INITIAL DECISION RELEASE NO. 1386
ADMINISTRATIVE PROCEEDING
FILE NOS. 3-18789 and 3-18790

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matters of	:	
	:	
KAREN BRUTON and	:	INITIAL DECISION
HOPE ADVISORS, LLC	:	September 16, 2019

APPEARANCES: Joshua A. Mayes for the Division of Enforcement, Securities and Exchange Commission

Mary C. Gill and Timothy J. Fitzmaurice of Alston & Bird LLP for Respondents Karen Bruton and Hope Advisors, LLC

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Karen Bruton from the securities industry, censures Hope Advisors, LLC, and dismisses charges brought pursuant to 17 C.F.R. § 201.102(e)(3) (Rule 102(e)(3)) against Bruton. Bruton and Hope Advisors were previously enjoined from violating the antifraud provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

On September 19, 2018, the Securities and Exchange Commission instituted administrative proceedings against Karen Bruton and Hope Advisors, LLC (No. 3-18789), pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, and against Bruton (No. 3-18790), pursuant to Rule 102(e)(3), as follow-on proceedings based on *SEC v. Bruton*, No. 16-cv-1752 (N.D. Ga.), in which Bruton and Hope were enjoined from violating the antifraud provisions of the Advisers Act. Thereafter, at the parties' request, the Commission consolidated the proceedings and ordered that an administrative law judge preside over the consolidated proceeding, which was assigned to the undersigned. *Karen Bruton*, Securities Exchange Act of 1934 Release No. 85630, 2019 SEC LEXIS 841 (Apr. 11, 2019); Admin. Proc. Rulings Release No. 6540, 2019 SEC LEXIS 849 (C.A.L.J. Apr. 12, 2019).

The parties had requested that the proceedings be decided by way of dispositive motions,[1] and a briefing schedule was set. *Karen Bruton*, Admin. Proc. Rulings Release No. 6545, 2019 SEC LEXIS 906 (A.L.J. Apr. 18, 2019). The parties' briefing is now complete, in accordance with the schedule.

B. Allegations and Arguments of the Parties

The OIP alleges that Bruton and Hope Advisors were enjoined against violations of the antifraud provisions of the Advisers Act in *SEC v. Bruton.* The Division urges that: Hope Advisors be censured and Bruton be barred from the securities industry pursuant to Advisers Act Sections 203(e) and 203(f), respectively; and Bruton be barred from appearing or practicing before the Commission pursuant to Rule 102(e)(3). Respondents oppose this.

II. PROCEDURAL ISSUES

A. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission's public official records and of the docket report and court's orders in *SEC v. Bruton*, of the public official records of the U.S. Commodity Futures Trading Commission, of the North Carolina State Board of Certified Public Accountant Examiners records, of the Tennessee Secretary of State Business Entity records, and of Financial Industry Regulatory Authority, Inc. (FINRA), records as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014).

B. Collateral Estoppel

It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by consent, like *SEC v. Bruton*; by summary judgment; or after a trial. *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *10 (Feb. 4, 2008) (injunction entered by consent), *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *1-2 & n.1, *7 (Jan. 21, 1998) (injunction entered by summary judgment); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn.13-14 (Oct. 12, 2007) (injunction entered after trial), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, Exchange Act Release No. 38389, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997); *see also Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *2-10, *22-30 (July 25, 2003). In proceedings based on injunctions entered by consent, the Commission considers, and

[1] The Commission stated that the proceedings "may be appropriate for summary disposition. The parties shall have an opportunity to submit motions for summary disposition along with supporting declarations and documentary evidence." *Karen Bruton*, 2019 SEC LEXIS 841, at *5 (footnote omitted).

does not permit the respondent to contest, the allegations of the injunctive complaint.[2] *Melton*, 2003 SEC LEXIS 1767, at *26-27.

As applicable to the Rule 102(e)(3) charges against Bruton, Rule 102(e)(3)(iv) provides: "A person who has consented to the entry of a permanent injunction as described in paragraph (e)(3)(i)(A) of this rule without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph (e)(3) to have been enjoined by reason of the misconduct alleged in the complaint." Paragraph (e)(3)(i)(A) provides that the Commission may temporarily suspend from appearing or practicing before it any "accountant," "who has been by name: (A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating . . . any provision of the Federal securities laws or of the rules and regulations thereunder."

