understanding that that could happen.”<sup>70</sup>

On February 12, 2010, the Firm filed a second notice of net capital deficiency.<sup>71</sup>

The Firm continued to have a net capital deficit until February 26, 2010, when Geary finally infused the Firm with an additional \$500,000, which was sufficient to bring it back into net capital compliance.<sup>72</sup> On February 26, 2010, the Firm filed a third notice of net capital deficiency.<sup>73</sup>

Enforcement introduced into evidence a chart showing the amount of net capital deficiency for each of 13 days during the period from January 31, 2010, through February 25, 2010. The amount of shortfall ranged from \$3,903 to \$131,273.<sup>74</sup>

The Firm continued to conduct a securities business throughout the period from January 31, 2010, through February 26, 2010.<sup>75</sup>

When Geary was asked why the Firm continued to conduct a securities business when it did not have the minimum required net capital, he blamed the two FINOPs, Frager and AR. He acknowledged that he knew the two discussed the issue of ceasing to do business, but, he said, “I wasn’t involved to the degree that would have brought me to say ... I mean, with the benefit of hindsight, sure, I wish I would have been more involved. But I’m obviously leaving it up to

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<sup>70</sup> Hearing Tr. (Geary) 483-85.

<sup>71</sup> Hearing Tr. (Barbazon-Wallace) 171; Hearing Tr. (Geary) 412-15; CX-37, at 8-9.

<sup>72</sup> Hearing Tr. (Hintze) 295-97; Hearing Tr. (Geary) 408.

<sup>73</sup> Hearing Tr. (Barbazon-Wallace) 172-73. FINRA staff discussed this series of events with Frager on February 26, 2010, and later in March 2010 with Geary. *Id.*

<sup>74</sup> Hearing Tr. (Barbazon-Wallace) 130-35; CX-38.

<sup>75</sup> Hearing Tr. (Barbazon-Wallace) 125, 146-49; Hearing Tr. (Hintze) 298-99; CX-39; CX-40.

[Frager] and [AR].”<sup>76</sup> He continued, “Well, I knew that there were discussions between [the two FINOPs]. And I relied on them to be the persons to say, okay, brokers, don’t write tickets.”<sup>77</sup> He said that he “knew intuitively the customers were all right” because the Firm did not commingle customer funds with the Firm’s funds. He concluded, “I just figured this was something for [Frager] and [AR] to hash out. And I trusted that they would do it correctly.”<sup>78</sup>

In the investigation, AR, the other FINOP and CCO, gave a statement indicating that on February 10, 2010, when Frager was informed that the Firm was below its minimum net capital threshold, she and he did discuss sending an email to the brokers advising them not to accept buy orders. Email correspondence between AR and Frager shows that AR put in a call to FINRA staff, and that she suggested that they wait to notify the brokers until hearing back from FINRA staff.<sup>79</sup>

The email correspondence also reflects that Geary was involved in the discussions of what to do. Frager responded to AR, agreeing that she should not yet notify the brokers.<sup>80</sup> In that email message he indicated that he had talked to others, including “Keith,” meaning Geary.

The Firm’s WSPs in effect at the time contained specific provisions regarding net capital in its customer protection policies and procedures. The WSPs made it plain that the consequence of falling below the minimum net capital threshold was to cease doing business. The WSPs required that if net capital fell below the minimum required amount, then the FINOP was to

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<sup>76</sup> Hearing Tr. (Geary) 415-16.

<sup>77</sup> Hearing Tr. (Geary) 417.

<sup>78</sup> Hearing Tr. (Geary) 417.

<sup>79</sup> Hearing Tr. (Barbazon-Wallace) 165-70; CX-RX-46, at 3 of 3.

