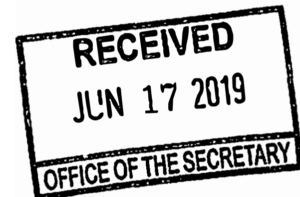
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of KAREN BRUTON and HOPE ADVISORS, LLC, Respondents.	ADMINISTRATIVE PROCEEDING FILE NO. 3-18789 and 3-18790



RESPONDENTS' OPPOSITION TO THE DIVISION OF ENFORCEMENT'S CONSOLIDATED MOTION FOR SUMMARY DISPOSITION

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TABLE OF CONTENTS

Introduction 1

Background 3

A. Ms. Bruton Traded Options With the Goal of Supporting Her Charity 3

B. The District Court Action. 6

C. The Impact of the District Court Action on Just Hope International 9

Argument 10

I. The Court Lacks Legal Authority to Impose the Sanctions Sought by the Division 10

A. Censures and Bars Are Unlawful Punishments Under *Kokesh*. 10

B. The Sanctions Sought by the Division Serve No Remedial Purpose 14

C. This Court Lacks Statutory Authority to Censure Hope Advisors Because Hope Advisors Is Not an Investment Adviser. 15

D. The Commission's "Gag Rule" Violates the First and Fifth Amendments. 16

II. The Punishments the Division Seeks Will Not Serve the Public Interest 18

A. Each of the *Steadman* Factors Advises Against Sanctions 18

1. There Is No Possibility That Hope Advisors or Ms. Bruton Will Violate the Federal Securities Laws. 19

2. The Alleged Misconduct Was Not Egregious And It Did Not Involve a High Degree of Scienter 20

3. Hope Advisors and Ms. Bruton Acknowledge the Importance of the Federal Securities Laws 22

4. The Alleged Misconduct Was Isolated. 22

B. The Punishments Sought by the Division Will Principally Harm Just Hope International. 22

Conclusion 24

TABLE OF AUTHORITIES

Page(s)

Cases

In the Matter of Christopher A. Lowry,
55 S.E.C. 1133 (2002)....................22

Crosby v. Bradstreet Co.,
312 F.2d 483 (2d Cir. 1963)....................16

FCC v. Fox TV Stations, Inc.,
567 U.S. 239 (2012)....................18

In the Matter of Alfred Clay Ludlum, III, Admin. Proc. File No. 3-14572,
2013 SEC LEXIS 2024 (July 11, 2013)....................12

In the Matter of BDO China Dahua CPA Co., et al., Admin. Proc. File
Nos. 3-14872, 3-15116, 2013 SEC LEXIS 1298 (Apr. 30, 2013)....................12

In the Matter of David J. Montanino, Admin. Proc. File No. 3-15943, 2015 SEC
LEXIS 1406 (Apr. 16, 2015)....................21

In the Matter of James A. Winkelmann, Sr. & Blue Ocean Portfolios, LLC,
Admin. Proc. File No. 3-17253, 2017 SEC LEXIS 837 (Mar. 20, 2017)....................18

In the Matter of James Prange, Admin. Proc. File No. 3-16410, 2014 SEC LEXIS
4874 (Dec. 19, 2014)....................21

In the Matter of Johnny Clifton, Admin. Proc. File No. 3-14266, 2013 SEC
LEXIS 2022 (July 12, 2013)....................12

In the Matter of Michael C. Pattison, Admin. Proc. File No. 3-14323, 2012 SEC
LEXIS 2973 (Sept. 20, 2012)....................12

In the Matter of Michael R. Drogin, CPA, Admin. Proc. File No. 3-10762, 2011
SEC LEXIS 135 (Jan. 11, 2011)....................13

In the Matter of Montford & Co, Inc. & Ernest V, Montford, Sr., Admin. Proc.
File No. 3-14536, 2014 SEC LEXIS 1529 (May 2, 2014)....................12

In the Matter of Robert L. Burns, Admin. Proc. File No. 3-12978, 2011 SEC
LEXIS 2722 (Aug. 2, 2011)....................13

In the Matter of Robert W. Armstrong III, Admin. Proc. File No. 3-9793, 2005
SEC LEXIS 1497 (June 24, 2005)....................13

In the Matter of Tzemach David Netzer Korem, Admin. Proc. File No. 3-14208,
2013 SEC LEXIS 2155 (July 26, 2013)....................12

In the Matter of vFinance Inv., Inc. & Richard Campanella, Admin. Proc. File
No. 3-12918, 2010 SEC LEXIS 2216 (July 2, 2010)....................13

Johnson v. SEC,
87 F.3d 484 (D.C. Cir. 1996)....................11, 14

Kokesh v. SEC,
137 S. Ct. 1635 (2017).................... *passim*

Marrie v. SEC,
374 F.3d 1196 (D.C. Cir. 2004)....................12

McCurdy v. SEC,
396 F.3d 1258 (D.C. Cir. 2005)....................10, 11, 13

Saad v. SEC,
873 F.3d 297 (D.C. Cir. 2017)....................11

SEC v. Founding Partners Capital Mgmt.,
No. 2:09-cv-229-Ftm-20SPC, 2009 U.S. Dist. LEXIS 40221 (M.D. Fla. May
13, 2009)....................6, 7

SEC v. Gentile,
No. 16-1619 (JLL), 2017 U.S. Dist. LEXIS 204883 (D.N.J. Dec. 13, 2017)....................11

SEC v. Helms,
No. A-13-CV-01036 ML, 2015 U.S. Dist. LEXIS 110758 (W.D. Tex. Aug.
21, 2015)....................21

SEC v. Hope Advisors, LLC, et al.,
No. 16-cv-1752-LMM (N.D.G.A.).................... *passim*

SEC v. Johnson,
No. 16-10607-NMG, 2019 U.S. Dist. LEXIS 49970 (D. Mass. Mar. 21, 2019)....................19, 21

SEC v. Pardue,
367 F. Supp. 2d 773 (E.D. Pa. 2005)....................19, 20

SEC v. Snyder,
No. H-03-04658, 2006 U.S. Dist. LEXIS 81830 (S.D. Tex. Aug. 22, 2006)....................19, 21, 22

SEC v. Wilde,
No. SACV 11-0315, 2012 U.S. Dist. LEXIS 183252 (C.D. Cal. Dec. 17,
2012)....................22

Siegel v. SEC,
592 F.3d 147 (D.C. Cir. 2010) 10, 14

Sierra Club v. EPA,
322 F.3d 718 (D.C. Cir. 2003) 11

Slotterback v. Interboro Sch. Dist.,
766 F. Supp. 280 (E.D. Pa. 1991) 17

Solantic, LLC v. City of Neptune Beach,
410 F.3d 1250 (11th Cir. 2005) 17

Steadman v. SEC,
603 F.2d 1126 (5th Cir. 1979) 3, 18, 19, 22

Statutes

15 U.S.C. § 80b-2(11) 15

15 U.S.C. § 80b-3(e) 3, 15, 16

15 U.S.C. § 80b-3(f) 12, 15

15 U.S.C. § 80b-21(11) 15

28 U.S.C. § 2462 10

Other Authorities

17 C.F.R. § 202.5(e) 3, 16, 17

Dave Boucher, *Local Firm Faces Fed Accusations*, THE TENNESSEAN (June 1,
2016) 9

The Division of Enforcement's (the "Division") Consolidated Motion for Summary Disposition (the "Motion") should be denied and this administrative proceeding should be dismissed, with prejudice. As explained more fully below, this Court lacks authority to censure Hope Advisors, LLC or bar Karen Bruton, and neither of those sanctions are in the public interest.

INTRODUCTION

Karen Bruton is 70 years old, retired and unemployed. (Declaration of Karen Bruton ¶¶ 1, 12 ("Bruton Decl."), attached hereto as Exhibit A.) She has no plan, intent or desire to work in the securities industry or obtain any other form of full-time employment. (*Id.* ¶ 12.) Her CPA license became inactive years ago and she has not worked as an accountant in over a decade. (*Id.* ¶ 3.) After years of hard-fought litigation defending herself against claims brought by the SEC in federal district court, which exhausted her financial resources, she entered a consent order to resolve the federal litigation and to fully retire from the industry. She now devotes her time and energy to charity work in Africa, Central America, South America and the Caribbean.

Hope Advisors, LLC is a Tennessee limited liability company that is wholly owned by Ms. Bruton. (*Id.* ¶ 13.) During the relevant time period, Hope Advisors served as the Commodity Pool Operator for two private funds. For several years, Hope Advisors was also registered with the SEC as an investment adviser, but it has not been registered with the SEC since 2016, and it conducted very little trading under the SEC's jurisdiction prior to 2016. Hope Advisors is no longer an operational entity, and Ms. Bruton has no plan, intent or desire to operate it again. (*Id.*) In fact, Ms. Bruton is in the process of liquidating and dissolving Hope Advisors. (*Id.*)

In this follow-on proceeding, the Division requests that the Court impose three separate sanctions, each of which are punitive measures intended solely to punish Karen Bruton and Hope Advisors without any corresponding or accompanying remedial purpose or effect. *First*, the Division seeks a permanent associational bar against Ms. Bruton, which would serve no

meaningful purpose since she is fully retired. *Second*, the Division asks this Court to permanently bar Ms. Bruton from appearing or practicing before the Commission as an accountant, which would be an academic exercise, since her CPA license has been inactive since 2008, she has not provided tax or accounting services to any person or entity in more a two decade nor does she have any plan, intent or desire to do so. Moreover, the Division has never accused her of any accounting fraud or malfeasance. *Third*, the Division asks this Court to censure Hope Advisors, even though it is not an operational entity, Ms. Bruton (its sole owner) has no plan, intent or desire to use it again, and Ms. Bruton is in the process of liquidating and dissolving Hope Advisors. The sole purpose of a censure would be to publicize the punishment imposed in the federal litigation.

For the following reasons, this Court lacks legal and equitable authority to impose the Division's requested sanctions.

First. Each of these measures is punitive in nature and, as such, this Court lacks the authority to issue these sanctions against Ms. Bruton and Hope Advisors. Like the Commission itself, this Court may impose sanctions for a remedial purpose, but not for punishment. In this instance, none of the proposed sanctions are remedial under the Supreme Court's recent decision in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), which held that a "civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment." 137 S. Ct. at 1645 (emphasis in original) (quotations and citation omitted). The Commission has repeatedly held that bars and censures are imposed to ***punish*** the alleged wrongdoer and ***deter*** others from violating the federal securities laws. Accordingly, bars and censures are not solely remedial under *Kokesh*; instead, they are punishments, and, as a result, this Court lacks legal authority to censure Hope Advisors or bar Ms. Bruton.

Second. Under Section 203(e) of the Investment Advisers Act of 1940 (the "Advisers Act") this Court only has authority to censure an "investment adviser." Hope Advisors, however, is not registered with the SEC as an investment adviser, nor does it meet the Advisers Act's statutory definition of an "investment advisor." As such, this Court lacks legal authority to censure Hope Advisors.

Third. Ms. Bruton's and Hope Advisors's constitutional rights in this proceeding are impaired by the Commission's "Gag Rule," 17 C.F.R. § 202.5(e), which prohibits them from offering a full defense against the Division's allegations. The "Gag Rule" violates the First Amendment because it is a prior restraint and a content-based regulation that is neither necessary to serve a compelling government interest nor narrowly tailored to achieve that purpose. It also violates the Fifth Amendment's Due Process Clause because it is impermissibly vague.

Fourth. The proposed sanctions are ***not*** in the public interest, as application of the *Steadman* factors to the facts of this case demonstrates. Among other things, there is no risk that Ms. Bruton or Hope Advisors will violate the federal securities laws; the alleged misconduct was not egregious; and they acknowledge the importance of complying with the federal securities laws. In addition, this Court's public interest determination must consider the impact the sanctions will have on the public-at-large, which weighs decidedly against punishing Ms. Bruton and Hope Advisors. Indeed, it would be *adverse* to the public interest to sanction Hope Advisors and Ms. Bruton, since the most profound effect of those sanctions will be felt by a charity that is closely associated with Ms. Bruton's name.

BACKGROUND

A. Ms. Bruton Traded Options With the Goal of Supporting Her Charity.

After graduating with her bachelor's degree in Math from the University of North Carolina, Ms. Bruton had a successful corporate career. She spent nearly a decade at Duke Power, where

she became the first female Vice President in the company's history. (Bruton Decl. ¶ 2.) During her time at Duke Power, she also earned an MBA from Wake Forest University. She then worked for nearly 20 years at Franklin Industries, a private company in Tennessee, where she served as Vice President and Corporate Controller. (*Id.* ¶ 3.)