III. FINDINGS OF FACT

Bruton and Hope Advisors were enjoined, on consent, against violating Sections 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder; they were also ordered to pay, jointly and severally, disgorgement of $1,237,235 and a civil monetary penalty of $250,000. Final Judgment as to Defendants Karen Bruton and Hope Advisors, LLC, *SEC v. Bruton* (Sept. 13, 2018), ECF No. 132.[3]

Bruton was a certified public accountant (CPA) licensed in North Carolina, Certificate Number 11543, from February 22, 1979, to June 30, 2008, when her status became "inactive." *See* North Carolina State Board of Certified Public Accountant Examiners, Licensee Search, https://ncboaprod.glsuite.us/GLSuiteWeb/Clients/NCBOA/ASPX/LicenseeDetails_WithDocs.aspx?EntityID=1118025 (last visited Sept. 10, 2019). "Inactive" status "describes a [person] who has requested inactive status and has been approved by the Board and who does not use the title 'certified public accountant' nor does he or she allow anyone to refer to him or her as a 'certified public accountant,' and neither he nor she nor anyone else refers to him or her in any representation as described in 21 NCAC 08A .0308(b)."[4] *See* North Carolina State Board of Certified Public

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[2] Respondents argue that paragraph 12 of their consent in *SEC v. Bruton*, which was incorporated in the court's judgment, ECF No. 132 at ¶ VI, in which they agreed not to make public statements denying the allegations of the amended complaint in that action, is an unconstitutional prior restraint on speech. This administrative proceeding is not the proper forum for a collateral attack against the court's judgment, and the undersigned lacks the authority to invalidate the court's orders. To the extent that Respondents wish to pursue this claim, they should seek redress from the court, which has retained jurisdiction to enforce the terms of the judgment.

[3] ECF No. 132 is appended to the Division's Motion for Summary Disposition at TAB III.

[4] Rule 21 NCAC 08A .0308 defines "Holding Out to the Public." Subsection (b) provides: "a 'representation' shall be deemed to include any oral, electronic, or written communication indicating that the person holds a certificate, including without limitation, the use of titles or legends on letterheads, reports, business cards, brochures, resumes, office signs, telephone

Accountant Examiners, Licensees, https://nccpaboard.gov/licensees/ (last visited Sept. 10, 2019). Thus, Bruton has not been a CPA since June 30, 2008.

Bruton owned and controlled Hope Advisors, a Tennessee limited liability company, which was a Commission-registered investment adviser; Hope Advisors's registration was terminated as of September 1, 2016. *See* Investment Adviser Public Disclosure, Hope Advisors, LLC, https://www.adviserinfo.sec.gov/IAPD/IAPDFirmSummary.aspx?ORG_PK=157748 (last visited Sept. 10, 2019). On April 15, 2015, the U.S. Commodities Futures Trading Commission fined Hope Advisors $100,000 for acting as a commodity pool operator without registering with the CFTC and for providing monthly statements to investors that failed to show both realized and unrealized gains and losses; Hope Advisors had remedied the violations in 2013. *See Hope Advisors LLC*, CFTC Docket No. 15-19, 2015 WL 1752850 (Apr. 15, 2015). Hope Advisors's status as a business entity is currently "active." *See* Tennessee Secretary of State, Business Information Search, https://tnbear.tn.gov/Ecommerce/FilingSearch.aspx (search for "Hope Advisors") (last visited Sept. 10, 2019).

The following facts are established as set forth in the Second Amended Complaint in *SEC v. Bruton*, ECF No. 71,[5] and are as follows:

Bruton retired in 2007 from a career of more than twenty-five years as a vice president and corporate controller, most recently with a Tennessee-based private corporation and, having taken courses in options trading, commenced trading options.

Hope Advisors was the investment adviser to two private funds, Hope Investments, LLC (HI Fund) and HDB Investments, LLC (HDB). The HI Fund was offered to accredited investors. As of 2013, HDB had a single investor, who liquidated his investment in March 2016 and reinvested the proceeds in the HI Fund. Hope Advisors/Bruton's trading in the two funds primarily consisted of trading in options, options on futures, and futures, tied to broad-based market indices such as the S&P 500, Russell 2000, and NASDAQ 100.

