

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 85630 / April 11, 2019

INVESTMENT ADVISERS ACT OF 1940  
Release No. 5222 / April 11, 2019

ACCOUNTING AND AUDITING ENFORCEMENT  
Release No. 4040 / April 11, 2019

Admin. Proc. File Nos. 3-18789, 3-18790

In the Matters of

KAREN BRUTON and  
HOPE ADVISORS, LLC

ORDER REGARDING FURTHER PROCEEDINGS

On September 19, 2018, in a proceeding under our Rule of Practice 102(e)(3) (“*Bruton I*”), we issued an order temporarily suspending Karen Bruton from appearing or practicing before the Commission.<sup>1</sup> That suspension was based on a final judgment entered against Bruton in federal district court permanently enjoining her from violating Sections 206(1), (2), and (4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder.<sup>2</sup> Bruton filed a petition to lift her temporary suspension under Rule of Practice 102(e)(3)(ii);<sup>3</sup> we denied that petition and set the matter down for a hearing in accordance with Rule of Practice 102(e)(3)(iii).<sup>4</sup>

<sup>1</sup> *Karen Bruton, CPA*, Exchange Act Release No. 84198, 2018 WL 4488869 (Sept. 19, 2018); see 17 C.F.R. § 201.102(e)(3)(i)(A) (authorizing us to temporarily suspend an accountant subject to such an injunction from appearing or practicing before the Commission).

<sup>2</sup> *Bruton*, 2018 WL 4488869, at \*1; see *SEC v. Hope Advisors, LLC, et al.*, No. 1:16-cv-1752-LMM (N.D. Ga. Sept. 13, 2018), ECF No. 132.

<sup>3</sup> 17 C.F.R. § 201.102(e)(3)(ii).

<sup>4</sup> *Karen Bruton*, Exchange Act Release No. 84627, 2018 WL 6061351 (Nov. 19, 2018); see 17 C.F.R. § 201.102(e)(3)(iii).

On September 19, 2018, we separately issued an order instituting proceedings under Advisers Act Section 203(e) and (f) against Bruton and Hope Advisors, LLC (“Hope”).<sup>5</sup> In that “follow-on” proceeding (“*Bruton II*”), we ordered a hearing to determine what, if any remedial action was appropriate against Bruton and Hope given that the Division of Enforcement alleged a federal court had permanently enjoined them from violating the federal securities laws.<sup>6</sup>

In *Bruton I* and *Bruton II*, we directed that each proceeding be set down for a hearing before the Commission and specified procedures for the conduct of that hearing. We directed the parties to “conduct a prehearing conference” and to “file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference.”

On January 31, 2019, the parties submitted their joint statement about their prehearing conference. The parties stated that they had agreed: (1) that we should consolidate the proceedings in *Bruton I* and *Bruton II* “for purposes of dispositive motions and any hearings that may be required”; (2) that these cases should “be assigned to an administrative law judge” (“ALJ”), subject to the respondents’ waiver of defenses “based on any alleged or actual defect in the appointment or removal protections of any [ALJ] assigned to this matter”;<sup>7</sup> (3) that “an evidentiary hearing is unnecessary” and that these proceedings should “be decided by way of dispositive motions” and any additional supporting “documentary evidence and declarations”; and (4) that we or the ALJ should issue a specific briefing schedule for dispositive motions.

We begin with the parties’ request that we consolidate these proceedings. Our Rule of Practice 201(a) provides that we may consolidate “proceedings involving a common question of law or fact . . . for hearing of any or all the matters at issue in such proceedings.”<sup>8</sup> Both proceedings involve common questions of law and fact arising from the effect, if any, of a permanent injunction entered against Bruton and Hope. While not bound by the parties’ agreement,<sup>9</sup> we agree that litigating the two proceedings together on a consolidated basis would promote efficiency. We conclude it is appropriate to consolidate these proceedings for purposes of any dispositive motions and any hearings that may be required in this case.