<sup>80</sup> Hearing Tr. (Barbazon-Wallace) 165-70; CX-RX-46.

notify the regulators and “alert Senior Management that we must immediately cease doing business.”<sup>81</sup>

In light of these facts and circumstances, the Hearing Panel finds that Geary knew that the Firm fell into a net capital deficit on January 31, 2010, and he knew that it continued to have a net capital deficit through most of the next three weeks in February 2010. He was in daily contact with Hintze, and Hintze was monitoring the Firm’s net capital position throughout the period, although she only began keeping daily net capital computations on February 10, 2010. The Firm’s net capital position was the focus of Geary’s activities in February 2010, as he anxiously sought a bank loan to get the Firm in a better financial position.

The Hearing Panel further finds that Geary actually knew that the Firm was supposed to stop doing customer business if it did not have the required minimum net capital. Geary’s suggestion that he did not have the “knowledge base” to realize that the Firm should have ceased doing business is not credible in light of the email correspondence showing his involvement in discussions with Frager when Frager and AR were talking about shutting down the Firm’s customer business. Nor is it a reasonable position for the Firm’s chairman, CEO, and president to take. That is particularly true in light of the WSPs, which clearly state that the Firm should stop doing business if it falls below the minimum net capital threshold.

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<sup>81</sup> Hearing Tr. (Barbazon-Wallace) 150-54; CX-12 Supplement, at 13.

## IV. CONCLUSIONS

### A. THE NET CAPITAL RULE

A firm's net capital is a measure of its liquidity and its ability to meet its financial obligations. By Exchange Act Rule 15c3-1,<sup>82</sup> the Securities and Exchange Commission imposes minimum net capital requirements on broker-dealers in order to protect customers and other market participants from broker-dealer failures.<sup>83</sup> The net capital rule "is designed to insure that a broker-dealer will have sufficient liquid assets to satisfy its indebtedness, particularly the claims of its customers."<sup>84</sup> The net capital rule involves "fundamental safeguards" and is "one of the most important weapons in the [regulatory] arsenal to protect investors."<sup>85</sup>

Although the net capital rule is complex to apply, since it requires various calculations in various circumstances, certain basic principles are well-known. A broker-dealer is required to maintain a minimum level of net capital at all times.<sup>86</sup> This has been called "moment-to-moment" net capital compliance.<sup>87</sup>

Geary's Firm was subject to a minimum net capital requirement of \$250,000 because it received checks made payable to it from customers.<sup>88</sup> The net capital rule prohibited the Firm

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<sup>82</sup> 17 C.F.R. § 240.15c3-1.

<sup>83</sup> *Fox & Co. Investments, Inc.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at \*18 (Oct. 28, 2005).

<sup>84</sup> *Dep't of Enforcement v. Block*, No. C05990026, 2001 NASD Discip. LEXIS 35, at \*32 (NAC Aug. 16, 2001).

<sup>85</sup> *Fox*, 2005 SEC LEXIS 2822, at \*40 (quoting *Blaise D'Antoni & Associates, Inc. v. SEC*, 289 F.2d 276, 277 (5th Cir. 1961)).

<sup>86</sup> The net capital rule begins with the statement that a securities broker-dealer must maintain its minimum net capital "at all times." 17 C.F.R. § 240.15c3-1(a).

<sup>87</sup> Hearing Tr. (DeMando Scott) 333-34. *See also* Notice To Members 2007-16 (Apr. 2007) (SEC's net capital rule requires a broker-dealer to maintain its required net capital continuously).

<sup>88</sup> 17 C.F.R. § 15c3-1(a)(2)(i).

from continuing to engage in a securities business if its net capital fell below that amount.<sup>89</sup>

**B. GEARY PERMITTED THE FIRM TO CONDUCT CUSTOMER BUSINESS WHILE IT HAD INSUFFICIENT NET CAPITAL IN VIOLATION OF THE NET CAPITAL RULE**

**1. May 2009 Net Capital Violation**

The Hearing Panel believes Geary knowingly caused the Firm's May 2009 net capital violation, but, at a minimum, he acted recklessly. He had been specifically told by an experienced FINOP that he should not use the Firm in connection with a CEMP transaction. Nevertheless, Geary had the Firm acquire the CMOs before a separate entity was created to handle the CEMP transactions. He did so knowing that the Firm needed financing to cover the \$77 million price and before he had any buyers. Geary did not consult Frager, the FINOP, prior to the transaction. The transaction was very large and unusual for the Firm and had to have an impact on its net capital position.