The funds were charged an incentive fee of 20% of net realized gains, as disclosed in the HI Fund's private placement memorandum. HDB's operating agreement actually represented that the 20% was charged on that fund's net asset value (NAV), which includes both realized and unrealized losses and gains. For the HI Fund, of the 20%, half went to Hope Advisors, and half went to the Just Hope Foundation, which funded Just Hope International, a charity founded and run by Bruton. There was a "high water mark": if the funds suffered losses, Hope Advisors would receive no fees

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directories, websites, the Internet, or any other advertisements, news articles, publications, listings, tax return signatures, signatures on experience or character affidavits for exam or certificate applicants, displayed membership in CPA associations, displayed CPA licenses from this or any other jurisdiction, and displayed certificates or licenses from other organizations which have the designation 'CPA' or ' Certified Public Accountant' by the person's name."

[5] ECF No. 71 is appended to the Respondents' Opposition to the Division's Motion for Summary Disposition as Exhibit B.

in subsequent months until the losses had been offset by gains. Hope Advisors did not include unrealized losses and gains in calculating the incentive fees.

As of February 29, 2016, the HI Fund had a NAV of approximately $136 million, and HDB had a NAV of approximately $65 million when it was liquidated in March 2016. The HI Fund had unrealized losses of between $3 million and $62 million at the end of every month for at least the two years before the May 31, 2016, commencement of *SEC v. Bruton*. Hope Advisors charged the HI Fund incentive fees every month in 2014 and 2015. After Hope Advisors caused HDB to realize more than $30 million in losses in the summer of 2015, it ceased collecting incentive fees from HDB.

In October and November 2014, the funds experienced significant trading losses due to volatility in the financial markets. Thereafter, Hope Advisors/Bruton entered a series of paired trades that essentially cancelled each other and effectively rolled over realization of losses to subsequent months, which allowed them to report a targeted monthly realized gain of approximately 1% in the funds every month, receive incentive fees every month, and avoid the high water mark restriction. This practice was not disclosed to the investors. Toward the end of every month, Bruton would approve such trades calculated to achieve those goals in light of that month's realized losses. Thus, between November 2014 and March 2016, Hope Advisors collected over $6 million in incentive fees from the HI Fund, which, after payment of salaries and expenses, was divided nearly equally between Bruton and two other Hope Advisors employees. HDB, which also had significant unrealized losses, paid Hope Advisors over $1 million in fees, a significant portion of which Bruton retained.

The following facts are not disputed by the Division and are established by Bruton's June 4, 2019, declaration under penalty of perjury (Opp. at Ex. A):

Bruton, now seventy, worked for several years as a CPA in public accounting, before joining Duke Power, where she eventually became the first female Vice President in the company's history. In 1987, she left Duke Power and joined Franklin Industries, a private company in Tennessee. At the time she left Franklin Industries in 2007, her title was Vice President and Controller. Since that date she has never held a position with the designation of "accountant" and has devoted herself to charity work. After a few mission trips, she determined that the best way to help impoverished persons around the world was through economic empowerment projects, such as agricultural training, business mentoring, skills training for young adults, and assistance with the formation of village savings and loan associations. To that end, she founded Just Hope International, Inc., a 501(c)(3) public charity, which has provided or assisted with economic empowerment projects in impoverished communities in countries in the Caribbean, Latin America, and Africa. She is no longer involved in Just Hope International's day-to-day operations but remains a member of its board of directors.

Following her retirement Bruton had engaged in trading for her personal account. Eventually yielding to the importunities of friends and former colleagues, she began trading options for HDB (the former colleagues' investment vehicle), formed the HI Fund, and traded options for it. Half of the fees she received from the HI Fund were paid to a grant making foundation, Just Hope Foundation, which she formed with the goal of providing a permanent source of funds to pay the

administrative costs of Just Hope International, so that all donations to that charity could be used directly on economic empowerment projects. From the other half, she paid the expenses she incurred trading for the HI Fund – including salaries, rent, legal and accounting fees, and other expenses – and kept as earned income what remained. In 2018, after the settlement of *SEC v. Bruton*, Bruton retired from all employment or income producing activities and does not intend to obtain employment, activate her CPA license, provide accounting or tax services for any person or entity, work in the securities, accounting, or tax industries, or practice before the Commission. Bruton states that she settled *SEC v. Bruton* because she had exhausted her financial resources and was unable to finance the defense any further.