In early 2007, Ms. Bruton had a calling to put her faith to work and serve those in need. (*Id.* ¶ 4.) Accordingly, she resigned from her position at Franklin Industries and formed Just Hope International, Inc., a 501(c)(3) public charity whose founding concept and mission is to make a lasting economic impact for persons in need around the world, including in Haiti, Sierra Leone, Ghana, Panama, Togo and the Dominican Republic. (*Id.*) Ms. Bruton was inspired to assist impoverished persons around the world through economic empowerment projects during a trip to Nicaragua, where she took a tractor trailer full of freeze dried food from Minnesota to feed the children who lived on the huge trash dump outside of Managua called La Chureca. (*Id.*) La Chureca was the largest open-air landfill in Central America. Ms. Bruton fed the children a hot, healthy meal for two weeks. (*Id.*) When she returned home, she was full of gratitude that she was able to give those children food, but she realized all those children were hungry again and she had not changed their situation. (*Id.*) It was at that moment that Ms. Bruton realized that the best way she could 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 & Loan Associations. (*Id.*) Accordingly, she founded Just Hope International to provide a "hand up," rather than a "hand out," to impoverished people around the world by providing or assisting with economic empowerment projects that have included:

- Working with 35 young women in Uganda who, as children, were abducted, tortured, abused, raped and impregnated by the Lord's Resistance Army to

help them market their handmade crafts and link them to potential buyers in their communities, so that they can earn an income to support themselves as well as their children;

- The development of a five-acre pineapple farm in Sierra Leone, where the local community has planted over 90,000 pineapple plants, which were eventually harvested and sold by the community in a local market;
- The development of a 15-acre dwarf banana farm in Honduras, which is farmed by a community of approximately 60 households that was devastated by Hurricane Mitch in 1998;
- Linking 60 subsistence farmers, who collect specific Non-Timber Forest Products (NTFP), to buyers for further processing, which allows them to earn supplemental income;
- Supporting the Widows Empowerment Program in Haiti, which is seeking to revive the local economy by empowering widows to rebuild their businesses and spread the culture of entrepreneurship in Haiti;
- Providing training, education, support and other assistance to a microeconomic retail shoe resale operation in Honduras that is providing 25 individuals from 14 villages the opportunity to earn an income;
- Providing logistical and training support to over 100 members of the Lunsar community in Sierra Leonne who are farming ginger, which could allow them to double their current income;
- Supporting programs for children living in orphanages in the Dominican Republic, teenage girls in Panama and young men in Honduras that teach basic skills necessary to live a safe, healthy adult life, such as renting an apartment, applying for a job and paying bills; and
- Helping villages in Ghana organize themselves into Village Savings & Loan Associations, which allows the villages to save money for large purchases and make loans to each other for business and educational purposes.

(*Id.*)

When Ms. Bruton left the corporate world in 2007 and formed Just Hope International, she had no aim, intention or desire to enter the securities industry or obtain any other form of full-time employment. (*Id.* ¶ 5.) Instead, she planned to volunteer full-time at Just Hope International, and, as she intended, for many years, Ms. Bruton spent a significant amount of her time volunteering at Just Hope International in a managerial capacity and by participating in numerous service trips

to assist with Just Hope International's economic empowerment projects in Africa, Central America, South America and the Caribbean. (*Id.*)

To support herself while volunteering at Just Hope International, she planned to invest her savings in the market. (*Id.* ¶ 6.) Ms. Bruton was successful in her trading and, within a short period of time, friends and former colleagues approached her about investing for them as well. (*Id.*) Ms. Bruton resisted these requests for a period of time. (*Id.*) Eventually, however, she agreed to expand her trading to include her friends and colleagues, with a view toward providing financial support for Just Hope International.[1] (*Id.*) Half of the incentive allocations she earned from trading options for a private fund she formed in 2011 were paid to Just Hope Foundation, a tax-exempt 501(c)(3) grant making foundation that Ms. Bruton created with the goal of further supporting Just Hope International through grants that would offset the charity's administrative costs. (*Id* ¶ 7.) This allowed all other donations to Just Hope International to be used directly on economic empowerment projects around the world. (*Id.*) Ms. Bruton's decision to trade options for two private funds was ***not*** motivated by a desire for personal profit or financial gain. (*Id.*)

B. The District Court Action.

In May 2016, the Division filed a civil enforcement action against Hope Advisors and Ms. Bruton, *SEC v. Hope Advisors, LLC, et al.*, No. 16-cv-1752-LMM (N.D.G.A.) (the "District Court Action").[2] In addition, although it had no involvement with the investments or any alleged misconduct, Just Hope Foundation was named as a relief defendant in the District Court Action.[3]

[1] In 2008, Ms. Bruton began trading options for a small entity formed by several of her former colleagues—HDB Investments, LLC ("HDB")—and, several years later, she began trading for a private fund that she formed—Hope Investments, LLC ("HI"). (Bruton Decl. ¶ 6.)

[2] The Division later added two additional Defendants.

[3] Relief defendant status is an "obscure common law concept." *SEC v. Founding Partners Capital Mgmt.*, No. 2:09-cv-229-Ftm-20SPC, 2009 U.S. Dist. LEXIS 40221, at *4 (M.D. Fla. May 13,

(Second Amended Complaint, *SEC v. Hope Advisors, LLC, et al.*, No. 16-cv-1752-LMM (N.D.G.A., Aug. 30, 2017), ECF No. 71 ¶ 5 ("Amended Complaint" or "Am. Compl."), attached hereto as Exhibit B.) Importantly, Just Hope Foundation and Just Hope International are separate legal entities with very different purposes. As described above, Just Hope Foundation is a tax-exempt 501(c)(3) grant making foundation that Ms. Bruton formed in 2011 with the goal of further supporting Just Hope International through grants that would offset the charity's administrative costs. (Bruton Decl. ¶ 7.) It also makes grants to other charitable organizations. Just Hope International, on the other hand, is a public charity Ms. Bruton founded in 2007, which seeks to make an economic impact that lasts for impoverished persons around the world through economic empowerment projects. (*Id.* ¶ 4.)

The Division's allegations in the District Court Action related to the disclosures made to investors regarding a trading strategy that Hope Advisors and Ms. Bruton executed to respond to extreme volatility in the financial markets in late 2014. The Division never alleged that Hope Advisors or Ms. Bruton implemented the trading strategy solely or primarily for the purpose or with intent of personally enriching themselves or earning incentive allocations.[4]

According to the SEC, Ms. Bruton and Hope Advisors utilized a trading strategy that "had the purpose and effecting of avoiding realization of the losses." (Am. Compl. ¶ 61.) Ms. Bruton

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2009). "A relief defendant is not accused of wrongdoing, but a federal court may order equitable relief against such a person where that person (1) has received ill-gotten funds, and (2) does not have a legitimate claim to those funds." *Id.* at *3-4.

[4] The Division alleged that the trading strategy had "the primary purpose of avoiding realization of losses." (Am. Compl. ¶ 125; *see also id.* ¶¶ 61, 63 (alleging that the trading strategy "had the purpose and effect of avoiding realization of the losses" and the at-issue trades "all had the same purpose and effect, *i.e.*, to avoid having realized losses at any month's end").) Although an *effect* of avoiding the realization of losses was that Ms. Bruton and Just Hope Foundation earned incentive allocations (*id.* ¶¶ 31, 33), the Division did not allege that Ms. Bruton or Hope Advisors implemented the trading strategy solely or primarily for the purpose or with the intent of personally enriching themselves or earning incentive allocations.

and Hope Advisors believed this trading strategy would benefit investors, since investor withdrawals were based solely on *realized* gains and losses. (Bruton Decl. ¶¶ 8-9.) In other words, by implementing this trading strategy, investors would not be forced to take the losses caused by the extreme market volatility in late 2014 if they withdrew some or all of their investment. Ms. Bruton and Hope Advisors believed that it would have been unfair for withdrawing investors to incur those losses since they intended to reduce and eventually eliminate those losses over time, such that they would never be realized by investors. (*Id.* ¶ 9.)

Among other disclosures, investors received letters in December 2014 and June 2015 that explained the trading strategy, and those letters are attached hereto as Exhibits C and D, respectively. The December 2014 letter, for example, explained to investors that "[d]uring the months of October and December, we experienced two sharp V-bottoms in the market. . . . [and] [w]hen we experience such radical moves in the market, we need time to manage through the events. We accomplish this by moving positions into future months in order to provide that time. That is what we have been doing for the last three months and [we] have now moved the unrealized positions into 2015." (Ex. C.) In addition, investors received a full accounting of their realized and unrealized gains and losses through monthly account statements, annual audited financial statements for the funds and annual K-1 reports. (*See* Am. Compl. ¶ 29; Ex. C (discussing K-1 reports).) In the District Court Action, however, the Division alleged that Hope Advisors and Ms. Bruton should have explained differently and/or made additional disclosures to investors regarding their trading strategy. (*Id.* ¶¶ 124-137.)

For more than two years, Hope Advisors and Ms. Bruton vigorously defended themselves in the District Court Action. (Bruton Decl. ¶ 10.) In 2018, because they were no longer able to finance their defense (*id.*), they reached an agreement with the SEC to resolve the District Court

Action "[w]ithout admitting or denying the allegations of the Amended Complaint." (Final Judgment, *SEC v. Hope Advisors, LLC, et al.*, No. 16-cv-1752-LMM (N.D.G.A., Sept. 13, 2018), ECF No. 132 at 2, attached as Tab III to the Motion.) As part of their settlement with the SEC, which occurred in the middle of discovery in the District Court Action, Hope Advisors and Ms. Bruton agreed to pay disgorgement of $1,237,235, which the SEC is required to distribute to investors. (*Id.*, at 4, 7-8.) This amount has already been paid in full to the Commission by Hope Advisors and Ms. Bruton.

C. The Impact of the District Court Action on Just Hope International.

There is no allegation that Just Hope International had any involvement in the trading or disclosures that formed the basis of the District Court Action or this proceeding, and it has never been a party to either action. The publicity resulting from the District Court Action, however, had a significant negative effect on Just Hope International, which, in turn, impacted the thousands of impoverished persons around the world who depend on Just Hope International's programs and services. Present, past and potential donors (especially in the Nashville area, where Ms. Bruton resides and Just Hope International is based) were led to believe that the Division's allegations also concerned Just Hope International. For example, shortly after the District Court Action was filed, *The Tennessean*, Nashville's largest newspaper, stated—incorrectly—that the SEC had alleged that "[a] Brentwood organization [Just Hope International] created to help impoverished communities around the world actually gamed the financial system to collect millions in unwarranted fees." (Dave Boucher, *Local Firm Faces Fed Accusations,* THE TENNESSEAN (June 1, 2016), attached hereto as Exhibit E.)

Although Ms. Bruton has no involvement in Just Hope International's day-to-day operations, the charity has struggled to persuade donors that it is not involved in any way with this case. Ms. Bruton is personally aware of past and potential donors who were unwilling to donate

to Just Hope International, in light of the Division's allegations. (Bruton Decl. ¶ 11.) The public punishments contemplated by this follow-on proceeding will only increase Just Hope's difficulty in raising the funds that are necessary to provide charitable programs and services relied upon by so many impoverished persons around the world.

ARGUMENT

I. The Court Lacks Legal Authority to Impose the Sanctions Sought by the Division.

A. Censures and Bars Are Unlawful Punishments Under *Kokesh*.

The jurisdiction of this Court allows for the imposition of "sanctions for a remedial purpose, but not for punishment." *McCurdy v. SEC*, 396 F.3d 1258, 1264 (D.C. Cir. 2005).[5] None of the sanctions requested by the Division in this case, however, are remedial under the U.S. Supreme Court's recent decision in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017).

In *Kokesh*, the Supreme Court addressed whether 28 U.S.C. § 2462, which imposes a five year statute of limitations on government suits "for the enforcement of any civil fine, penalty, or forfeiture," applies to claims for disgorgement. 137 S. Ct. at 1639. In a 9-0 decision, the Supreme Court concluded that "[d]isgorgement, as it is applied in SEC enforcement proceedings, operates as a penalty under § 2462." *Id.* at 1645. In reaching this conclusion, the Supreme Court held that a "civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term." 137 S. Ct. at 1645 (emphasis in original) (quotations and citation omitted). In this regard, "disgorgement thus bears all the hallmarks of a penalty: It is imposed as a consequence of violating a public law and it is intended to deter, not to compensate." *Id.* at 1644.

[5] *Siegel v. SEC*, 592 F.3d 147, 157 (D.C. Cir. 2010) ("[I]t is important to remember that the agency [the Commission] may impose sanctions for a remedial purpose, but not for punishment.").