Because the transaction was so large and put the Firm millions of dollars into a net capital deficit, the Firm's customers were subject to a high degree of risk. That risk was heightened because it was unclear whether Geary's strategy for selling the CMOs, either as they were or as part of a CEMP transaction, would work. He testified that the market for such instruments was in what amounted to freefall. Although the period when the Firm was not in net capital compliance was only two days, Geary had planned to retain the CMOs in the Firm's account for several weeks, lengthening the time that customers would have been at risk. The only reason that he did not was that Frager spoke to Geary on Monday, June 1, 2009, and insisted that Geary get the CMOs out of the Firm's account.

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<sup>89</sup> *Dep't of Enforcement v. Investment Management Corp.*, No. C3A010045, 2003 NASD Discip. LEXIS 47, at \*13-14 (NAC Dec. 15, 2003).

## **2. February Net Capital Violation**

In February 2010, Geary allowed the Firm to continue doing customer business when he knew that it had a net capital deficiency. That month, he was constantly monitoring the Firm's net capital position and desperately seeking funds to infuse capital into the Firm. He knew that Frager and AR were considering shutting down the Firm's customer business, and he had been told by Frager on various occasions that the consequence of falling below the Firm's minimum net capital threshold would be to cease doing business. Geary also knew or should have known that the Firm's WSPs required the Firm to cease doing business if it fell below its minimum net capital threshold. This violation went on for an extended period of time and placed the Firm's customers at risk during the entire period.

### **C. GEARY'S CONDUCT WAS UNETHICAL AND VIOLATED FINRA RULE 2010**

FINRA Rule 2010 requires that FINRA members and their associated persons "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. Rule 2010 is a broad prohibition that covers not only unlawful conduct and

violations of other regulatory requirements, but also unfair or unethical activities.<sup>90</sup> The Rule applies to all business-related conduct.<sup>91</sup> The Rule “serve[s] as an industry backstop for the representation, inherent in the relationship between a securities professional and a customer, that the customer will be dealt with fairly and in accordance with the standards of the profession.”<sup>92</sup>

Given the fundamental importance of the net capital rule to the protection of investors, as discussed above, a violation of that rule is serious. Geary’s knowing, or at best reckless, disregard for the requirements of the net capital rule fell far short of the standards of the profession and placed the Firm’s customers at risk. In both instances, Geary violated FINRA Rule 2010.

#### **D. GEARY’S DEFENSES ARE REJECTED**

In his defense, Geary makes two main arguments. One, which is more closely tied to the May 2009 events, is that he was ignorant that the consequence of a net capital deficit was that the

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<sup>90</sup> *E.g.*, *Stephen J. Gluckman*, 54 S.E.C. 175, 185, 1999 SEC LEXIS 1395 (July 20, 1999); *Dep’t of Enforcement v. Trende*, No. 2007008935010, 2011 FINRA Discip. LEXIS 54, at \*11 and nn.12 & 13 (OHO Oct. 4, 2011).

<sup>91</sup> *Trende*, 2011 FINRA Discip. LEXIS 54, at \*11 and nn.12 & 13.