IV. CONCLUSIONS OF LAW

A. Advisers Act Charges

Bruton and Hope Advisors have been permanently enjoined "from engaging in or continuing any conduct or practice in connection with . . . the purchase or sale of any security" as well as activity in connection with "an investment adviser" within the meaning of Sections 203(e) and 203(f) of the Advisers Act, 15 U.S.C. § 80-b-3(e)(4), (f). The misconduct underlying the civil case occurred while Hope Advisors was an investment adviser, and Bruton was associated with an investment adviser.

B. Rule 102(e) Charges

The Rule 102(e) charges against Bruton will be dismissed. She is not a CPA and was not a CPA during the time of the misconduct underlying *SEC v. Bruton*. The Commission has held that persons who are not CPAs (or other licensed professionals) may be subject to the rule. *See Jean-Paul Bolduc*, Admin. Proc. File No. 3-9793, 2002 SEC LEXIS 3427, at *4 n.9 (July 18, 2002) (on interlocutory review, setting aside dismissal of 102(e) proceeding: "The parties should address the question of, if [non-CPA Respondent] Armstrong is subject to the Rule, the nature of any professional standards to which he was subject during the period at issue[,] . . . whether Armstrong's actions constituted 'appearing or practicing' before the Commission and whether they threatened the integrity of the Commission's processes"); *Robert W. Armstrong, III*, Exchange Act Release No. 51920, 2005 SEC LEXIS 1497, at *39, 44-55 (June 24, 2005) (non-CPA controller of a subsidiary of a public issuer who participated in an earnings management scheme by calculating and booking the subsidiary's reserves and income not in accordance with GAAP to be included in the issuer's financial statements in its public filings violated the antifraud provisions and "appeared and practiced before the Commission" within the meaning of Rule 102(e)). The Commission said, "disciplining accountants pursuant to Rule 102(e) for effecting a fraudulent scheme by computing the figures and providing the information incorporated into Commission filings furthers the Rule's remedial purpose of protecting the integrity of the Commission's processes." *Armstrong*, 2005 SEC LEXIS 1497, at *48. The Commission also said that the reference in Rule 102(e)(1)(iv) to "persons licensed to practice as accountants" did not limit Rule 102(e) to licensed accountants but rather to define the term "improper professional conduct" for purposes of Rule 102(e)(1)(ii). *Id.*, 2005 SEC LEXIS 1497, at *53-54.

Although Bruton, like Armstrong, was once a CPA, she was not acting as an accountant in the misconduct underlying *SEC v. Bruton*. She last worked, as a corporate controller, in a position involving accounting in 2007 and last worked for a public issuer in 1987. She is not presently acting as an accountant and has no intention to act as one in the future. Thus, even if a sanction were permitted by Rule 102(e), it is unjustified in these circumstances. In sum, her misconduct has no nexus to the integrity of the Commission's processes relevant to Rule 102(e) under the precedent in *Armstrong* or any other Rule 102(e) case.

V. SANCTION

The Division requests that Bruton be barred from the securities industry and that Hope Advisors be censured. As requested, a collateral bar will be ordered against Bruton,[6] and Hope Advisors will be censured. Respondents cite *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), for the proposition that all proposed sanctions, in light of the facts in this proceeding, are penalties with no remedial purpose. *Kokesh*, which held that disgorgement is a "penalty" within the meaning of 28 U.S.C. § 2462 and thus subject to the five year statute of limitations, is inapposite. Courts that have considered the issue have ruled that *Kokesh* designates disgorgement as a penalty only within the meaning of 28 U.S.C. § 2462 and not as a penalty in all contexts.[7] *See United States v. Meyer*, 376 F. Supp. 3d 1290, 1295 (S.D. Fla. 2019); *SEC v. Ahmed*, 343 F. Supp. 3d 16, 26-27 (D. Conn. 2018); *SEC v. Camarco*, No. 17-cv-2027, 2018 U.S. Dist. LEXIS 212816, at *3-5 (D. Colo. Dec. 18, 2018); *SEC v. Mapp*, No. No. 16-cv-246, 2018 U.S. Dist. LEXIS 125352, at *17-18 (E.D. Tex. July 25, 2018); *United States v. RaPower-3, LLC*, 294 F. Supp. 3d 1238, 1240-42 (D. Utah 2018), *confirmed*, No. 15-cv-828, 2018 U.S. Dist. LEXIS 58090, at *2 & n.8 (D. Utah Mar. 13, 2018); *SEC v. Brooks*, No. 07-cv-61526, 2017 U.S. Dist. LEXIS 122377, at *21-24 (S.D. Fla. Aug. 3, 2017). The Commission has also stated, "it makes no sense to extend [*Kokesh*'s] compensation-based test to *non*pecuniary sanctions" such as a FINRA bar. *John M.E. Saad*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at *5 (Aug. 23, 2019).