We turn next to the parties’ request that these proceedings be decided by way of dispositive motions because “an evidentiary hearing is unnecessary.” We agree that these cases

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<sup>5</sup> *Karen Bruton, CPA and Hope Advisors, LLC*, Advisers Act Release No. 5038, 2018 WL 4488879 (Sept. 19, 2018).

<sup>6</sup> *Id.* at \*1.

<sup>7</sup> *Cf. Lucia v. SEC*, 138 S. Ct. 2044, 2049-50 & n.1 (2018) (holding that the Commission’s ALJs are inferior officers for purposes of the Appointments Clause of Article II of the Constitution, and declining to reach “whether the statutory restrictions on removing the Commission’s ALJs are constitutional”).

<sup>8</sup> 17 C.F.R. § 201.201(a).

<sup>9</sup> *See, e.g., Sanford’s Estate v. CIR*, 308 U.S. 39, 51 (1939); *NLRB Union, Local 6 v. FLRA*, 842 F.2d 483, 485 n.6 (D.C. Cir. 1988); *see ABN AMRO Clearing Chicago LLC*, Exchange Act Release No. 83849, 2018 WL 3869452, at \*2 (Aug. 15, 2018) (Commission is “not bound by the parties’ stipulation as to a deferential standard of review”).

may be appropriate for summary disposition.<sup>10</sup> The parties shall have an opportunity to submit motions for summary disposition along with supporting declarations and documentary evidence.<sup>11</sup> Although the parties also agree that, in their view, “an evidentiary hearing is unnecessary” and that the ALJ “and ultimately the Commission” may “resolve any apparent conflicts in the evidence without an evidentiary hearing,” that determination is best made after summary disposition briefing. The parties may well be correct that an evidentiary hearing is unnecessary, but it would be premature to make that determination at this time.

Finally, we turn to the parties’ request that we set this matter down before an Administrative Law Judge. Bruton and Hall state that they make their request:

“while knowingly and voluntarily agreeing that they will not initiate or raise a defense to the [proceedings] or orders that may be issued during or at the conclusion of the [proceedings] based on any alleged or actual defect in the appointment or removal protections of any Administrative Law Judge assigned to this matter.”

Bruton and Hall also specify that their waiver of these defenses “applies in any forum, including proceedings before the Administrative Law Judge, the Commission, or any court.” Under the circumstances, we grant the parties’ request to set this matter down for a hearing before an ALJ.

We also find under Rule of Practice 100(c) that it would serve the interests of justice and not result in prejudice to any party to specify further procedures before an ALJ in this matter.<sup>12</sup>

Accordingly, IT IS ORDERED that these proceedings are consolidated under the caption above for purposes of any motions for summary disposition and hearings that may be required.

IT IS FURTHER ORDERED that this consolidated proceeding be presided over by a hearing officer who shall be an Administrative Law Judge in accordance with Rule of Practice 110.<sup>13</sup> The Chief Administrative Law Judge shall by rotation to the extent practicable designate an ALJ to be the presiding hearing officer.<sup>14</sup> The assigned ALJ shall hold a prehearing

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<sup>10</sup> See, e.g., *Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 78319, 2016 WL 3853756, at \*22 (July 13, 2016) (explaining that “summary disposition is typically appropriate” in follow-on proceedings “because the issues to be decided are narrowly focused and the facts not genuinely in dispute”); cf. *Michael Pattison, CPA*, Exchange Act Release No. 67900, 2012 WL 4320146, at \*7 (Sept. 20, 2012) (reasoning that proceedings under Rule 102(e)(3)(1)(A) based on a predicate injunction are analogous to follow-on proceedings).

<sup>11</sup> 17 C.F.R. § 201.250(b) (discussing motions for summary disposition).

<sup>12</sup> Rule of Practice 100(c), 17 C.F.R. § 201.100(c). To the extent they are conflicting, the procedures specified in this order supersede those specified in the *Bruton I* order denying the petition to lift the suspension or in the *Bruton II* order instituting proceedings.