*See also Dep’t of Enforcement v. Brokaw*, No. 2007007792902, 2012 FINRA Discip. LEXIS 53, at \*45-46 (NAC Sept. 14, 2012); *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2011 FINRA Discip. LEXIS 40, at \*17-18 and n.46 (OHO June 13, 2011) (“Rule 2110 is an ethical rule ... FINRA’s authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”), *aff’d*, 2012 FINRA Discip. LEXIS 61 (NAC Dec. 12, 2012); *Dep’t of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at \*22 (NAC Feb. 24, 2011) (“FINRA’s disciplinary authority under NASD Rule 2110 is also broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”) (internal citations and quotations omitted), *aff’d in part*, John Edward Mullins, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012); *Dep’t of Enforcement v. DiFrancesco*, No. 2007009848801, 2010 FINRA Discip. LEXIS 37, at \*16 n.11 (NAC Dec. 17, 2010) (citing cases) (“There is a long line of cases stating that a member can be disciplined for “business-related conduct” that violates NASD Rule 2110, even when the activity does not involve a security.”), *aff’d*, Exchange Act Rel. No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012); *Dep’t of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at \*12 (NAC June 2, 2000) (citing *Daniel Joseph Alderman*, 52 S.E.C. 366, 369 (1995), *aff’d*, 104 F.3d 285 (9th Cir. 1997)).

<sup>92</sup> *Dep’t of Enforcement v. Hunt*, No. 2009018068701, 2012 FINRA Discip. LEXIS 62, at \*9 (NAC Dec. 18, 2012) (quoting *DiFrancesco*, 2012 SEC LEXIS 54, at \*17) (citation omitted).

Firm had to cease doing business. The second, which is more closely tied to the February 2010 events, is that he relied on Frager and AR to make sure that the Firm was in compliance with the net capital rule. Geary conceded, somewhat reluctantly, that by the time of the February 2010 events, he did know that a net capital deficit could require the Firm to cease doing business.

The Hearing Panel rejects Geary's first argument. As noted above, the Hearing Panel believes that Geary knew that the consequence of the net capital violation that he created was that the Firm had to cease doing business. But even if he did not, he behaved recklessly when he had the Firm take such a large position in the CMOs without having the money to pay for the CMOs and no real plan for financing the transaction. This was particularly true when Geary's plan for selling the CMOs was so speculative and not yet fully formed. The resulting large net capital deficit of \$11.5 million exposed customers to a real risk that the Firm would collapse.

The Hearing Panel also rejects Geary's contention that he reasonably relied on others to tell him that the Firm should cease doing customer business. It is well-established that the president of a securities broker-dealer bears a heavy responsibility for his firm's compliance with all applicable rules and regulations.<sup>93</sup> That includes net capital compliance.<sup>94</sup> Geary was not only the president but the chairman and CEO of the Firm. He was senior management – all of senior management. It was his responsibility to stop the Firm from doing business.<sup>95</sup> Although Frager, the FINOP who prepared FOCUS Reports and was on-site one or two days a month, also

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<sup>93</sup> *Block*, 2001 NASD Discip. LEXIS 35, at \*25-26.

<sup>94</sup> *Id.*; *Hutchison Financial Corp.*, Exchange Act Rel. No. 32215, 1993 SEC LEXIS 1107, at \*10-11 n.16 (Apr. 26, 1993).

<sup>95</sup> *See Harrison Sec. Inc.*, Exchange Act Rel. No. 50614, 2004 SEC LEXIS 2477 (Oct. 29, 2004) (SEC administrative proceeding against a firm, the firm's CEO, and the firm's FINOP for violations of the Exchange Act's net capital, books and records and reporting provisions).

bore responsibility for the net capital compliance failures of the Firm, that does not relieve Geary of his liability.

In his testimony, Geary also made a number of assertions, either in defense or in mitigation, that did not amount to full-fledged arguments but which he thought meaningful to the analysis. The Hearing Panel acknowledges and rejects those, too.

For example, Geary noted in his testimony that the Firm did not commingle customer funds with the Firm's funds. Because of this, he thought the May 2009 CMO purchase did not harm customers.<sup>96</sup> There also was evidence that the Firm did not retain customer checks written to the Firm, but rather scanned in customer checks, depositing them into the customers' accounts.<sup>97</sup> The required minimum net capital is a separate issue, however, from commingling and the prompt deposit of customer checks in customers' accounts.<sup>98</sup>

## V. SANCTIONS

FINRA's Sanction Guidelines ("Sanction Guidelines") provide the guideposts for sanctions in FINRA disciplinary proceedings.<sup>99</sup> They set forth recommendations regarding sanctions for many specific violations, including violations of the net capital rule and FINRA Rule 2010. As to a person shown to be a "responsible party" for such a violation, the Sanction Guidelines recommend considering a suspension in any or all capacities for up to 30 business days. In egregious cases, a lengthier suspension of up to two years or even a bar may be appropriate. A fine may be imposed, ranging from \$1,000 to \$50,000. The Sanction Guidelines

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<sup>96</sup> Hearing Tr. (Geary) 417.