While *Kokesh* did not expressly address censures, associational bars and practice bars, "the *Kokesh* analysis matters" here because "[t]he Supreme Court's reasoning in *Kokesh* was not limited to the specific statute at issue" in that case. *Saad v. SEC*, 873 F.3d 297, 305 (D.C. Cir. 2017) (Kavanaugh, J., concurring).[6] Thus, applying the analysis of *Kokesh*, to be lawful, sanctions imposed by this Court must "*solely* . . . serve a remedial purpose," *Kokesh*, 137 S. Ct. at 1645 (emphasis in original), since this Court "may impose sanctions for a remedial purpose, but not for punishment." *McCurdy*, 396 F.3d at 1264. That is, sanctions imposed by this Court must be *solely* "directed toward correcting or undoing the effects of" the alleged misconduct. *Johnson v. SEC*, 87 F.3d 484, 491 (D.C. Cir. 1996) (holding that a censure and six month suspension was "certainly not 'remedial'" because it was "not directed toward correcting or undoing the effects of Johnson's alleged[]" misconduct).

It is axiomatic, however, that neither a censure nor an associational or practice bar "provide[s] anything to the [alleged] victims to make them whole or remedy their losses." *Saad*, 873 F.3d at 305 (Kavanaugh, J., concurring). "Under any common understanding of the term 'remedial,' expulsion and suspension . . . are not remedial. Rather, expulsion and suspension are punitive." *Id.* at 304. Accordingly, "in light of the Supreme Court's analysis in *Kokesh*, expulsion or suspension" or censure "is a penalty, not a remedy." *Id.* at 305; *see also SEC v. Gentile*, No. 16-1619 (JLL), 2017 U.S. Dist. LEXIS 204883, at *9-10 (D.N.J. Dec. 13, 2017) (holding that a "penny stock bar" was not remedial because it "would only serve to punish Defendant" and "would not restore any '*status quo ante*' nor would it serve any retributive purposes").

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[6] To the extent the Division attempts to distinguish *Kokesh* on the grounds that it did not address the exact sanctions here, "that argument carries no weight since carefully considered language of the Supreme Court, even if technically dictum, generally must be treated as authoritative." *Sierra Club v. EPA*, 322 F.3d 718, 724 (D.C. Cir. 2003).

The Commission's decisions confirm the foregoing analysis that censures and bars are unlawful punishments under *Kokesh* because they "cannot fairly be said *solely* to serve a remedial purpose," but rather "can only be explained as also serving either retributive or deterrent purposes." *Kokesh*, 137 S. Ct. at 1645 (emphasis in original) (quotations and citation omitted). As the Commission has explained, bars and censures are imposed to "prevent" future violations by the alleged wrongdoer and to "deter others" from violating the federal securities laws

- Associational bars ***prevent "future violations of the federal securities laws*** " and "***deter[] others*** from engaging in the same serious misconduct." *In the Matter of Alfred Clay Ludlum, III*, Admin. Proc. File No. 3-14572, 2013 SEC LEXIS 2024, at *34 (July 11, 2013) (emphasis added) (quotations and citation omitted).[7]

- Practice bars "***prevent [the alleged wrongdoer] and deter others from disregarding their professional responsibilities*** and protect the investing public." *In the Matter of Michael C. Pattison*, Admin. Proc. File No. 3-14323, 2012 SEC LEXIS 2973, at *50-51 (Sept. 20, 2012) (emphasis added) (quotations and citation omitted).[8]

[7] *See also In the Matter of Montford & Co, Inc. & Ernest V, Montford, Sr.*, Admin. Proc. File No. 3-14536, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014) (holding that an associational bar under Section 203(f) of the Advisers Act "will prevent [Respondent] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct"); *In the Matter of Tzemach David Netzer Korem*, Admin. Proc. File No. 3-14208, 2013 SEC LEXIS 2155, at *36 (July 26, 2013) (holding that collateral bars under Section 15 of the Securities Exchange Act of 1934 "are imposed to protect the public interest from future harm at [the] hands" of the alleged wrongdoer and to "protect the public interest by deterring [Respondent] and others from violating the provisions of the federal securities laws, misleading investors, and manipulating the market"); *In the Matter of Johnny Clifton*, Admin. Proc. File No. 3-14266, 2013 SEC LEXIS 2022, at *59 (July 12, 2013) ("Imposing a full collateral bar" under Section 15 of the Securities Exchange Act of 1934 "will protect the investing public from the likelihood that [Respondent] will commit future violations of the federal securities laws. A bar will also have the salutary effect of deterring others from engaging in the same serious misconduct.")

[8] *Marrie v. SEC*, 374 F.3d 1196, 1200 (D.C. Cir. 2004) (Rule 102(e) practice bars are "directed at protecting the integrity of the Commission's own processes, as well as the confidence of the investing public in the integrity of the financial reporting processes") (quotations and citation omitted); *In the Matter of BDO China Dahua CPA Co., et al.*, Admin. Proc. File Nos. 3-14872, 3-15116, 2013 SEC LEXIS 1298, at *19 (Apr. 30, 2013) (holding that practice bars are "directed at protecting the integrity of the Commission's own processes and the confidence of the investing

- Censures "alert[] the public . . . of the unacceptability of [Respondent's] conduct' and . . . ***encourage[] other traders to observe scrupulously the fiduciary duties they owe their investment advisory*** clients." *In the Matter of Robert L. Burns*, Admin. Proc. File No. 3-12978, 2011 SEC LEXIS 2722, at *25 (Aug. 2, 2011) (emphasis added) (quotations and citation omitted).[9]

As these decisions from the Commission illustrate, censures and bars are "imposed as a consequence of violating a public law and [they are] intended to deter, not compensate." *Kokesh*, 137 S. Ct. at 1644. As such, censures and bars "bear[] all the hallmarks" of punishments. *Id.* Indeed, *Kokesh* specifically held that if a civil sanction is intended, even only in part, to deter others from violating the law, it is "inherently punitive," and not remedial, "because deterrence is not a legitimate nonpunitive government objective." *Id.* at 1643 (quotations and citation omitted).

Thus, the Commission's decisions regarding the purpose and intent of censures and bars confirm that they "cannot fairly be said *solely* to serve a remedial purpose" after *Kokesh*. *Id.* at 1645. Instead, they "can only be explained as also serving either retributive or deterrent purposes." *Id.* (emphasis in original) (quotations and citation omitted). As a result, the censures and bars are not remedial under *Kokesh*; instead, they are punishments, and since the Court "may impose sanctions for a remedial purpose, but not for punishment," this Court lacks legal authority to censure Hope Advisors or bar Ms. Bruton. *See McCurdy*, 396 F.3d at 1264.

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public in the integrity of the financial reporting process." (quotations and citations omitted)); *In the Matter of Michael R. Drogin, CPA*, Admin. Proc. File No. 3-10762, 2011 SEC LEXIS 135, at *5-6 (Jan. 11, 2011) ("The purpose of Rule 102 is to protect the integrity of the Commission's processes . . . ."); *In the Matter of Robert W. Armstrong III*, Admin. Proc. File No. 3-9793, 2005 SEC LEXIS 1497, at *47 (June 24, 2005) ("The Commission disciplines professionals pursuant to Rule 102(e) in order to 'protect the integrity of its own processes.'" (citation omitted)).

[9] *See also In the Matter of vFinance Inv., Inc. & Richard Campanella*, Admin. Proc. File No. 3-12918, 2010 SEC LEXIS 2216, at *56 (July 2, 2010) (holding that a censure under Section 15 of the Securities Exchange Act of 1934 was imposed "to deter further misconduct, and to impress . . . the need for scrupulous compliance in the future").

B. The Sanctions Sought by the Division Serve No Remedial Purpose.

Even if, contrary to *Kokesh*, the Court finds that censures and bars are not unlawful punishments (and they are), this Court still lacks authority to censure Hope Advisors and bar Ms. Bruton because the Division has failed to articulate *any* remedial purpose served by those punishments. The Division does not (because it cannot) assert that these sanctions are "directed toward correcting or undoing the effects of" the alleged misconduct. *Johnson*, 87 F.3d at 491. Instead, the Division argues that censuring Hope Advisors and barring Ms. Bruton is "appropriate for the protection of investors," and that the alleged misconduct "is precisely the sort that warrants an industry bar" and censure. (Motion, at 9-10.) But "[t]o justify a sanction as remedial, the agency must do more than say, in effect, petitioners are bad and must be punished." *Siegel*, 592 F.3d at 157 (quotations and citation omitted).

In particular, there is no legal or factual basis for this Court to conclude that barring Ms. Bruton from practicing or appearing before the Commission as an accountant serves any remedial purpose. On the contrary, such a sanction cannot be described as anything other than purely punitive. Ms. Bruton's CPA license has been inactive for more than 10 years, she has not provided tax or accounting services to any person or entity in more than two decades, and she has no plan, intention or desire to provide tax or accounting services to any person or entity in the future. In addition, and perhaps most importantly, the Division has never alleged that Ms. Bruton engaged in any fraud or malfeasance as an accountant.

The only further justification offered by the Division is that "a censure will provide notice to state regulators of Hope's misconduct," and "will alert Commission staff (and potential clients of Hope) of Hope's prior misconduct" should Hope Advisors seek to re-register with the Commission as an investment adviser. (Motion, at 10.) There is, however, no basis for this Court to conclude that a censure is solely or even partially remedial because it would serve as notice to

state regulators or the Commission itself of the Commission's allegations in the District Court Action.

C. This Court Lacks Statutory Authority to Censure Hope Advisors Because Hope Advisors Is Not an Investment Adviser.

The Division asks this Court to censure Hope Advisors, pursuant to Section 203(e) of the Advisers Act, 15 U.S.C. § 80b-3(e). (Motion, at 10.) That provision of the Advisers Act, however, only authorizes this Court to censure an "investment adviser": "The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any ***investment adviser*** . . . ." 15 U.S.C. § 80b-3(e) (emphasis added). Here, it is undisputed that Hope Advisors is *not* registered with the SEC as an investment adviser. (Motion, at 10 ("Hope is no longer registered as an investment adviser with the Commission.")) Moreover, Hope Advisors is not currently an operating entity (Bruton Decl. ¶ 13), and it cannot, therefore, fall within the Advisers Act's statutory definition of an investment adviser. *See* 15 U.S.C. § 80b-21(11) (defining an "investment adviser" as an entity "advising others . . . as to the value of securities . . . the advisability of investing in, purchasing, or selling securities, or . . . promulgat[ing] analyses or reports concerning securities.").

In addition, unlike Section 203(f) of the Advisers Act, which authorizes this Court to bar or suspend "any person" who "***at the time of the alleged misconduct, [was] associated . . . with an investment adviser***," 15 U.S.C. § 80b-3(f) (emphasis added), Section 203(e) does not contain a "look back" provision. That is, Section 203(e) does not allow this Court to censure an entity simply because it was an investment adviser at the time of the alleged misconduct. Rather, Section 203(e) only authorizes this Court to censure registered investment advisers or other entities who fall within the statutory definition of an "investment adviser" under 15 U.S.C. § 80b-2(11).

Here, for the reasons explained above, Hope Advisors is not registered as an investment adviser and it does not fall within the statutory definition of an "investment adviser." Accordingly, this Court lacks legal authority to censure Hope Advisors under Section 203(e) of the Advisers Act.

D. The Commission's "Gag Rule" Violates the First and Fifth Amendments.

Finally, this Court should deny the Division's Motion because the Commission's "Gag Rule," 17 C.F.R. § 202.5(e), operates to violate Ms. Bruton's and Hope Advisors's substantial rights under the First and Fifth Amendments of the U.S. Constitution in defending themselves against administrative sanction and censure. The "Gag Rule" sets forth the Commission's "policy not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings":

> The Commission has adopted the policy that in any civil lawsuit brought by it or in any administrative proceeding of an accusatory nature pending before it, it is important to avoid creating, or permitting to be created, an impression that a decree is being entered or a sanction imposed, when the conduct alleged did not, in fact, occur. Accordingly, it hereby announces its policy not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings. In this regard, the Commission believes that a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.

17 C.F.R. § 202.5(e). For at least three reasons, the "Gag Rule" violates the Ms. Bruton's and Hope Advisors's rights under the U.S. Constitution.[10]

First, the "Gag Rule" is a prior restraint on speech, in violation of the First Amendment. "Although prior restraints are not unconstitutional *per se*, any system of prior restraint bears a

[10] It is irrelevant that Hope Advisors and Ms. Bruton "agreed" to comply with the "Gag Rule." *See Crosby v. Bradstreet Co.*, 312 F.2d 483, 485 (2d Cir. 1963) (holding that a stipulated district court order that "was entered on consent" violated the First Amendment because it "constitutes a prior restraint" and "that the parties may have agreed to it is immaterial").

heavy presumption against its constitutional validity," and "Supreme Court cases addressing prior restraints have identified two evils that will not be tolerated in prior restraint regulations. First, a regulation that places 'unbridled discretion' in the hands of a government official constitutes a prior restraint and may result in censorship. Second, a prior restraint that fails to place limits on the time within which the official must decide whether proposed speech will be allowed is impermissible." *Slotterback v. Interboro Sch. Dist.*, 766 F. Supp. 280, 297-98 (E.D. Pa. 1991). Here, the "Gag Rule" "incorporate[s] both of the evils that doom prior restraints under the First Amendment": (i) it provides the Commission with unbridled enforcement discretion and (ii) it contains no time limitation. *Id.* at 299.

Second, the "Gag Rule" also violates the First Amendment because it is a content-based restriction that is neither "necessary to serve a compelling government interest" nor "narrowly tailored to achieve that end." *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1267 (11th Cir. 2005). The "Gag Rule" itself states that the Commission believes it is necessary and "important" because it "avoid[s] creating, or permitting to be created, an impression that a decree is being entered or a sanction imposed, when the conduct alleged did not, in fact, occur." 17 C.F.R. § 202.5(e). But no court has held (or would ever hold) that the government has a compelling interest in preventing the creation of an *impression* that a judgment was entered or sanction imposed when the conduct alleged by the government did not, in fact, occur, and this Court should not be the first. Indeed, it would be unprecedented for this Court to hold that the Commission has a compelling interest in creating the *impression* that its allegations are true—regardless of whether the allegations are *actually* true. Furthermore, even if the Commission had such a compelling government interest, the "Gag Rule" is not narrowly drawn to achieve that purpose. On the

contrary, the least restrictive means of avoiding the *impression* that the Commission's allegations are untrue is for the Commission to demand specific admissions.

Finally, the "Gag Rule" is unconstitutionally vague, in violation of the Fifth Amendment's Due Process Clause. The Supreme Court recently explained that "[a] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required" and "[w]hen speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech." *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253-54 (2012). Here, the "Gag Rule" provides almost no limiting principle on the scope of speech that is prohibited; indeed, it even purports to prohibit Ms. Bruton or Hope Advisors from creating the "impression" that the allegations in the Amended Complaint "did not, in fact, occur." Accordingly, the "Gag Rule" violates the Due Process Clause of the Fifth Amendment.

II. The Punishments the Division Seeks Will Not Serve the Public Interest.

A. Each of the *Steadman* Factors Advises Against Sanctions.

The public interest analysis begins with the *Steadman* factors: (1) "the egregiousness of the respondent's actions," (2) "the isolated or recurrent nature of the infraction," (3) "the degree of scienter involved," (4) "the sincerity of the respondent's assurances against future violations," (5) "the respondent's recognition of the wrongful nature of his or her conduct," and (6) "the likelihood that the respondent's occupation will present opportunities for future violations." *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). In considering the *Steadman* factors, this Court's public interest "inquiry is flexible, and no one factor is dispositive." *In the Matter of James A. Winkelmann, Sr. & Blue Ocean Portfolios, LLC*, Admin. Proc. File No. 3-17253, 2017 SEC LEXIS 837, at *179-80 (Mar. 20, 2017). Here, for the reasons explained below, each of the

Steadman factors favor Hope Advisors and Ms. Bruton. Accordingly, it is not in the public interest for this Court to punish Ms. Bruton and Hope Advisors.

1. *There Is No Possibility That Hope Advisors or Ms. Bruton Will Violate the Federal Securities Laws.*

"The likelihood of recurrence is of particular importance when determining whether, or to what extent," a censure or bar is in the public interest. *SEC v. Johnson*, No. 16-10607-NMG, 2019 U.S. Dist. LEXIS 49970, at *9 (D. Mass. Mar. 21, 2019); *see also SEC v. Pardue*, 367 F. Supp. 2d 773, 776-77 (E.D. Pa. 2005) (holding that "courts should weigh the loss of livelihood and the stigma attached to permanent exclusion from the corporate suite, against the likelihood of future misconduct in a fitting matter" (quotations and citation omitted)). Here, this factor weighs heavily in favor of Hope Advisors and Ms. Bruton, and, standing alone, justifies denying the Division's Motion because there is no possibility that either Hope Advisors or Ms. Bruton will violate the federal securities laws.

Hope Advisors is not an operational entity, and Ms. Bruton—its sole owner—has no plan, intention or desire to use it again. (Bruton Decl. ¶ 13.) In fact, Ms. Bruton is in the process of liquidating and dissolving Hope Advisors. (*Id.*) Likewise, Ms. Bruton, is 70 years old, retired, not employed, and she has no plan, intention or desire to re-enter the securities industry, provide tax or accounting services to any person or obtain any other employment. (*Id.* ¶¶ 1, 12.) Accordingly, the overwhelming evidence before this Court shows that neither Hope Advisors nor Ms. Bruton has the desire or the opportunity to violate the federal securities laws. Therefore, this *Steadman* factor weighs heavily in their favor. *See, e.g.*, *SEC v. Snyder*, No. H-03-04658, 2006 U.S. Dist. LEXIS 81830, at *25-27 (S.D. Tex. Aug. 22, 2006) (denying SEC's request for officer and director bar because "[t]he overwhelming evidence . . . establishes that Defendant has no realistic chance of ever again obtaining a position as an officer or director of a public company");

Pardue, 367 F. Supp. 2d at 777 ("Although a permanent bar on serving as an officer or director of a publicly traded company would be the most effective means of preventing a future violation by [Defendant], I see little reason to issue it. . . . As the [Defendant's] family is no longer in ownership" of the company that employed Defendant "and [Defendant] is no longer employed by the company, the odds of a future violation are lower.") .

2. *The Alleged Misconduct Was Not Egregious And It Did Not Involve a High Degree of Scienter.*

The SEC's allegations in the District Court Action concern disclosures regarding an options trading strategy that Hope Advisors and Ms. Bruton implemented during periods of "volatility in the financial markets," which allegedly had the "purpose and effect of avoiding realization of losses." (Am. Compl. ¶¶ 60-61.) Avoiding the realization of losses had the potential to benefit investors because "only realized gains and losses would affect the capital account" of each investor "and only realized gains and losses would affect the amount of any investor's redemption" (*id.* ¶ 28) ,and Ms. Bruton and Hope Advisors implemented the strategy because they believed it would benefit investors. (Bruton Decl. ¶ 8-9.) Moreover, the trading strategy was disclosed to investors, through letters describing the strategy (examples of which are attached hereto as Exhibits C and D), as well as monthly account statements, annual audited financial statements from the funds, and annual K-1 reports, each of which disclosed realized and unrealized gains and losses. (Am. Compl. ¶ 29.) In the District Court Action, the Division claimed that Hope Advisors and Ms. Bruton should have provided additional disclosures to investors. (*See, e.g.*, *id.* ¶¶ 124-137.) Importantly, however, the Division did not allege that Hope Advisors and Ms. Bruton implemented the trading strategy for the sole or primary purpose of personally enriching themselves or earning incentive allocations.

In other words, the District Court Action was a disclosure case, and although the disclosure requirements of the federal securities laws are important, "their importance does not inevitably mean that every violation is necessarily egregious." *Snyder*, 2006 U.S. Dist. LEXIS 81830, at *6. Indeed, "such a conclusion would render it unnecessary for a court ever to undertake an inquiry of egregiousness in cases involving [alleged] fraudulent reporting violations" of the federal securities laws. *Id.*

In particular, here, Hope Advisors and Ms. Bruton did not fail to disclose the trading strategy. Instead, the Division simply claimed that they should have provided *additional* disclosures to investors. These types of allegations do not rise to the level of egregious conduct. *See, e.g.*, *In the Matter of David J. Montanino*, Admin. Proc. File No. 3-15943, 2015 SEC LEXIS 1406, at *103 (Apr. 16, 2015) (holding that respondent's conduct was not egregious because his actions were "based on his desire to achieve what he believed was the best possible outcome for [his clients] given the circumstances"); *see also Johnson*, 2019 U.S. Dist. LEXIS 49970, at *5 (holding that defendant's "selective disclosure[s]" regarding a public company's FDA clinical trials "while materially misleading, are not so egregious as to warrant a lifetime bar").

Likewise, particularly where, as here, there was no adjudication on the merits of the Division's claims and neither Hope Advisors nor Ms. Bruton is alleged to have acted with an intent to personally enrich themselves, their alleged misconduct—failing to make additional disclosures the Division claims should have been made—did not involve a high degree of scienter either. *Cf.* *In the Matter of James Prange*, Admin. Proc. File No. 3-16410, 2014 SEC LEXIS 4874, at *15 (Dec. 19, 2014) (finding that respondent's "state of mind reflects a high degree of scienter" because "[h]e acted repeatedly, with full understanding of the illegal nature of the conduct, and the clear intention to illegally enrich himself"); *see also cf. SEC v. Helms*, No. A-13-CV-01036 ML, 2015

U.S. Dist. LEXIS 110758, at *55 (W.D. Tex. Aug. 21, 2015) (defendants "had a high degree of scienter, consistently manipulating and lying to investors to perpetuate their Ponzi scheme"); *SEC v. Wilde*, No. SACV 11-0315, 2012 U.S. Dist. LEXIS 183252, at *47 (C.D. Cal. Dec. 17, 2012) (defendant "acted egregiously and with a high degree of scienter in orchestrating, promoting, and playing a leadership role in two non-existent, fraudulent prime bank investment programs").

3. Hope Advisors and Ms. Bruton Acknowledge the Importance of the Federal Securities Laws.

The fifth *Steadman* factor—recognition of the wrongful nature of the alleged conduct—is satisfied here because Hope Advisors and Ms. Bruton acknowledge the importance of complying with the federal securities laws. (Bruton Decl. ¶ 8.) Accordingly, this factor should weigh in their favor; at worst, it provides "minimal" support to the Division. *See Snyder*, 2006 U.S. Dist. LEXIS 81830, at *15-16 (the fifth *Steadman* factor provides "minimal" support for the SEC in light of "testimony . . . which demonstrates Defendant's grasp of the importance of securities laws").

4. The Alleged Misconduct Was Isolated.

The District Court Action concerned Hope Advisors's and Ms. Bruton's disclosures regarding the trading strategy. Since the disclosures at-issue were made to investors on only a few occasions, the alleged misconduct was isolated, and this final factor also favors Hope Advisors and Ms. Bruton.

B. The Punishments Sought by the Division Will Principally Harm Just Hope International.

In addition to the *Steadman* factors, the Commission has explained that "the public interest determination extends beyond the consideration of particular investors to the public-at-large." *In the Matter of Christopher A. Lowry*, 55 S.E.C. 1133, 1145 (2002). Here, the proposed sanctions against Ms. Bruton and Hope Advisors will have a harmful impact on the public-at-large, which

provides an additional and independent basis for this Court to conclude that punishing Ms. Bruton and Hope Advisors is ***not*** in the public interest.

The predominant harm from an associational bar, a practice bar or a censure will not be felt by Ms. Bruton or Hope Advisors, who have no plans, intentions or desire to re-enter the securities industry or practice before the Commission. (Bruton Decl. ¶¶ 12-13.) Moreover, for the reasons explained above, punishing Ms. Bruton and Hope Advisors serves no remedial purpose. Whatever purported harm Ms. Bruton and Hope Advisors caused to investors was remedied by their full payment of $1,237,235 in disgorgement as part of the Final Judgment.

Rather, punishing Ms. Bruton and Hope Advisors will predominantly cause harm to Just Hope International, which in turn will have a negative impact on the thousands of impoverished persons around the world who depend on Just Hope International's charitable programs and services. Although there is no allegation that Just Hope International had any involvement with Ms. Bruton's or Hope Advisors's alleged misconduct, many past, present and potential Just Hope International benefactors—particularly in the Nashville area, where Ms. Bruton resides and Just Hope International is headquartered—were led to believe that the Division's allegations also concerned Just Hope International. Press reports regarding the case, including, for example, an article in *The Tennessean*, Nashville's largest newspaper, stated incorrectly that the SEC had alleged that "[a] Brentwood organization [Just Hope International] created to help impoverished communities around the world actually gamed the financial system to collect millions in unwarranted fees." (Ex. E (*The Tennessean* article).)

Although Ms. Bruton has no involvement in Just Hope International's day-to-day operations (Bruton Decl. ¶ 5), Just Hope International has struggled to persuade past, present and potential donors of the undisputed truth—that it has nothing to do with this case. Moreover, public

perception regarding Just Hope International's involvement in this case has made it extremely difficult for Just Hope International to raise the funds that are necessary to provide the charitable programs and services around the world, which many impoverished persons rely upon. Ms. Bruton is personally aware of past and potential Just Hope International donors who were unwilling to donate to the charity, in light of the Division's allegations. (*Id.* ¶ 11.) Accordingly, punishing Hope Advisors and Ms. Bruton in this administrative proceeding will only serve to further harm Just Hope International's reputation in the community, and further impair its ability to raise the funds that are necessary to continue its charitable works around the world.

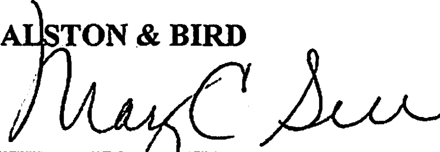
For this additional and independent reason, there is no basis for the Court to conclude that punishing Hope Advisors and Ms. Bruton is in the public interest. Instead, it will predominantly cause harm to Just Hope International, and it would actually be *against* the public interest for this Court to punish Ms. Bruton and Hope Advisors.

CONCLUSION

For each of the reasons explained herein, the Division's Motion should be denied, and these consolidated administrative proceedings should be dismissed, with prejudice.

Respectfully submitted this 5th day of June, 2019.

ALSTON & BIRD



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of June, 2019, a true and correct copy of the foregoing **RESPONDENTS' OPPOSITION TO THE DIVISION OF ENFORCEMENT'S CONSOLIDATED MOTION FOR SUMMARY DISPOSITION** was delivered to the following via facsimile and by depositing three true and correct copies of the same in the U.S. mail, first class postage prepaid:

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE, Mailstop 1090
Washington, D.C. 20549
Mailstop 1090
Attn: Acting Secretary of the Commission, Vanessa Countryman
Fax: (703) 813-9793

A true and correct copy of the foregoing **RESPONDENTS' OPPOSITION TO THE DIVISION OF ENFORCEMENT'S CONSOLIDATED MOTION FOR SUMMARY DISPOSITION** was delivered to the following via email and by depositing a true and correct copy in the U.S. mail, first class postage prepaid:

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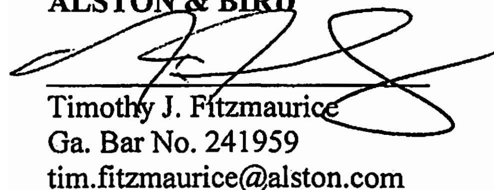

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EXHIBIT A

DECLARATION OF KAREN BRUTON

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Karen Bruton. I am 70 years of age and I have personal knowledge of the matters set forth in this declaration.

2. After I received my bachelor's degree in Math from the University of North Carolina, I became a Certified Public Accountant ("CPA") in the State of North Carolina and worked for several years in public accounting before joining Duke Power, where I worked for over a decade, eventually becoming the first female Vice President in the Company's history. While I worked at Duke Power, I also earned an MBA from Wake Forest University. In 1987, I left Duke Power and joined Franklin Industries, a private company in Tennessee, where I remained until 2007.

3. My CPA designation was for the state of North Carolina. Once I moved to Tennessee in or around 1987, I never applied for a CPA license in the state of Tennessee nor did I ever practice in public accounting. I held a high-level position with Franklin Industries and, since 2007, I have never held the designation of "accountant." When I left Franklin Industries, my title was Vice President and Corporate Controller. My CPA license has been inactive since 2008.

4. In 2007, I had a calling to put my faith to work and serve those in need. Accordingly, I left my corporate career and founded Just Hope International, Inc., a 501(c)(3) public charity, whose mission is to make an economic impact that lasts for impoverished people all over the world by providing a "hand up," rather than a "hand out." Before founding Just Hope International, I participated in a few mission trips to serve others, including to feed the hungry and build churches. The "ah-ha" moment that became the genesis of Just Hope International's purpose occurred during a trip to Nicaragua where I took a tractor trailer full of freeze dried food from

Minnesota to feed the children who lived on the huge trash dump outside of Managua called La Chureca. La Chureca was the largest open-air landfill in Central America. I fed the children a hot, healthy meal for two weeks. When I returned home, I was full of gratitude that I was able to give those children that food. But when I woke up the next morning, I realized all those children were hungry again. I had not changed their situation. In that moment, I realized that the best way I could 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 & Loan Associations. And so, over the last decade, Just Hope International has provided or assisted with dozens of economic empowerment projects in impoverished communities all over the world, including Haiti, Peru, Nicaragua, Sierra Leone, Uganda, South Sudan, Ghana, Panama, Honduras, Togo, Tanzania and the Dominican Republic. Those projects have included, by way of example:

a. Working with 35 young women in Uganda who, as children, were abducted, tortured, abused, raped and impregnated by the Lord's Resistance Army to help them market their handmade crafts and link them to potential buyers in their communities, so that they can earn an income to support themselves as well as their children;

b. The development of a five-acre pineapple farm in Sierra Leone, where the local community has planted over 90,000 pineapple plants, which were eventually harvested and sold by the community in a local market;

c. The development of a 15-acre dwarf banana farm in Honduras, which is farmed by a community of approximately 60 households that was devastated by Hurricane Mitch in 1998;

d. Linking 60 subsistence farmers, who collect specific Non-Timber Forest Products (NTFP), to buyers for further processing, which allows them to earn supplemental income;

e. Supporting the Widows Empowerment Program in Haiti, which is seeking to revive the local economy by empowering widows to rebuild their businesses and spread the culture of entrepreneurship in Haiti;

f. Providing training, education, support and other assistance to a microeconomic retail shoe resale operation in Honduras that is providing 25 individuals from 14 villages the opportunity to earn an income;

g. Providing logistical and training support to over 100 members of the Lunsar community in Sierra Leonne who are farming ginger, which could allow them to double their current income;

h. Supporting programs for children living in orphanages in the Dominican Republic, teenage girls in Panama and young men in Honduras that teach basic skills that are necessary to live a safe, healthy adult life, such as renting an apartment, applying for a job and paying bills; and

i. Helping villages in Ghana organize themselves into Village Savings & Loan Associations, which allows the villages to save money for large purchases and make loans to each other for business and educational purposes.

5. When I left my corporate career to form Just Hope International in 2007, I planned to volunteer full-time at the charity. I never have been and never intended to become a paid employee of the charity. For many years, I spent a significant amount of my time volunteering at Just Hope International in a managerial capacity and by participating in numerous service trips in

Africa, Central America, South America and the Caribbean. Today, however, I am no longer involved in Just Hope International's day-to-day operations, though I remain a volunteer member of Just Hope International's Board of Directors.

6. To support myself while I volunteered at Just Hope International, I planned to live off of my retirement savings and also invest some of my savings in the market for supplemental income. Because I was successful with my trading, some of my friends and former colleagues approached me in or around 2008 about investing for them as well. I resisted these requests for a period of time, but I eventually agreed to expand my trading to include my friends and former colleagues because I thought it could potentially provide financial support for Just Hope International. Accordingly, in or around 2008, I began trading options for a small entity formed by several of my former colleagues—HDB Investments, LLC ("HDB")—and, several years later, I began trading options for a private fund that I formed—Hope Investments, LLC ("HI"). I traded options for HDB until it was closed by its then-sole owner in 2016, and I traded options for HI until I retired in 2018.

7. My decision to trade options for these two private funds was *not* motivated in any way by a desire for personal profit or financial gain. Half of the incentive allocations I earned from trading options for HI—which I could have kept for myself as earned income—were instead paid to a grant making foundation, Just Hope Foundation, that I formed with the goal of providing a permanent source of funds to pay the administrative costs of Just Hope International, the public charity, which allowed all donations to Just Hope International to be used directly on economic empowerment projects around the world. It was a strong encouragement for donors to give to Just Hope International knowing that 100% of their contributions went directly to a need. I used the other half of the incentive allocations to pay for the expenses I incurred trading for the fund,

including employee salaries, rent, legal and accounting fees, and other necessary expenses, and I kept as earned income only what remained after all of those expenses were paid.

8. During the time that I traded for HDB and HI, I always executed trades that I believed were in the best interests of investors. Furthermore, I intended, at all times, to comply with the requirements of the federal securities laws, and I understand and appreciate the importance of complying with the federal securities laws.

9. With respect to the trading strategy that was executed in response to extreme market volatility in late 2014, I implemented that strategy because I believed avoiding the realization of losses that were caused by that volatility would benefit investors, since investor withdrawals were based solely on realized gains and losses. I did not think it would be fair to force investors to realize losses caused by that market volatility, since I believed that we would be able to reduce and eventually eliminate those losses over time, which we had previously accomplished more than once in a volatile market.

10. For more than 2 years, I vigorously defended myself and my management company, Hope Advisors, LLC, in *SEC v. Hope Advisors, LLC, et al.*, No. 16-cv-1752-LMM (N.D. Ga.) (the "District Court Action"). But defending Hope Advisors and myself in the District Court Action exhausted nearly all of my personal financial resources, and in 2018, I was unable to finance my defense any further. Accordingly, Hope Advisors and I reached an agreement with the SEC to resolve the District Court Action "[w]ithout admitting or denying the allegations of the Amended Complaint." If I had the financial resources to continue my defense in the District Court Action, I would have defended myself all the way to a trial on the merits, if necessary.

11. Although the charity I founded, Just Hope International, was never named as a party in the District Court Action and there was never any allegation that Just Hope International had

any involvement with the trading or disclosures that formed the basis of the District Court Action, the publicity surrounding the SEC's claims caused immeasurable harm to Just Hope International. Many members of the Nashville community, where I live and where Just Hope International is based, were led to believe that the SEC's allegations also concerned Just Hope International, in part because of incorrect reports in the media regarding the case. I am personally aware of past and potential donors who were unwilling to donate to Just Hope International due to publicity resulting from the District Court Action.

12. In 2018, after the settlement of the District Court Action, I fully retired from all employment or income producing activities, and I have no plan, intention or desire to (i) obtain full- or part-time employment, (ii) activate my CPA license, (iii) provide accounting or tax services for any person or entity, (iv) work in the securities, accounting or tax industries, or (v) practice before the SEC.

13. I am the sole owner of Hope Advisors, LLC, which previously served as a Commodity Pool Operator for HI and HDB. Hope Advisors is no longer an operational entity, I have no plan, intention or desire to use Hope Advisors as an operational entity, in the securities or any other industry, and I am in the process of liquidating and dissolving Hope Advisors.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

Executed on June 4, 2019.

Karen Bruton

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **HOPE ADVISORS, LLC, KAREN BRUTON, TODD WORTMAN, and DAWN ROBERTS,** **Defendants,** **and** **JUST HOPE FOUNDATION,** **Relief Defendant.**	**Civil Action File No.** **1:16-cv-1752-LMM**

SECOND AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. This enforcement action arises out of a fraudulent scheme to generate fees by Hope Advisors, LLC ("Hope"), a registered investment adviser, its principal, Karen Bruton, and two Hope employees, Dawn Roberts and Todd Wortman (collectively, "Defendants"). Hope managed the account of two private investment funds, Hope Investments, LLC (the "HI Fund") and HDB Investments, LLC ("HDB Fund") (collectively, the "Funds"). Hope's only compensation for managing the funds came in the form of an incentive fee, calculated as a share (10% for the HI Fund and 20% for HDB Fund) of the profits earned in the Funds' accounts).

2. The HI Fund and HDB Fund employed a "high-water-mark" fee structure pursuant to which Hope was entitled to no fees unless the Funds made profits that exceeded past losses. In other words, all prior losses needed to be made up before Hope would be paid. From no later than January 2013 through May 31, 2016 (the "relevant period"), when the Commission filed its initial Complaint, Defendants engaged in a continuous pattern of fraudulent trading to circumvent the impact of the high-water-mark fee structure. The fraudulent trading exploited the HI Fund's practice of calculating the incentive fee

exclusively on the basis of monthly "realized" gains and losses—"unrealized" gains and losses (*i.e.*, those attributable to open trading positions at a month's end) were not included in the fee calculation.[1]

3. Each month, Hope caused the Funds to make certain "Scheme Trades" that had the purpose and effect of realizing a large gain in the current month while effectively guaranteeing a large loss would be realized early the following month. In essence, these trades continuously converted any realized losses into realized gains in the current month, and losses which would be realized in subsequent months, except that they would be continually deferred by the Defendants engaging in additional Scheme Trades. The Defendants did not simply avoid realization of trading losses, however, they also intentionally sized the Scheme Trades such that the Funds realized a profit every month. Hope employees maintained a spreadsheet that tracked, month to date, the realized losses of the Funds. As the end of each month approached, Bruton picked the amount of profit she wished the Funds to show (and de facto, the fees she wished

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[1] As alleged below, the HDB Fund's operative documents actually called for the incentive fee to be calculated in a different manner. Nevertheless, in practice, Hope calculated the fee for the HDB Fund in the same way it calculated the fee for the HI Fund.

to generate), and she, along with Wortman and Roberts, would work together to size the Scheme Trades accordingly.

4. Without the fraudulent Scheme Trades, Hope would have received almost no incentive fees during the relevant period. Instead, Hope extracted millions of dollars in incentive fees. Up until the filing of the initial Complaint in this action, Hope used the Scheme Trades to avoid realization of more than $50 million in losses in the HI Fund, while still earning large monthly incentive fees.

5. In addition to the incentive fee paid to Hope by the HI Fund, the fund paid a 10% incentive fee to the Just Hope Foundation (the "Hope Foundation"), which in turn funded Just Hope International (the "Hope Charity"), a charity founded and run by Bruton. The Hope Foundation and its employees (aside from Bruton) were not involved in the fraudulent trading scheme, however, it did not provide any goods or services to the HI Fund in exchange for the incentive fees the Hope Foundation was paid. Accordingly, the Hope Foundation was unjustly enriched and is a Relief Defendant in this action.

DEFENDANTS

6. **Hope Advisors, LLC ("Hope")** is a Tennessee limited liability company formed on March 23, 2011, and serves as a commodity pool operator and trading manager. Hope is wholly owned by Bruton, and was the investment adviser to the HI and HDB Funds. Hope has been a Commission-registered investment advisor since July 2013. Hope is registered with the Commodities Futures Trading Commission as a commodity pool operator and became a member of the National Futures Association in such capacity in January 2013. On April 15, 2015 the CFTC entered an order against Hope finding violations of Section 4m(1) of the Commodity Exchange Act (requiring commodity pool operators to register) and Regulation 4.22(d) thereunder (requiring commodity pool operators to disclose to pool participants both realized and unrealized gains and losses).

7. **Karen Bruton** is the owner of Hope Advisors, LLC. Bruton is 66 years of age and is a self-taught options trader. Formerly, she worked as a corporate executive. She has an inactive CPA license. While Hope employs three traders in addition to Bruton, Bruton approves all trades, including the trades that are at issue in this matter.

8. **Dawn Roberts** is the controller and chief compliance officer of, and a trader for, Hope and resides in the Nashville, Tennessee area. Roberts is an associated person of Hope. Roberts was tasked with calculating the amount of gain needed for the HI Funds to report a net realized gain to investors at the end of each month. Roberts received a portion of the incentive fees collected by Hope.

9. **Todd Wortman** is a senior trader employed by Hope and resides in the Nashville, Tennessee area. Wortman is an associated person of Hope. He has an inactive CPA license from Tennessee. In conjunction with Bruton, Wortman was primarily responsible for identifying potentially profitable trades for the HI Fund. Wortman received a portion of the incentive fees collected by Hope.

RELIEF DEFENDANT

10. **Just Hope Foundation (the "Hope Foundation")** is a tax-exempt Section 501(c)(3) private foundation formed in Tennessee in 2011. Bruton is its President. Hope Foundation is a private grant making entity that supports the Hope Charity, a charity founded by Bruton. Hope Foundation receives 50% of the incentive fees earned by Hope from the HI Fund. As of year-end

2014, the Hope Foundation had assets of almost $10 million, most of which is invested in the HI Fund.

OTHER RELEVANT ENTITIES

11. **Hope Investments, LLC (the "HI Fund")** is a privately offered, single manager fund offered by Hope to accredited investors as that term is defined under Section 4(a)(2) of the Securities Act of 1933 ("Securities Act") and Rule 506 of Regulation D promulgated thereunder. The HI Fund is a Tennessee limited liability company that was formed on February 16, 2011. The HI Fund is not registered as an investment company under the Investment Company Act of 1940 in reliance on Section 3(c)(1) thereunder, since it will not admit more than 100 beneficial owners. As of February 29, 2016, the net asset value ("NAV") of the HI Fund was $136 million.

12. **HDB Investments, LLC (the "HDB Fund")** is a Tennessee limited liability company formed in April 2008. As of approximately 2013 the Fund was a single investor investment vehicle. In approximately March 2016, the HDB Fund's sole investor placed the HDB Fund's entire net asset value, approximately $65 million, into the HI Fund. The HDB Fund is no longer operating.

JURISDICTION AND VENUE

13. The Commission brings this action pursuant to the authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act, [15 U.S.C. §§ 77t(b) and 77t(d)], Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)], and Sections 209(d) and 209(e) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-9(b) and 80b-9(d)].

14. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14(a)].

15. In connection with the transactions, acts, practices, and courses of business described in this Complaint, the Defendants, directly and indirectly, have made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

16. The Defendants have consented to venue in the Atlanta Division of the Northern District of Georgia.

FACTS

A. Background

17. Karen Bruton, a CPA, spent more than 25 years as a vice president and corporate controller, most recently with a Nashville, Tennessee-based private corporation that produced limestone. Sometime prior to her retirement in 2007, Bruton began to take online and other training courses in options trading.

18. In 2008, Bruton organized the HDB Fund as an investment vehicle to trade options for herself and approximately five other investors.

19. The largest and primary investor in HDB Fund was a wealthy individual ("Investor A"). Ultimately, Investor A became the sole investor in HDB Fund.

20. In 2011, Bruton organized the HI Fund to expand her ability to invest the funds of family and friends.

21. Bruton also founded Hope to provide advisory services to the HI Fund and HDB Fund.

22. Bruton's and Hope's trading in the two funds was very similar and primarily consisted of trading in (1) options, (2) options on futures, and (3)

futures, tied to broad-based market indices such as the S&P 500, Russell 2000 and NASDAQ 100.

23. The general trading strategy for both Funds was to sell options with the goal of having them expire "out of the money," allowing the Funds to profit from the proceeds it received from selling the options. The HI Fund's offering documents state that it trades 50-60 days out and within two standard deviations of the market that the options are based upon.

24. The HI Fund had an NAV of approximately $136 million as of February 29, 2016.

25. As of the same date, the HI Fund had unrealized losses of approximately $57 million.

26. The HI Fund had unrealized losses at the end of nearly every month for at least two years before the filing of the original complaint in this action, with the amount fluctuating between $3 million and $62 million.

27. The minimum investment in the HI Fund is $250,000. The investment is termed the investor's "capital account."

28. According to the HI Fund documents, including its private placement memorandum, only realized gains and losses would affect the capital

account and only realized gains and losses would affect the amount of any investor's redemption from the HI Fund.

29. Until approximately August 2013, Hope only reported this realized capital position to investors. At that time, Hope was notified of certain investor reporting and other deficiencies resulting from an audit by the National Futures Association. Hope then began to also provide each investor a statement of his or her share of the Funds' net asset value (which includes unrealized gains and losses).

30. Unlike the fee structure used by many investment advisers, Hope does not charge the Funds a management fee based on a percentage of assets under management.

31. Instead, Hope shares in any net realized gains earned in either Fund in a given month by deducting an incentive fee equal to 20% of net realized gains during the month.

32. Half of the incentive fee for the HI Fund (*i.e.*, 10% of net realized gains) goes to the Hope Foundation.

33. The operative documents of the Funds provided that if the Funds suffered losses, Hope would receive no fee and would receive no fees in

subsequent months until the losses have been offset by gains (the so-called "high water mark" restriction).

34. Hope excluded unrealized gains and losses for purposes of calculating the incentive fee.

35. Hope charged the HI Fund incentive fees in every month from 2013 until shortly before the Commission filed the original Complaint in this action.

36. In the summer of 2015, Hope caused the HDB Fund to realize its losses. This resulted in more than a $30 million decrease in the "capital account" of Investor A. Hope ceased collecting an incentive fee at that time, and in the spring of 2016, Investor A redeemed his interest in the HDB Fund and used that money to buy an additional interest in the HI Fund.

B. The HI Fund's Private Placement Memorandum

37. Potential investors in the HI Fund were provided a private placement memorandum ("PPM").

38. The PPM used during the relevant period disclosed that the fund would pay an Incentive Fee based on 20% of *realized* profits (with 10% going to Hope and the other 10% going to the Hope Foundation).

39. The PPM also noted the high-water-mark structure of the fee agreement, stating, in part, as follows:

> For the avoidance of doubt, any loss by the Fund in any month is made up "dollar for dollar" to the investors before the Incentive Allocation is paid again on New Trading Profits made on the Fund's trades.

40. The PPM disclosed that the fee structure gave Hope an incentive to defer realization of losses, however it immediately minimized the risk that losses could be deferred for any substantial period of time.

41. Specifically, the PPM stated as follows:

> **Incentive allocations may be paid by the Fund Even Though the Fund Is Experiencing Unrealized Trading Losses.** . . . [I]t is possible that the Fund will pay an Incentive Allocation on New Trading Profits even though there are unrealized losses on open positions. Thus, there is an incentive for the Investment Adviser to realize gains and defer realization of losses; however due to the type of trading in which the Investment Advisor engages, it is unlikely that the Investment Advisor will be able to defer realization of losses on positions for any extended period of time since most trades into which the Investment Advisor enters will only be open for 30 to 90 days at maximum.

42. When an investor would withdraw from the fund during the relevant period, unrealized gains or losses would be excluded. This was disclosed in the PPM, which provided as follows:

> A Withdrawing Member receives only his or her pro rata portion of Net Realized Profits or Losses at the Withdrawal Date and will not Participate in Unrealized Gains or Losses.
>
> . . .
>
> Following such a withdrawal by a member, all other Members remaining in the fund after the withdrawal date will receive the benefit of any gains realized subsequent to the Withdrawal date; however the Members remaining in the Fund will also participate in any losses subsequently realized on positions that were outstanding as of that Withdrawal Date and closed after the Withdrawal Date.

43. At the end of each month during the relevant period, Hope sent account statements to each investor in the HI fund.

44. The first page of that account statement showed realized gains for the month and year to date, the monthly and year to date incentive fee paid on those realized gains, and the change in the realized gains and loss, both for the month and year to date. As of 2013, a small box on the second page also showed the NAV of the investor's account and his or her share of the unrealized losses.

45. In June 2015, Bruton sent investors an email stating that the unrealized losses "are carried at the fund level."

C. The HDB Fund's Operative Documents

46. The terms of Investor A's investment in the HDB Fund were governed by an operating agreement.

47. The HDB Fund operating agreement specified that Hope shall be entitled to 20% of the "Net Capital Appreciation" of the fund.

48. Net Capital Appreciation was defined as being an increase in the NAV of the fund over the course of an accounting period (typically one year).

49. The NAV of a fund includes both realized and unrealized losses and gains.

50. In other words, according to the operative document, unlike with the HI Fund, Hope was never entitled to calculate its fee based on the "realized" profits in the HDB Fund.

51. Nevertheless, that is the way that Hope charged fees.

52. The operating agreement contained a provision similar in effect to the high water mark provision in the HI Fund's PPM.

53. According to that provision, each investor was to be given a "Loss Recovery Account" and any decreases in NAV during an accounting period

were to be added to the account. Subsequent increases in NAV were to be deducted from the account, and no incentive fee was to be paid until the Loss Recovery Account had a zero balance.

54. Investor A understood that Hope was taking a 20% share of monthly profits, but he did not understand the mechanics of how it was calculated.

55. Investor A believed that the HDB Fund was charged a fee in accordance with the operating agreement, and he signed a letter to that effect in September of 2015 in response to concerns raised during the Commission's examination of Hope.

D. <u>Background of the Funds' Trading</u>

56. By 2014, the Funds were trading heavily in options on S&P 500 Index Futures. Those futures are referred to as E-Minis.

57. A put is the option to sell the underlying future at a particular price (referred to as the "strike price") and a call is the option to purchase the underlying future at a particular price.

58. For most of the options on the E-Minis that Hope traded, the options could not be exercised prior to maturity of the option and no additional

consideration was required to exercise the option. Instead, the options were exercised automatically if the option was "in the money" at maturity. As a result, the option would "assign" and the account of the person who bought or sold the option would be treated as being long or short in the underlying future.

59. If the Funds bought or sold an option that matured "out of the money," the option would simply expire and there would be no assignment of the underlying future.

E. <u>The Fraudulent Trading Scheme</u>

60. In October and Deccmber 2014, the Funds experienced significant trading losses due to volatility in the financial markets.

61. In response to these extensive losses, beginning in November 2014 and continuing almost every month until the filing of the Complaint in this action, Defendants entered a series of trades ("Scheme Trades") in the accounts of the HI Fund and the HDB Fund that had the purpose and effect of avoiding realization of the losses.

62. Hope had used similar Scheme Trades in prior months.

63. Before February 2015, the Defendants used a variety of forms of Scheme Trades, but they all had the same purpose and effect, *i.e.*, to avoid

having realized losses at any month's end.

64. In most months after February 2015, the Scheme Trades took the form of large matching "paired" trades that essentially canceled each other and cumulatively had little to no prospect of gain or loss, except for transaction costs.

65. These Scheme Trades, however, effectively "rolled over" realization of losses to subsequent months, which allowed Defendants to (1) report a targeted monthly realized gain of approximately 1% in the Funds every month and (2) receive an incentive fee every month and avoid the high water mark restriction.

66. Hope employees, including Roberts, maintained a spreadsheet that tracked, month to date, the realized losses of the Funds.

67. As the end of a particular month approached, Bruton would ask Hope employees for the amount of the Funds' net realized losses month to date.

68. Bruton would then either enter a Scheme Trade herself or approve Scheme Trades that the other traders proposed and entered.

69. These Scheme Trades often involved (1) selling call or put options on futures that would expire at the end of the current month ("first leg option")

and simultaneously (2) buying call or put options on futures for the same quantity at the same "strike price" that would expire early the next month ("second leg option").

70. These options would typically be deep "in the money," meaning they were very likely to be exercised or assigned.

71. The sale of the first leg options would result in significant proceeds (referred to as "premium") being paid to the respective Fund, which was realized as a gain for the current month when the first leg option expired.

72. Bruton picked the size of the first leg option sale so that the premium collected would be sufficient to offset the losses realized for the month and enable the fund to report a net realized gain for the current month.

73. The expiration of the first leg options also resulted in the assignment of futures in the Fund's account, which would carry a large "unrealized" loss at the current market price.

74. The expiration of the second leg option, typically at the end of the first week of the subsequent month, covered this open futures position, but also required the Fund to realize a large loss (the purchase price of the second leg option).

75. The net effect of the Scheme Trades was to allow Hope to defer indefinitely the Funds' realization of trading losses while consistently reporting a realized gain in the Funds and collecting an incentive fee.

76. To illustrate with a specific example, the HI Fund began the month of February 2015 with a net unrealized loss of $44 million. Much of this loss became realized early in the month.

77. On February 24, 2015, Hope caused the HI Fund to *sell* 7,000 call options (*i.e.*, first leg options) on S&P 500 E-mini futures with a strike price of $2,000, for a sales price of $39,228,812.50. These first leg options expired on Friday, February 27 (*i.e.*, 3 days later).

78. That same day, Hope caused the HI Fund to *buy* 7,000 call options (*i.e.*, second leg options) on S&P 500 E-mini futures with the same strike price as the first leg options. The total purchase price was $39,556,075. These second-leg options expired on Friday, March 6 (*i.e.*, 10 days later).

79. On February 24, 2015, the closing market price for the underlying futures was $2,113.75, meaning that the first and second leg options were deep in the money.

80. Because the first and second leg options were deep in the money on February 24, and because the options expired in such a short period of time, the HI Fund had almost no exposure to market movements in the futures underlying the options. In other words, the HI Fund stood almost no chance of making or losing money on this paired Scheme Trade regardless of which direction the futures market moved.

81. On February 27, the first leg options that Hope had sold expired, and Hope realized a gain from the sale of those options in the amount of $39,228,812.50 (*i.e.,* the sales price of those options).

82. Because those options expired in the money, the underlying futures were assigned, such that the HI Fund's account was treated as being "short" 7,000 S&P 500 E-mini futures as of that day. Hope did not record any realized loss from that assignment, however, even though, as a result of the assignment, Hope had essentially sold short the futures at a price below the current market price and would eventually need to cover the position in some manner. Instead, the open futures position was treated as an *un*realized loss.

83. The amount of the "realized" gain from the transaction was not, however, reflective of the profitability of the options trade because the open

futures position resulted directly from the sale of the options. In other words, Hope treated the options trade as "closed" even though there was still ongoing exposure from the trade because of the futures position.

84. In account statements sent to investors at the end of February, 2015, Hope reported that the HI Fund had net realized gains of $1,729,670 for the month.

85. Hope charged the HI Fund a fee of $345,934 (*i.e.*, 20% of the reported realized gain), half of which was sent to thc Hopc Foundation.

86. On March 6th, the second leg options expired in the money, the options were exercised, and the Fund was "delivered" 7,000 futures.

87. The futures delivered as a result of the expiration of the second leg options covered the HI Fund's short futures position that had resulted from the expiration of the first leg options. Because the positions in the underlying futures cancelled each other out, the HI Fund did not realize any gain or loss on those futures.

88. At that point, consistent with the fund's accounting practice, the HI Fund realized a loss of $39,556,075, *i.e.*, the purchase price of the second leg options.

89. Hope then entered into similar Scheme Trades in March to avoid having realized losses at the end of that month, and so on.

90. The procedure for executing trades like the one set forth above would typically involve Bruton, Wortman and Roberts collaborating to determine the appropriate size and type of trade.

91. Roberts would track in a spreadsheet up-to-date trading data for the HI Fund, which she would download from an online brokerage platform. Roberts' spreadsheet included a formula that would allow her to see, in real time, the realized losses or gains for the month based on the trade data.

92. Roberts would track that metric, and as the end of a month approached, she would tell Bruton and Wortman the amount of realized losses for the month up to that point, which would include the losses realized early in the month from the prior month's Scheme Trade. She would also tell Bruton and Wortman the current amount of the investor capital account balances, which would fluctuate month-to-month as a result of contributions and redemptions.

93. Bruton and Wortman would then use the total capital account balances to determine how large the Scheme Trades needed to be to show an approximate 1% return on the aggregrate capital account balance for the month.

94. Once they received the data from Roberts, Wortman and Bruton would determine the amount of premium they wanted to sell in the first-leg option transaction or a similar transaction. At that point, Wortman typically would review the options markets to identify the most advantageous way to raise the desired amount of premiums. For instance, he would attempt to identify options for which there was sufficient availability in the market and for which he could minimize the cost to the HI Fund of the Scheme Trade

F. Hope's Controller Objected to the Scheme Trades in Early 2015

95. In early spring 2015, Hope's then-controller ("the Controller") objected to the continuing practice of executing the Scheme Trades. The Controller raised these concerns with both Bruton and with Roberts, suggesting that, at a minimum, the Scheme Trades should be sized so as not to realize profits that allowed Hope to skirt the high-water-mark provision.

96. The Controller documented his concerns in a memorandum to Roberts, which Roberts provided to Bruton.

97. That memorandum stated, in part as follows:

> The practice of selling ITM calls/puts at EOM (and buying the same positions in the next month) in order to realize the gain from the sale and defer losses to future months allows for the possibility for management to choose the amount of realized return for the month. Instead of simply making trades according to strategy and opportunity and reporting the results, any amount of premium can be sold at EOM in the month-end play to show any amount of monthly realized gain.
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> . . .
>
> Had the losses been realized in the month they were incurred (not deferred to future months), the High Water Mark provision would be activated and no performance fee would be charged until the losses were recovered.
>
> . . .
>
> I believe the monthly, realized-only basis member statements (which are based on the operating agreement and are sent with the GAAP statements) are misleading. They show a % ROR that does not account for capital drawdown resulting from deferred losses. They also show an overstated account balance when compared to the fair market value of the account (NAV) because they do not account for the significant liabilities tied to open positions resulting from the month-end "debt roll forward". As such, they do not give the investors an accurate picture of the financial status of their accounts.

98. Bruton refused to stop making Scheme Trades or to size them such that the HI Fund would stop earning a fee until the losses had been made up.

99. As a justification, Bruton told the Controller that she was "running a business" and "had bills to pay," or words to that effect.

100. When Bruton and Roberts failed to address his concerns, the Controller resigned.

101. Wortman was aware of the concerns raised by the Controller and of the reason for the Controller's resignation.

102. The Scheme Trades continued after the Controller's resignation.

G. Roberts and Wortman Participated in Hope's Fraud on the HI Fund

103. Roberts maintained and tracked the data that was essential to carrying out the Scheme Trades in the HI Fund. She actively participated in the process of making Scheme Trades even after receiving the memorandum from the Controller.

104. Roberts also was in charge of calculating the amount of the fee Hope would collect from the HI Fund each month, and was thus fully aware of the impact of the Scheme Trades.

105. Roberts received a share of the fees collected from the HI Fund as her compensation. In 2015, the amount of her share was approximately $650,000.

106. As month's end approached, Wortman would consult with Roberts and Bruton to determine the amount of realized gains Wortman needed to target through a Scheme Trade.

107. Wortman would then survey the options market to identify Scheme Trades and would propose specific Scheme Trades to Bruton.

108. Once Bruton approved a Scheme Trade, Wortman would typically be the person to execute the trade.

109. Wortman and Roberts knew the purpose and effect of the Scheme Trades.

110. Like Roberts, Wortman received a share of the fees collected from the HI Fund as his compensation. In 2015, his share was approximately $650,000.

111. The Scheme Trades were not in the best interest of the Funds.

112. The HI Fund did not have a month with a net realized loss from August 2011, just after it was opened, until the initial Complaint in this action was filed.

113. Between November 2014 and March 2016, Hope collected over $6 million in incentive fees from the HI Fund.

114. Most of the incentive fees would not have been paid in the absence of the Scheme Trades.

H. Bruton and Hope Defrauded the HDB Fund

115. During this period, Hope also charged fees to the HDB Fund to which it was not entitled under the terms of the HDB Fund's operating agreement.

116. At all times from as least October 2014 until June of 2015, the HDB Fund carried significant unrealized losses, which should have been factored into Hope's fee calculation.

117. If those unrealized losses had been factored in, as required by the operating agreement, Hope would have been entitled to no fees.

118. Hope and Bruton also caused the HDB Fund to execute Scheme Trades in the accounts of the HDB Fund.

119. Even if Hope had been entitled to collect fees on the basis of realized gains and losses, it would have been entitled to no fees from October 2014 until June of 2015 in the absence of the Scheme Trades.

120. Instead, Hope collected over $1 million worth of fees during that period.

121. Bruton paid herself a significant portion of the fee income.

122. For example, in October of 2014, Hope experienced massive trading losses as a result of volatility in the market. The HI Fund and the HDB Fund collectively ended the month with unrealized losses of approximately $100 million, most of which resulted from the October trading losses. Nevertheless, Hope reported to investors that the Funds had millions of dollars' worth of "realized" gains in October and collected incentive fees of more than $600,000.

123. Despite the massive trading losses in both Funds that month, Bruton caused Hope to pay her over $220,000 in early November 2014 for her October "performance."

I. Bruton and Hope Misled the Funds' Investors

124. Bruton and Hope never told the Funds' investors about the Scheme Trades.

125. Bruton and Hope never told the Funds' investors that Hope was causing the Funds to make trades for the primary purpose of avoiding realization of losses.

126. Bruton and Hope never told the Funds' investors that Hope was able to (and in fact did) pick the amount of its "realized" gain every month through Scheme Trades.

127. Bruton and Hope never told the Funds' investors that the amount of "realized" gain each month bore no relation to the profitability of the Funds' trading.

128. Bruton and Hope misled investors by telling them that Hope was "managing" unrealized losses by pushing "positions" into future months, when in fact, Hope was causing the Funds to enter into Scheme Trades that were unrelated to the trades that caused the losses.

129. Bruton and Hope misled investors by comparing the "realized" gains to indices like the S&P 500 without informing them about the Scheme Trades.

130. Bruton and Hope misled investors by touting "realized" gains when they bore no relation to the actual profitability of the purportedly "closed" options trades that were part of the Scheme Trades.

131. Although the PPM described the high-water-mark structure, which appeared to protect investors from the cost of fees until losses in the Funds were made up, Bruton and Hope never told the Funds' investors that Hope neutralized the protections of the high-water-mark fee structure by repeatedly engaging in the Scheme Trades.

132. Bruton and Hope never told the Funds' investors that Hope was able to avoid realizing losses indefinitely through the Scheme Trades.

133. Bruton and Hope never told the HI Fund's investors that the HI Fund was likely to carry unrealized losses for the foreseeable future as a result of the Scheme Trades.

134. At least three new investors purchased interests in the HI Fund in 2015 after the Defendants had begun making the Scheme Trades.

135. Those three new investors invested more than $900,000 in the HI Fund in 2015.

136. At least five existing investors increased the size of their investment in the HI Fund in 2015 after the Defendants had begun making the Scheme Trades.

137. Those five existing investors made more than $1,600,000 in capital contributions to the HI Fund in 2015.

J. Hope's Redemption Practices

138. Hope redeems investors exiting the HI Fund without reducing the value of their investments by the HI Fund's large net unrealized losses.

139. Consequently, redeeming investors get a windfall, while the pro rata share of the unrealized losses to the remaining investors increases.

140. While the Fund states that investors will redeem exclusive of unrealized losses, the Fund did not inform new investors that the value of their investments were subject to immediate reduction as a result of their being saddled with a pro rata share of large unrealized losses.

COUNT I
(Hope and Bruton)
Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. § 77q(a)]

141. The Commission realleges paragraphs 1 through 140 above.

142. Defendants Hope and Bruton, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

143. Defendants Hope and Bruton knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

144. While engaging in the course of conduct described above, Defendants Hope and Bruton acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

145. By reason of the foregoing, Defendants Hope and Bruton indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II
(Hope and Bruton)
Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act
[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

146. Paragraphs 1 through 140 are hereby realleged and are incorporated by reference.

147. Defendants Hope and Bruton, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

148. By reason of the foregoing, Defendants Hope and Bruton, directly and indirectly, have violated and, unless enjoined, will continue to violate

Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III
(Hope and Bruton)
Violations of Section 10(b) and Rule 10b-5 of the Exchange Act
[15 U.S.C. § 78j(b) & 17 C.F.R. § 240.10b-5]

149. The Commission realleges paragraphs 1 through 140 above.

150. Defendants Hope and Bruton, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

151. Defendants Hope and Bruton knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

152. By reason of the foregoing, Defendants Hope and Bruton, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT IV
(Hope and Bruton)
Violations of Sections 206(1) of the Advisers Act
[15 U.S.C. §§ 80b-6(1)]

153. The Commission realleges paragraphs 1 through 140 above.

154. During the relevant period, Defendants, acting as investment advisers, using the mails and the means and instrumentalities of interstate

commerce, directly and indirectly, employed devices, schemes and artifices to defraud one or more advisory clients and/or prospective clients.

155. Defendants Hope and Bruton knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendants Hope and Bruton acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

156. By reason of the foregoing, Defendants Hope and Bruton have violated, and, unless enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT V
(Hope and Bruton)
Violations of Section 206(2) of the Advisers Act
[15 U.S.C. § 80b-6(2)]

157. Paragraphs 1 through 140 are hereby realleged and are incorporated herein by reference.

158. During the relevant period, Defendants Hope and Bruton, acting as investment advisers, by the use of the mails and the means and instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices,

and courses of business which would and did operate as a fraud and deceit on one or more advisory clients and/or prospective clients.

159. By reason of the foregoing, Defendants Hope and Bruton, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT VI
(Hope and Bruton)
Violations of Section 206(4) and Rule 206(4)-8 of the Advisers Act
[15 U.S.C. § 80b-6(4) & 17 C.F.R. §206(4)-8]

160. The Commission realleges paragraphs 1 through 140 above.

161. During the relevant period, Defendants Hope and Bruton, in connection with the purchase and sale of pooled investment vehicles described herein:

a. made untrue statements of material facts and/or omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, and

b. engaged in acts, practices, and courses of business that were fraudulent, deceptive, and/or manipulative, all as more particularly described above.

162. Defendants Hope and Bruton knowingly, intentionally, and/or recklessly made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants Hope and Bruton acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

163. By reason of the foregoing, Defendants Hope and Bruton, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

COUNT VII
(Bruton)
Aiding and Abetting

164. The Commission realleges paragraphs 1 through 140 above.

165. Bruton substantially assisted the violations set forth in Counts I through VI above, by, among other things, planning, facilitating and/or directing the Scheme Trades.

166. Bruton knew the true purpose of the Scheme Trades and knew that the Scheme Trades had not been disclosed to investors.

167. Bruton personally benefitted from the fees generated by the Scheme Trades.

168. As a result of the conduct described above, Bruton aided and abetted the violations set forth in Counts I through VI above.

COUNT VIII
(Roberts and Wortman)
Aiding and Abetting

169. The Commission realleges paragraphs 1 through 140 above.

170. Roberts and Wortman substantially assisted the violations set forth in Counts IV through VI above, by, among other things, planning, facilitating and/or directing the Scheme Trades in the HI Fund.

180. Roberts and Wortman knew the true purpose of the Scheme Trades and knew that the Scheme Trades were not in the best interest of the HI Fund.

181. Roberts and Wortman personally benefitted from the fees generated by the Scheme Trades in the HI Fund.

182. As a result of the conduct described above, Roberts and Wortman aided and abetted the violations set forth in Counts IV through VI above.

COUNT IX
(Hope Foundation)

183. The Commission realleges paragraphs 1 through 140 above.

184. As a result of the conduct described above, the Hope Foundation received proceeds of the Defendants' fraudulent scheme.

185. The Hope Foundation had no legitimate claim to the funds it received as a result of the scheme and was unjustly enriched by the receipt of such proceeds.

PRAYER FOR RELIEF

The Commission respectfully requests that this Court:

1. Find that Defendants committed the violations alleged;

2. Enter injunctions, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendants from violating, directly or indirectly, or aiding and abetting violations of the law and rules alleged in this complaint;

3. Order Defendants and the Relief Defendant to disgorge all ill-gotten gains in the form of any benefits of any kind derived from the illegal conduct alleged in this Complaint, plus prejudgment interest;

4. Order Defendants to pay civil penalties, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] in an amount to be determined by the Court; and

5. Order such other relief as is necessary and appropriate.

JURY TRIAL DEMAND

The Commission hereby demands a jury trial as to all issues so triable.

This __day of July, 2017.

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404-842-7600

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system which will automatically send email notification to all counsel of record in this case.

This ___ day of _________, 2017.

/s/ ________________________

EXHIBIT C

To: Members of Hope Investments, LLC

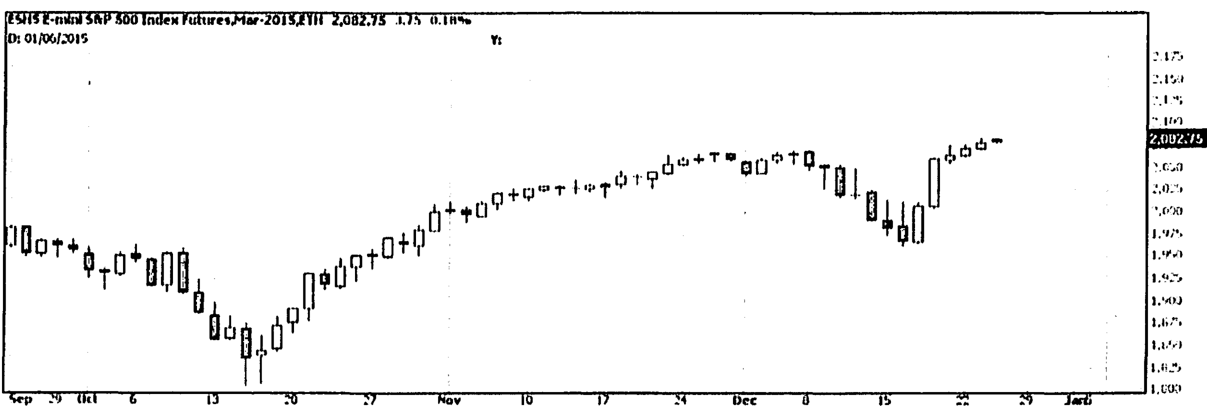
From: Karen Bruton, Managing Member

Date: December 24, 2014

Subject: Year End 2014

I hope this finds you well and all your presents wrapped and under the tree. I usually send you a note around the end of the year, but this one will be a little more involved. We have certainly, overall, had a good year but the events of the last three months have been a challenge.

Hope Investments has some unique features to it such as no management fees and the value of your Capital Account including only realized gains and realized losses. Unrealized gains and unrealized losses are carried at a fund level and ultimately are distributed to the members as they are closed and become realized. During the months of October and December, we experienced two sharp V-Bottoms in the market. This is a type of chart action exemplified by a steep decline in price followed by a steep recovery. You may be aware that the S&P, after experiencing a sharp decline, recovered over 100 points in 3 days in December. (See chart below.)



When we experience such radical moves in the market, we need time to manage through the events. We accomplish this by moving positions into future months in order to provide that time. That is what we have been doing for the last 3 months and have now moved the unrealized positions into 2015.

Those of you who have invested with us for a few years have experienced similar activity before. When it happens at year end, you are allocated your pro rata share of the unrealized loss. This could result in a deferral of tax owed on 2014 realized gains until 2015. Your K-1 which you will receive in 2015 will reflect this activity. We recommend you discuss this with your tax advisor to complete your 2014 income tax return.

If you have any questions about your account, our strategy, or would just appreciate a conversation with us, please call.

Best regards,

Karen

EXHIBIT D

To: Members of Hope Investments

Date: June 4, 2015

Subject: Hope Investments Update

Greetings from the Trading Desk of Hope Investments. As a reminder, our email account used to communicate with you is InvestorServices@HopeAdvisorsLLC.com. You may make inquiries to anyone in our group through this email. Please note that Bryan Ries has left our firm for other opportunities, and Dawn Roberts has taken over many of his responsibilities. Dawn and I have worked together for several years, and she is happy to help you in any way possible.

My year end 2014 letter to you discussed the two sharp V-Bottoms we experienced in October and December. You received your regular monthly reports, a year end independent Audit Report and for tax purposes, your schedule K-1 which all included the activities experienced in the last quarter of the year. In my December letter, I stated "When we experience such radical moves in the market, we need time to manage through the events. We accomplish this by moving positions into future months in order to provide that time." One of the unique features of our fund is that only realized gains and realized losses are passed to the investor's Capital Account per our contractual agreement. Unrealized losses and unrealized gains are carried at a fund level which is shown on the second page of your report.

We have reduced the unrealized loss by approximately 46% while increasing our 2015 realized returns by a little over 4% while the S&P has increased by only 2.4%. This market is a continual challenge, and we are dedicated to meeting the challenge to make your investment with us worthwhile.

You are welcome to stop by our office at 5203 Maryland Way, Suite 104, Brentwood, TN or call us at any time. We are always happy to hear from you.

Best regards,

Karen Bruton

Managing Member

615-370-5862

EXHIBIT E

LexisNexis

Local firm faces fed accusations

The Tennessean (Nashville, Tennessee)

June 1, 2016 Wednesday, 1 Edition

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Section: BUSINESS; Pg. D2

Length: 556 words

Byline: By, Dave Boucher

Body

A Brentwood organization created to help impoverished communities around the world actually gamed the financial system to collect millions in unwarranted fees, according to the U.S. Securities and Exchange Commission.

The SEC is investigating Hope Advisers Inc. a company that operates hedge funds in order to provide the money needed to run nonprofit Just Hope International, owned by local philanthropist Karen Bruton. The funds are valued at $175 million in net assets, according to the SEC. In a statement provided by a spokesman, Hope Advisors says it disagrees with the SEC's characterization of its approach to investments, but the company is cooperating with the investigation.

The hedge funds only earn money, that in turn can go to running the nonprofit, when a fund's profits exceed past losses, according to the SEC. This system of earning is known as "incentive fees": Essentially, the hedge fund executives aren't supposed to earn money unless the fund earns enough to cover losses and pay its investors at a certain rate.

"We allege that Hope Advisers and Bruton disregarded investors by engaging in a pattern of deceptive trades so they could continue earning large incentive fees," said Walter Jospin, director of the SEC's Atlanta Regional Office, in a news release posted late Tuesday to the SEC's website.

That means, according to the SEC, Hope Advisors executives schemed to make trades at the end of a month that on paper would show a profit each month, therefore creating a way for the hedge fund executives to earn their fees. In reality the firm would suffer significant losses pushed to the beginning of the following month, according to the SEC.

Without these late-month trades, deemed "fraudulent" by the SEC, Hope Advisors would have likely earned little to no money through their fee system. Additionally, the SEC says the company avoided realizing $50 million in losses that it actually sustained through its practices.

"Hope Advisers and Bruton engaged in a continuous pattern of trading to inflate their compensation from the funds. They not only delayed realization of trading losses but also intentionally sized certain trades so the funds realized a profit every month," the release states.

"The scheme has enabled Hope Advisers to avoid realization of more than $50 million in losses in the hedge funds while earning millions of dollars in fees to which they were not entitled."

The hedge fund operators and Bruton agreed to a consent order that restricts their access to $7 million in their funds, requires the executives to earn money only when they've followed the rules and prevents them from accepting any new investors.

In its complaint, filed Tuesday in federal court in Atlanta, the SEC calls for Hope Advisors and Bruton to return the "ill-gotten gains plus interest" and pay penalties. They could face additional punishment as well.

The statement from Hope Advisors says the company is working to get a full SEC inquiry that "clears our name."

"We are confident our approach was ethical, legal and appropriate," reads the statement.

The nonprofit arm of the organization is not accused of inappropriate conduct. However, the SEC says the nonprofit needs to return money that it received through fees the hedge funds should not have earned.

Reach Dave Boucher at 615-259-8892 and on Twitter @Dave_Boucher1.

Load-Date: June 2, 2016

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