<sup>13</sup> 17 C.F.R. § 201.110.

<sup>14</sup> 17 C.F.R. § 200.30-10(a)(2).

conference under Rule of Practice 221 to address the parties' request for a briefing schedule on any summary disposition motions, in addition to any other matters appropriate for consideration and action under that Rule.<sup>15</sup> The assigned ALJ shall exercise the full powers conferred by the Commission's Rules of Practice and the Administrative Procedure Act.<sup>16</sup>

Attention is called to Rule of Practice 151(b) and (c), providing that when, as here, the Commission has assigned a case to a hearing officer, all papers shall be filed with the Office of the Secretary (with a copy provided to the hearing officer) and that all motions, objections, or applications shall be directed to and decided by the presiding hearing officer.<sup>17</sup> This includes, without limitation, filings under Rules of Practice 210, 221, 222, 230, 231, 232, 233, and 250.<sup>18</sup>

IT IS FURTHER ORDERED that the ALJ shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) the completion of briefing on a motion pursuant to Rule of Practice 250;<sup>19</sup> (B) the completion of post-hearing briefing should the ALJ determine after review of the motions pursuant to Rule 250 that a public evidentiary hearing is necessary;<sup>20</sup> or (C) the determination by the hearing officer that a party is deemed to be in default under Rule of Practice 155 and no public hearing is necessary.<sup>21</sup> This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i) for the purposes of applying Rules of Practice 233 and 250.<sup>22</sup>

IT IS FURTHER ORDERED that the initial decision be issued on the basis of the record before the hearing officer, as defined by Rule of Practice 350,<sup>23</sup> and that the record index shall be prepared and certified in accordance with Rule of Practice 351.<sup>24</sup>

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<sup>15</sup> 17 C.F.R. § 201.221. The parties' January 31 joint statement proposed a briefing schedule for motions for summary disposition. The parties may renew their request for a briefing schedule on summary disposition before the ALJ.

<sup>16</sup> See, e.g., Rule of Practice 111, 17 C.F.R. § 201.111; 5 U.S.C. § 556.

<sup>17</sup> 17 C.F.R. § 201.151(b)-(c).

<sup>18</sup> 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, 250.

<sup>19</sup> 17 C.F.R. § 201.250.

<sup>20</sup> Because *Bruton I* and *Bruton II* were both set down for a hearing before the Commission, Rule of Practice 360(a)(2)(ii)'s requirement to issue an order scheduling a hearing within a specified time from service of the OIP did not apply. In the event that the hearing officer determines after reviewing the summary disposition motions that an evidentiary hearing is necessary, (A) that Rule will apply with a trigger date of the completion of briefing rather than service of the OIP, and (B) the hearing officer will have authority to consider and take action upon an agreement of the parties to a hearing date after the time period specified in the rule.

<sup>21</sup> 17 C.F.R. § 201.155.

<sup>22</sup> 17 C.F.R. §§ 201.233, .250, .360(a)(2)(i).

<sup>23</sup> 17 C.F.R. § 201.350.

<sup>24</sup> 17 C.F.R. § 201.351.

IT IS FURTHER ORDERED that, notwithstanding the last sentence of Rule 102(e)(3)(iii), upon issuance of an initial decision Rules of Practice 360(d), 410, and 411 shall govern further Commission consideration of this matter.<sup>25</sup>

By the Commission.

Vanessa A. Countryman  
Acting Secretary

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<sup>25</sup> 17 C.F.R. §§ 201.360(d), 410, 411. Given the parties' request that we consolidate these two proceedings, we find under Rule of Practice 100(c) that it would serve the interests of justice and not result in prejudice to any party to specify that the final sentence of Rule 102(e)(3)(iii)—which provides that the time limits set forth in Rule 540 will govern review of the hearing officer's initial decision in a Rule 102(e) case in which a temporary suspension has not been lifted—shall not apply to this consolidated proceeding.