<sup>97</sup> Hearing Tr. (Barbazon-Wallace) 148-49; Hearing Tr. (DeMando Scott) 335-36.

<sup>98</sup> Hearing Tr. (DeMando Scott) 333-36.

<sup>99</sup> FINRA Sanction Guidelines (2011) are available at [www.finra.org/SanctionGuidelines](http://www.finra.org/SanctionGuidelines).

instruct adjudicators to consider whether the Firm continued doing business with customers while knowing of the net capital deficiencies and whether there was any effort to conceal the deficiencies.<sup>100</sup>

The Sanction Guidelines also instruct adjudicators to consult the Principal Considerations and the General Principles, which are applicable to all sanction determinations.<sup>101</sup> The Overview to the Sanction Guidelines expresses the overarching purpose of FINRA's disciplinary actions and the objectives served by sanctions:

The regulatory mission of FINRA is to protect investors and strengthen market integrity through vigorous, even-handed and cost-effective self-regulation. . . . As part of FINRA's regulatory mission, it must stand ready to discipline member firms and their associated persons by imposing sanctions when necessary and appropriate to protect investors . . . and to promote the public interest.<sup>102</sup>

In this case, Geary permitted the Firm to continue conducting customer business while he knew or should have known of the Firm's net capital deficiency.<sup>103</sup> He did this twice,<sup>104</sup> and the second time the Firm was permitted to conduct customer business with deficient net capital over an extended period of time, for thirteen days over the course of more than three weeks.<sup>105</sup>

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<sup>100</sup> Sanction Guidelines at 28.

<sup>101</sup> Sanction Guidelines at 1. The General Principles are found in the Sanction Guidelines at 2-5. The Principal Considerations are found in the Sanctions Guidelines at 6-7.

<sup>102</sup> Sanction Guidelines at 1.

<sup>103</sup> Sanction Guidelines at 28, Principal Consideration 1 in connection with a net capital violation. Sanction Guidelines at 7, Principal Consideration 13. The Hearing Panel believes that Geary knew he was acting improperly and for that reason he did not consult Frager in connection with the May 2009 events and, although Geary was discussing the Firm's net capital position with Hintze in February, Frager was not informed until February 10, 2010, of the Firm's net capital deficiency. In any event, Geary's conduct qualifies as reckless.

<sup>104</sup> Sanction Guidelines at 7, Principal Consideration 18.

<sup>105</sup> Sanction Guidelines at 6, Principal Consideration 9.

Although Geary was the Firm's chairman, CEO, and president, he did not take responsibility for his misconduct. Instead, he attempted to shift blame to Frager and AR.<sup>106</sup>

The intentional or, at a minimum, reckless quality of Geary's misconduct persuades the Hearing Panel that stringent sanctions are warranted to protect the investing public, both to impress upon Geary himself the importance of compliance and also to deter others from engaging in similar misconduct.<sup>107</sup> The net capital rule is fundamental to protecting the investing public from financial recklessness by broker-dealers who receive or hold customer funds and securities.

The Hearing Panel does not find Geary's testimony regarding his current financial difficulties mitigating. He testified that he is working, but he still owes money on the loan that he obtained to purchase the Firm. He also testified regarding his family obligations and asserted that he would not have sufficient financial resources to support his family and meet his obligations if he were suspended, and that he did not have the financial resources to pay a fine.<sup>108</sup> None of this excuses his misconduct. Nor does it constitute sufficient evidence of a bona fide inability to pay. If he is financially unable to pay the monetary sanctions imposed, which are discussed below, then he can make the appropriate application for relief.<sup>109</sup> To the extent that the suspensions imposed result in a financial hardship because he cannot work during that period, that is always the result of a suspension. It is not a basis for a more lenient sanction.

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<sup>106</sup> Sanction Guidelines at 6, Principal Consideration 2.

<sup>107</sup> Sanction Guidelines at 2, General Principle 1.

<sup>108</sup> Hearing Tr. (Geary) 433-34.

<sup>109</sup> Sanction Guidelines at 5, General Principle 8.

The Sanction Guidelines permit an adjudicator to consider whether the respondent has been sanctioned by another regulator for the same misconduct at issue and whether that sanction provided substantial remediation.<sup>110</sup> Pursuant to a settlement, Geary is currently subject to sanctions imposed by the State of Oklahoma securities regulator for misconduct that includes some of the misconduct charged here. Among other things, he is operating under heightened supervision while working as a registered representative at another firm.<sup>111</sup> While the State of Oklahoma has disciplined Geary on overlapping charges, the sanctions in that matter were the result of a compromise. The Hearing Panel does not believe that the sanctions that resulted from Geary's settlement with the State of Oklahoma are sufficient for purposes of this proceeding or that they diminish the need for stringent sanctions in this matter.

In its closing argument, Enforcement suggested that the violations be aggregated for purposes of sanctions, because the same type of violation was alleged in the two separate charges against Geary. The Hearing Panel believes that the violations should not be aggregated because the circumstances of each were different. In addition, the Hearing Panel believes that the sanctions should be more stringent than Enforcement proposed.<sup>112</sup>

For the violation found in the First Cause of Action, relating to the May 2009 events, Respondent is fined \$10,000, suspended from association with a member firm in any capacity for 30 business days, and barred from acting in a principal or supervisory capacity with any FINRA member firm. For the violation found in the Fourth Cause of Action, relating to the February

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<sup>110</sup> Sanction Guidelines at 7, Principal Consideration 14.

<sup>111</sup> Hearing Tr. (Geary) 422-27.

<sup>112</sup> Enforcement requested that Geary be suspended from acting in any principal capacity for a total of 30 days, suspended in all capacities for 15 days, and fined \$10,000. Enforcement proposed concurrent suspensions.

2010 events, Respondent is fined \$20,000, suspended from association with a member firm in any capacity for 60 calendar days, and barred from acting in a principal or supervisory capacity with any FINRA member firm. The suspensions are imposed consecutively. Costs are also imposed.<sup>113</sup>

## **VI. ORDER**

For permitting the Firm to conduct customer business while it had a net capital deficiency in May 2009, in violation of FINRA Rule 2010, as charged in the First Cause of Action, Respondent is fined \$10,000, suspended from association with a member firm in any capacity for 30 business days, and barred from acting in a principal or supervisory capacity with any FINRA member firm. For permitting the Firm to conduct customer business while it had a net capital deficiency for 13 days during the period from January 31, 2010, until February 26, 2010, in violation of FINRA Rule 2010, as charged in the Fourth Cause of Action, Respondent is fined \$20,000, suspended from association with a member firm in any capacity for 60 calendar days, and barred from acting in a principal or supervisory capacity with any FINRA member firm. The suspensions are imposed consecutively.

In addition, Respondent is ordered to pay the costs of the hearing in the amount of \$5,056.70, which includes a \$750 administrative fee and the cost of the transcript. The cost shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

If this decision becomes FINRA's final disciplinary action, Geary's suspension shall commence on September 2, 2014, and end at the close of business on December 12, 2014. The

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<sup>113</sup> The Hearing Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.

bars from acting in a principal or supervisory capacity will be effective immediately if this decision becomes FINRA's final action. The fine and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

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Lucinda O. McConathy  
Hearing Officer  
For the Hearing Panel

Copies to:

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