INITIAL DECISION RELEASE NO. 1400
ADMINISTRATIVE PROCEEDING
FILE NO. 3-19024

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

In the Matter of		
ASCENSION ASSET MANAGEMENT, LLC, and GRENVILLE M. GOODER, JR.	:	INITIAL DECISION April 3, 2020

APPEARANCES: Joshua E. Braunstein and Luke A.E. Pazicky for the Division of Enforcement, Securities and Exchange Commission[1]

Thomas J. McGonigle, Alexandra J. Marinzel, and Macauley B. Venora of Murphy & McGonigle, P.C., for Ascension Asset Management, LLC, and Grenville M. Gooder, Jr.

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision orders Ascension Asset Management, LLC, and Grenville M. Gooder, Jr., jointly and severally, to pay a civil penalty of $50,000 and censures them.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on March 7, 2019, pursuant to Section 203(e), (f), and (k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940. On May 7, 2019, the Commission ordered that a hearing be convened before an Administrative Law Judge on September 9, 2019. *Ascension Asset Mgmt., LLC*, Advisers Act Release No. 5230, 2019 SEC LEXIS 1055, at *2. In the interim, the parties filed motions for summary disposition pursuant to 17 C.F.R. § 201.250, on which the undersigned ruled on August 29, 2019, making various findings of fact and conclusions of law. *Ascension Asset Mgmt., LLC*, Admin. Proc.

[1] Nicholas A. Pilgrim, who previously appeared for the Division, withdrew his appearance on August 9, 2019, and left the Commission's employ on that date.

Rulings Release No. 6665, 2019 SEC LEXIS 2290 (Summary Disposition Order). The undersigned held a one-day hearing in Washington, D.C., on September 9, 2019, to take additional evidence on the appropriate sanction, if any. The Division of Enforcement called one witness from whom testimony was taken, Patrick Smith, and Respondents called one, Respondent Gooder, in their case.[2]

The findings and conclusions in this Initial Decision are based on the record. Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission's public official records and of Financial Industry Regulatory Authority, Inc., 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). Preponderance of the evidence was applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 96-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the following post-hearing pleadings were considered: (1) the Division's Post-Hearing Brief; (2) Respondents' Counter-Proposed Findings of Fact and Conclusions of Law and Post-Hearing Brief; and (3) the Division's Post-Hearing Reply Brief. All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

B. Allegations and Arguments of the Parties

This Division requests that: Ascension and Gooder be censured and be ordered to cease and desist from further violations, to retain an independent compliance monitor, and to pay a civil penalty. Respondents urge that sanctions are not appropriate in that Respondents have remediated the violations, having even engaged a compliance consultant before the commencement of the Commission's examination that led to this proceeding and implemented the consultant's recommendations, even exceeding legal requirements, for instance by having monthly reviews instead of annual reviews. Respondents note that there is no evidence of client losses or misappropriation of client funds.

C. Procedural Issues

As the Summary Disposition Order stated, Respondents challenged the proceeding on the grounds that: it violates their Seventh Amendment right to jury trial; the presiding Administrative Law Judge is barred from adjudicating it under the Appointments Clause because of improper appointment and unconstitutional removal protections; claims based on conduct occurring prior to March 7, 2014, are barred by the five-year statute of limitations; and the Commission was not authorized to adopt Advisers Act Rule 206(4)-7, one of the rules that Respondents are charged with violating. The Summary Disposition Order denied Respondents' request that the proceeding be dismissed on these grounds. Post-hearing, Respondents reiterate their arguments and request reconsideration. The conclusions set forth in the Summary Disposition Order rejecting these challenges are adopted and incorporated herein. Respondents' objections are preserved for review.

[2] Citations to the transcript will be noted as "Tr. __." Citations to exhibits offered by the Division and by Respondents will be noted as "Div. Ex. __" and "Resp. Ex. __," respectively.

II. FINDINGS OF FACT

A. Previous Findings Incorporated

For purposes of this ID, the findings of fact set forth in the Summary Disposition Order (at *9-15) are deemed true and incorporated herein as follows:

Ascension, located in New York City, registered with the Commission as an investment adviser in June 2004. It provides asset allocation and portfolio management services to high net worth investors, trusts, foundations, and a pension plan, with regulatory assets under management of $152,456,779 as of December 31, 2017. Gooder, a Chartered Financial Analyst, founded Ascension in 2004 after working in the securities industry for about 40 years, including for several SEC-registered investment advisers. Ascension's sole owner and operator, he signed its Forms ADV.

Ascension has been a member since 2005 of the Investment Adviser Association (IAA), which advocates for and provides compliance and educational resources to SEC-registered investment advisory firms. However, Gooder did not read the organization's monthly compliance bulletins and did not attend its training events on compliance issues. Nor did he visit the Commission's website or contact Commission staff for guidance on any investment advisory compliance issues.

Until November 2015, Ascension did not adopt and implement written compliance policies and procedures or conduct annual reviews. Accordingly, Ascension did not have records of these things during that period. Since then, following the initiation of an examination by the Commission's Office of Compliance Inspections and Examinations (OCIE), Ascension has been in compliance with these requirements.

From September 2005 until March 2016, Respondents designated in Ascension's Forms ADV David N. Platt and Patrick L. Smith as Ascension's Chief Compliance Officer (CCO) at different times.

From about 2005, Ascension was an investment adviser to a private fund, which by 2007 had approximately 40 shareholders who collectively invested approximately $4.4 million. Gooder and Platt jointly managed the private fund. From about March 2010 until November 2015, Ascension did not retain an independent accountant to perform an annual audit of the private fund and did not distribute audited financial statements to its investors, nor did it retain an independent public accountant to conduct an annual surprise examination to verify the fund's assets.[3] The assets were in the possession of an independent qualified custodian. Since November 2015 the fund has been dissolved.

[3] These steps were required as of March 12, 2010. *See* Custody of Funds or Securities of Clients by Investment Advisers, 75 Fed. Reg. 1456 (Jan. 11, 2010) (amending Rule 206(4)-2, effective Mar. 12, 2010).

In or about July 2012, Gooder was named sole trustee of an approximately $5.2 million trust account, and from then through at least December 2015, Ascension was the investment adviser to the trust and received a fee for managing it. The assets were in the possession of an independent qualified custodian. As sole trustee, Gooder had the authority to obtain possession of and to withdraw client funds or securities maintained with a custodian. Through at least December 2015, Ascension did not engage an independent public accountant to conduct an annual surprise examination to verify the trust's assets. Since at least 2016 Ascension did do so.

Respondents concede that Ascension had what they describe as "technical" custody of the assets.[4] Respondents admit that through 2015 Ascension had "technical" custody of assets in the private fund and of at least some of the trust's assets and thus made "mistaken" statements in Forms ADV and in Form ADV brochures through February 2015 that it did not have custody of client assets.

Platt, listed in several Ascension Forms ADV filed between September 2005 and February 2015 as the adviser's CCO, has known Gooder for many years and owned and operated an investment adviser from 1980 to 2017, when he retired from business. He allowed Gooder to list his name as a convenience; Platt was not acquainted with the responsibilities of a CCO, and the two did not discuss it. He did not set up a compliance file, adopt or implement any written compliance policies and procedures, perform an annual review, or take any other action as Ascension's CCO.

Smith, listed in Ascension's Form ADV filed February 10, 2011, as the adviser's CCO, became acquainted with Gooder when both were associated with another investment firm. In 2009, when Smith was considering leaving that firm, Gooder suggested that he start his own firm and offered him shared office space rent-free until he became established. Smith began to pay rent in 2011 but found that he could not sustain it, and both made other arrangements for office space toward the end of 2011.

At most, Gooder mentioned only briefly to Smith that he was naming him CCO: Gooder recalls telling Smith that he was naming him CCO, without, however, discussing the duties and responsibilities involved.[5]

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[4] This appears to refer to the definition of custody in Rule 206(4)-2(d)(2): "*Custody* means holding, directly or indirectly, client funds or securities, *or having any authority to obtain possession of them* . . . includ[ing] . . . (ii) any arrangement . . . under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian." (second emphasis added; "*Custody*" is italicized in the original). The definition of custody was added in 2003 (then numbered as Rule 206(4)-2(c)(1)). *See* Custody of Funds or Securities of Clients by Investment Advisers, 68 Fed. Reg. 56692-93, 56701 (Oct. 1, 2003) (amending Rule 206(4)-2, effective Nov. 5, 2003).

[5] Weighing all the evidence, including Smith's testimony at the hearing, this finding will not be disturbed. As noted in the Summary Disposition Order, Smith testified in a June 2019 deposition that Gooder never talked to him about being CCO and that he was unaware he had been listed as

Prior to the OCIE examination, Respondents did not maintain any ledgers reflecting the adviser's assets, liabilities, reserves, capital, income, and expense accounts; rather, Gooder "ran Ascension Asset Management out of a checkbook." At year-end, he listed receipts and disbursements in different categories by hand on pieces of paper to provide to his accountant for tax purposes; he retained some of the papers.

Gooder did not read any IAA bulletins or Commission guidance regarding the custody rule that was published around the time of the 2010 amendment of the rule and did not have an understanding of the requirements of the rule.

B. Additional Findings of Fact

Evidence taken at the hearing focused on what sanctions, if any, are appropriate for the violations. In particular, Respondents introduced evidence to support their argument that their evidence of remediation obviated the need for any sanction and also argued that the evidence was insufficient to show "willful" violations.

On November 2, 2015, OCIE notified Respondents of an impending examination, to start on December 1. Tr. 85-86; Resp. Ex. 2. Respondents immediately took steps that led to engaging compliance consultants on November 9 and 10. Tr. 86-89; Resp. Exs. 5, 7. The consultants immediately reviewed Ascension's operations, resulting in a compliance policies and procedures manual on November 25. Tr. 90-91; Div. Ex. 3. Respondents have taken a number of steps to remain in compliance. They engage in a monthly review with a compliance consultant or correctly appointed CCO to make sure that their operation is within the guidelines of the manual. Tr. 91-92, 97, 99. They engaged a PCAOB-registered accounting firm, Mazars, for surprise audits of the trust as of January 2016. Tr. 96, 111-13; Resp. Exs. 15-18. To assist with books and records, as of February 2016, Respondents hired a bookkeeper who prepares balance sheets, income statements, ledgers, and trial balances. Tr. 93, 114-16; Resp. Exs. 19-20. They responded to OCIE's June 16, 2016, deficiency letter on July 14, 2016. Div. Ex. 95; Resp. Ex. 4. As of and since that date, Ascension was in compliance with the custody rule and remediated the other deficiencies; currently it contracts with a consultant to be CCO. Tr. 95-99, 104-08, 118-19; Resp. Ex. 11.

CCO in the February 2011 Form ADV until Commission staff showed him a copy in 2017. Smith reiterated this at the September 9, 2019, hearing. Tr. 46-49. He also testified that he had been under great financial stress, was working a second job seven nights a week, and was sleep deprived. Tr. 47, 53-56. In the June 2019 deposition he testified that for those reasons, his "recollection of [the 2011] time frame is very fuzzy at best." Tr. 56-57. Smith has been inconvenienced by the investigation of Respondents in that he had to explain it to his employer (and to travel to the hearing on his wedding anniversary) but has not been demoted or lost any salary. Tr. 49-50, 57.

Respondents spent over $100,000 on compliance – remediating the deficiencies and maintaining a compliance program – from November 2015 to date.[6] Tr. 119-20. Gooder now recognizes the importance of rules regulating investment advisers and intends to continue complying with them "enthusiastically" going forward. Tr. 120.

Ascension currently has assets under management of $160 million. Tr. 79. Most of the clients have been with Ascension or Gooder at his previous firm for ten to twenty years, some as long as forty years. Tr. 82. Ascension has lost no clients or assets under management as a result of the investigation and OIP, which were disclosed on Ascension's Forms ADV. Tr. 118.

III. CONCLUSIONS OF LAW

As concluded in the Summary Disposition Order, Ascension willfully violated and Gooder caused Ascension's violations of Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-2 thereunder; Ascension violated and Gooder caused Ascension's violations of Section 204 of the Advisers Act and Rule 204-2 thereunder; and Ascension and Gooder willfully violated Section 207 of the Advisers Act. These conclusions are adopted and incorporated herein.

Respondents argue that their conduct was not reckless, but merely negligent, and thus cannot be "willful," citing *Robare Group v. SEC*, 922 F.3d 468, 480 (D.C. Cir. 2019). The conclusion in the Summary Disposition Order that the conduct was reckless will not be revisited. A fiduciary who had decades of industry experience and who owned and controlled Ascension, Gooder failed to remain informed about compliance requirements – never attending IAA training events, reading IAA bulletins, visiting the Commission's website or otherwise obtaining Commission guidance on investment advisory compliance issues – and designated Platt and Smith as figurehead CCOs who would not undertake any actual compliance responsibilities. This shows that Respondents' conduct was at least reckless, amounting to scienter, and therefore willful. *See id.* at 479. No new evidence has been introduced to revisit that conclusion.

IV. SANCTIONS

The Division requests cease-and-desist orders, an independent compliance monitor, a civil penalty, and censures. As discussed below, a $50,000 civil penalty and censures will be ordered.

A. Sanction Considerations

In determining sanctions, the Commission considers such factors as:

> the egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's]

[6] This sum does not include fees spent responding to the investigation and in this proceeding. Tr. 120.

> assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent'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. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). 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). As the Commission has often emphasized, the public interest determination extends 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 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *pet. denied*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp*., Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. *See Leo Glassman*, Exchange Act Release No. 11929, 1975 SEC LEXIS 111, at *7 (Dec. 16, 1975).

B. Cease and Desist

Advisers Act Section 203(k) authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of the Advisers Act or rules thereunder or who "is, was, or would be a cause of the violation" and "in addition . . . require such person to comply, or take steps to effect compliance, with such provision . . . upon such terms and conditions and within such time as the Commission may specify." 15 U.S.C. § 80b-3(k)(1). Whether there is a reasonable likelihood of such violations in the future must be considered. *See KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). Such a showing is "significantly less than that required for an injunction." *Id*. at *114. In determining whether a cease-and-desist order is appropriate, the Commission considers the *Steadman* factors quoted above, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. *See WHX Corp. v. SEC*, 362 F.3d 854, 859-61 (D.C. Cir. 2004); *KPMG*, 2001 SEC LEXIS 98, at *116.

The violations were recurrent for ten years but ended four years ago, followed by a period of affirmative compliance. Respondents have recognized the wrongful nature of their conduct and given assurances against future violations. They acknowledged the deficiencies in their past conduct in words and action. While the Division argues that they may revert to their previous misconduct unless subject to a cease-and-desist order and monitoring, Respondents' claim to "enthusiastically" embrace compliance is made more credible by their affirmative compliance since November 2015. Thus, a cease-and-desist order will not be issued, and consequently the Division's request that Ascension be ordered to retain an independent compliance monitor for

three years will not be granted.[7] Further, while such monitors have been ordered in settled proceedings, the undersigned is unaware of any litigated case in which the Commission itself has ordered a respondent to retain a compliance monitor.[8]

C. Civil Money Penalty

The Division requests that Respondents be ordered to pay a second-tier penalty of $50,000. Sections 203(i) of the Advisers Act and 9(d) of the Investment Company Act authorize the Commission to impose civil money penalties for willful violations of those Acts or rules thereunder. In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. *See* 15 U.S.C. §§ 80b-3(1)(3), 80a-9(d)(3); *see, e.g.*, *Anthony Fields, CPA*, Securities Act of 1933 Release No. 9727, 2015 SEC LEXIS 662, at *101-02 (Feb. 20, 2015).

Harm to others and previous violations are absent from the instant case. While the Division argues that Smith was embarrassed by having to explain it to his employer, he did not suffer financial harm, there is no evidence of harm to Respondents' clients, and none was alleged. However, the violations involved a reckless disregard of a regulatory requirement and resulted in unjust enrichment. Respondents argue that there was no unjust enrichment because they received no additional moneys, while the Division points to the expenses that Respondents avoided for over ten years by not paying for compliance services, which cost them $100,000 during the four years after November 2015. The undersigned construes the savings as a form of unjust enrichment for the purpose of the penalty analysis. Deterrence also requires penalties for the violations.

Penalties in addition to the other sanctions ordered are in the public interest. Because Respondents' conduct was reckless, second-tier penalties are appropriate. 15 U.S.C. §§ 80b-3(i)(2)(B), 80a-9(d)(2)(B); *see SEC v. M&A W., Inc.*, 538 F.3d 1043, 1054 (9th Cir. 2008) ("[T]he imposition of second-tier penalties requires an assessment of scienter."). Pursuant to Sections 203(i)(2) of the Advisers Act and 9(d)(2) of the Investment Company Act, for each violative act or omission during the period of violation within the five-year statute of limitations

[7] The Division also cites Advisers Act Section 203(e), which authorizes the Commission to "place limitations on the activities, functions, or operations" of an investment adviser if "in the public interest" in support of its request that an independent monitor be ordered. 15 U.S.C. § 80b-3(e). In light of the conclusion that the likelihood of future violation is low, it is not in the public interest to impose the expense of an independent monitor on Respondents.

[8] There was one litigated case, which the Division cites, in which an administrative law judge ordered a compliance monitor, and based on the request of the parties to declare the decision final on an expedited basis, the Commission did so. *Ernst & Young LLP*, Initial Decision Release No. 249, 2004 SEC LEXIS 831, at *173-78, *182-83 (A.L.J. Apr. 16, 2004), *finality order*, Securities Act of 1933 Release No. 8413, 2004 SEC LEXIS 885 (Apr. 26, 2004).

through November 2, 2015, the maximum second-tier penalty for each violation for a natural person is $80,000 and for any other person is $400,000. 17 C.F.R. § 201.1001(a) & tbl. I. For violations after November 2, 2015, the maximum second-tier penalty for each violation for a natural person is $96,384 and for any other person is $481,920. 17 C.F.R. § 201.1001(b); Adjustments to Civil Monetary Penalty Amounts, 85 Fed. Reg. 1833, 1834 (Jan. 13, 2020).

The provisions, like most civil penalty statutes, leave the precise unit of violation undefined. *See* Colin S. Diver, *The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies*, 79 Colum. L. Rev. 1435, 1440-41 (1979).

The events at issue will be considered as one course of action, and the requested $50,000 penalty will be imposed jointly and severally on Ascension and Gooder. Combined with the other sanction ordered, this penalty is in the public interest.

D. Censure

Advisers Act Section 203(e) and (f) authorizes the Commission to censure an investment adviser or associated person who "has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under [the Advisers Act] . . . any statement which was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein." 15 U.S.C. § 80b-3(e)(1), (f). The statute also authorizes the Commission to censure an investment adviser or associated person who has willfully violated any provision of the Advisers Act or rules thereunder. *Id*. § 80b-3(e)(5), (f). The Division requests that Respondents be censured. In combination with the other sanction ordered, censures for Respondents' willful violations are in the public interest. The censures, like the civil penalty, are properly calibrated to punish Respondents for their misconduct and discourage future violations without a need for a cease-and-desist order or an independent monitor. *See Monetta Fin. Servs., Inc.*, Advisers Act Release No. 2438, 2005 SEC LEXIS 2491, at *7-8 (Oct. 4, 2005) (imposing censure and a civil monetary penalty but no cease-and-desist order after weighing the need for deterrence against mitigating factors).

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on January 30, 2020.

VI. ORDER

IT IS ORDERED that, pursuant to Sections 203(i) of the Investment Advisers Act of 1940 and 9(d) of the Investment Company Act of 1940, Ascension Asset Management, LLC, and Grenville M. Gooder, Jr., jointly and severally, PAY A CIVIL MONEY PENALTY of $50,000.

IT IS FURTHER ORDERED that, pursuant to Section 203(e) and (f) of the Investment Advisers Act of 1940, Ascension Asset Management, LLC, IS CENSURED for violating

Sections 206(4) and 207 of the Investment Advisers Act of 1940 and Rules 206(4)-7 and 206(4)-2 thereunder; and Grenville M. Gooder, Jr., IS CENSURED for violating Section 207 of the Investment Advisers Act of 1940.

Payment of civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/ofm; or (3) by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission.

Any payment by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order shall include a cover letter identifying the Respondent[s] and Administrative Proceeding No. 3-19024, and shall be delivered to: Enterprise Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). 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 undersigned's order resolving such motion to correct 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 motion to correct 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

Served by email on all parties.