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 80(b)-3(e), (f). The Commission considers factors including:

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[6] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. At least some of the conduct that led to the case against Respondents occurred after July 22, 2010. *See Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017) (holding that a collateral bar cannot be imposed when the violative conduct on which a follow-on proceeding was based ended before the July 22, 2010, effective date of the Dodd-Frank Act).

[7] Respondents cite *SEC v. Gentile*, No. 16-cv-1619, 2017 U.S. Dist. LEXIS 204883 (D.N.J. Dec. 13, 2017), which held, under *Kokesh*, that an injunction and penny stock bar were subject to the five year statute of limitations in 28 U.S.C. § 2462. However, the trades at issue in this proceeding occurred within five years of the OIP.

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Melton*, 2003 SEC LEXIS 1767, at *5. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

As described in the Findings of Fact, Respondents' conduct was egregious and recurrent, over a period of two years, and involved a degree of scienter as indicated by the fact that the misconduct violated the antifraud provisions of the Advisers Act. Bruton's most recent occupation, several years as an investment adviser in the securities industry, if she were allowed to continue it in the future, would present opportunities for future violations. Although she disavows any intention to work in the securities industry, the fact that she began trading for others in the HI Fund and HDB resulted from the requests of associates who had observed her trading for her own account. Absent a bar, she could engage in fraud in the securities industry. Likewise, while Hope Advisors is no longer a registered investment adviser or operational, it is still an active Tennessee business entity and not defunct. The violations are relatively recent. Consistent with a vigorous defense of the charges against them, Respondents have not recognized the wrongful nature of their conduct or made assurances against future violations other than disavowing an intent to work in the securities industry. The $1,237,235 in disgorgement that Respondents were ordered to pay is a measure of the direct harm to the marketplace. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). An injunction involving dishonesty weighs in favor of a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

The Commission considers fraud to be especially serious and to subject a respondent to the severest of sanctions. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *29-30. Indeed, from

1995 to the present, there have been over fifty litigated follow-on proceedings based on antifraud injunctions or convictions in which the Commission issued opinions, and all of the respondents were barred[8] – at least fifty unqualified bars and three bars with the right to reapply after five years.[9] Further, in every such case that followed the statutory provision of collateral bars, the Commission imposed a collateral bar rather than an industry-specific bar, reasoning that the antifraud provisions of the securities laws apply broadly to all securities-related professionals and violations demonstrate unfitness for future participation in the securities industry, even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42-43 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 SEC LEXIS 1926 (May 27, 2016).

VI. ORDER

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, KAREN BRUTON IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

IT IS FURTHER ORDERED that, pursuant Section 203(e) of the Investment Advisers Act of 1940, HOPE ADVISORS, LLC, IS CENSURED.

IT IS FURTHER ORDERED that the charges pursuant to 17 C.F.R. § 201.102(e)(3) against KAREN BRUTON ARE DISMISSED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the

[8] In the cases authorized before the effective date of the Dodd-Frank Act, which authorized collateral bars, the Commission imposed industry-specific bars, such as a bar from association with an investment adviser on a respondent who had been associated with an investment adviser at the time of his violation.

[9] Those three were *Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987 (Oct. 22, 1996); *Martin B. Sloate*, Exchange Act Release No. 38373, 1997 SEC LEXIS 524 (Mar. 7, 1997); and *Robert Radano*, Advisers Act Release No. 2750, 2008 SEC LEXIS 1504 (June 30, 2008). The Commission's opinions do not make clear the factors that distinguished these cases from those in which unqualified bars were imposed, but there is little difference between a "bar" and a "bar with the right to reapply in five years."

undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge