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## Texas State Securities Board

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MEMBER

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208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
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DERRICK MITCHELL  
MEMBER

E. WALLY KINNEY  
MEMBER

### SOAH DOCKET NO. 312-10-1757 SSB DOCKET NO. IC10-01

IN THE MATTER OF THE  
INVESTMENT ADVISER  
REGISTRATION OF  
TRITON FINANCIAL, LLC;  
THE INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATION OF  
KURT BRANHAM BARTON;  
TRITON ACQUISITION, LP D/B/A  
TRITON INSURANCE, LP;  
CAPVEST, LLC; AND  
TRITON OPPORTUNITY FUND, LLC

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BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS

### NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will be held at the State Office of Administrative Hearings, in the William P. Clements Building, 300 W. 15th Street, 4th Floor, Austin, Texas 78701, before an Administrative Law Judge beginning on **February 25, 2010 at 9:00 AM Central Time** for the purpose of determining whether the investment adviser registration of Triton Financial, LLC ("Respondent Triton") and the investment adviser representative registration of Kurt Branham Barton ("Respondent Barton") with the Securities Commissioner of Texas ("Securities Commissioner") should be REVOKED and whether Respondent Triton, Respondent Barton, Triton Acquisition, LP d/b/a Triton Insurance, LP ("Respondent Triton Insurance"), Capvest, LLC ("Respondent Capvest"), and Triton Opportunity Fund, LLC ("Respondent Opportunity Fund")(collectively "Respondents") should be ordered to CEASE AND DESIST from engaging in fraudulent conduct.

This hearing will be held pursuant to The Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 et seq. (Vernon 1964 & Supp. 2009) ("Texas Securities Act"); the Rules and Regulations of the Texas State Securities Board, 7 Tex. Admin. Code Chapter 101 et seq. (Supp. 2009)("Board Rules"); the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.001 et seq. (Vernon 2008 & Supp. 2009); and the Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Tex. Admin. Code Chapter 155 (Supp. 2009) ("SOAH Rules").

**IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

**THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE STAFF OF THE STATE SECURITIES BOARD AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.**

**IF YOU FAIL TO ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

CONTACT INFORMATION

Ronak V. Patel, Attorney  
Inspections & Compliance Division  
Texas State Securities Board  
208 E. 10th Street, 5th Floor  
Austin, Texas 78701  
Telephone: (512) 305-8300  
Facsimile: (512) 305-8340

Docketing Office  
State Office of Administrative Hearings  
300 W. 15th Street, Suite 504  
Austin, Texas 78701  
Telephone: (512) 475-3445  
Facsimile: (512) 475-4994

Pursuant to § 105.9 of the Board Rules, all documents filed by any party, other than business records and transcripts, and all documents issued by the Administrative Law Judge must be contemporaneously served upon the Securities Commissioner's representative as identified below:

Sonia Fergerson  
Securities Commissioner's Representative  
Texas State Securities Board  
208 E. 10th Street, 5th Floor  
Austin, Texas 78701  
Telephone: (512) 305-8300  
Facsimile: (512) 305-8336

Legal authority and jurisdiction for this matter exist under Sections 14 and 23 of the Texas Securities Act, Section 2003.021(b) of the Texas Government Code, and Section 155.51 of the SOAH Rules.

The staff of the Texas State Securities Board ("Staff") will present evidence in support of its request that the registrations of Respondents Triton and Barton with the

Securities Commissioner be REVOKED and Respondents be ordered to CEASE AND DESIST from engaging in fraudulent conduct. The Staff alleges:

## **I. Parties**

1. Respondent Triton is a Texas limited liability company whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. On or about June 28, 2006, Respondent Triton registered with the Securities Commissioner as an investment adviser. This registration is currently effective.
2. Respondent Barton is a natural person whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. Respondent Barton is Respondent Triton's chairman and CEO. On or about June 28, 2006, Respondent Barton registered with the Securities Commissioner as an investment adviser representative of Respondent Triton. This registration is currently effective.
3. Respondent Triton Insurance is a Texas limited partnership whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. Respondent Triton Insurance was formed on or about July 16, 2008. Respondent Triton Insurance's General Partner is Tvest Group, LLC, a wholly owned Respondent Triton subsidiary.
4. Respondent Capvest is a Texas limited liability company whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. Respondent Capvest was formed on or about July 18, 2006. Respondent Barton is the managing member of Respondent Capvest.
5. Respondent Opportunity Fund is a Delaware limited liability company whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. Respondent Opportunity Fund's managing member is a Texas limited liability company, Triton Services, LLC d/b/a Triton Realty ("Triton Realty"). Triton Realty is wholly owned Respondent Triton subsidiary.

## **II. General Background**

6. Since at least 2004, Respondent Triton sponsored dozens of investment opportunities and raised over \$50 million for these ventures. Triton-sponsored investment opportunities included interests in the following entities, among many others: Triton Athletic Center, LP; Triton Sports Center, LP; Triton Golf, LP; Boyce Lane, LP; Grant Villa Apartments, LP; Triton Plaza, LP; Triton Center, LP; Rundberg, LP; and Triton Bridge Fund, LP.

7. Respondent Triton and the sponsored partnerships used broker-dealers and Respondent Triton's own salesmen, including prominent former National Football League ("NFL") players and Heisman Trophy winners, to sell these opportunities to investors and market the partnerships' businesses.
8. Respondents Triton and Barton often told investors in the limited partnerships to expect quarterly distributions, usually 7% of the principal investment (annualized). In 2009, the distributions became infrequent and Respondents Triton and Barton received numerous questions from investors. Respondents Triton and Barton used new investor funds to provide distributions and return of principal to previous investors.

### **III. Sale of Interests in Triton Insurance**

#### ***A. The Offering***

9. From July 2008 through October 2009, the Triton Insurance Respondents<sup>1</sup> sold limited partnership interests in Respondent Triton Insurance ("Triton Insurance LP Interests"). Approximately \$8.4 million was raised through the sale of these limited partnership interests.
10. The Triton Insurance LP Interests are "securities" as defined by Section 4.A of the Texas Securities Act.
11. The primary disclosure document for this offering was the Triton Insurance, LP Confidential Investment Memorandum ("CIM"). The CIM stated that the offering size was \$12 million dollars, composed of 240 investor units at \$50,000 per unit.
12. The CIM specified that Respondent Triton Insurance would use most of the funds from the offering to acquire 7% cumulative convertible preferred stock issued by an affiliate, Triton Holdings, LP. ("Triton Holdings").
13. The CIM further stated that Triton Holdings' first acquisition would be National States Insurance Company ("NSIC"), an insurance company based in St. Louis, Missouri. The CIM further stated that Triton Holdings had entered into a Letter of Intent to purchase NSIC. Notably, the majority of the CIM discussed specific financial and operational details about NSIC.

#### ***B. Sales of Triton Insurance Interests before any Acquisition***

14. From July 2008 through January 22, 2009, over \$6 million was raised through the sale of Triton Insurance LP Interests. The investors were provided the CIM that stated Respondent Triton Insurance would use the proceeds of the offering primarily for the purchase of NSIC through Triton Holdings.

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<sup>1</sup> The "Triton Insurance Respondents" are Respondent Triton Insurance, Respondent Triton, and Respondent Barton.

15. In or about October 2008, Respondents Triton and Barton decided that the first acquisition by Triton Holdings would be a Nebraska-based equipment leasing company, Axis Capital, Inc. ("Axis")
16. However, the funds raised through the sale of Triton Insurance LP Interests were not held in escrow or otherwise maintained in Respondent Triton Insurance's account. Instead, the funds were diverted to Respondent Triton's affiliates and Respondent Barton. For example:
  - a. On August 19, 2008, Respondent Triton Insurance received two investor deposits totaling approximately \$200,000 in connection with the sale of limited partnership interests. Prior to these deposits, the balance in Respondent Triton Insurance's bank account was \$2,000. On August 20, 2008, \$110,000 was transferred from Respondent Triton Insurance to an account for Triton Athletic Center, LP.
  - b. By October 20, 2008, the Triton Insurance Respondents had raised millions of dollars through the sale of Triton Insurance LP Interests. On October 20, 2008, \$465,000 was transferred from Respondent Triton Insurance to Respondent Triton. Prior to this transfer, Respondent Triton's account balance was approximately \$7,200. Subsequently, \$250,000 was transferred from Respondent Triton to Respondent Barton's personal bank account.
17. Furthermore, investor funds from the sale of Triton Insurance LP Interests were used to provide returns to previous investors in other Triton-sponsored investments. For example,
  - a. Through two separate transfers on August 28 and 29, 2008, \$335,000 of investor funds was moved from Respondent Triton Insurance's account to an account for Respondent Capvest. Prior to these deposits, Respondent Capvest's account balance was about \$1,200. An investor in a promissory note issued by Respondent Capvest was paid \$324,067.50 with the funds transferred from Respondent Triton Insurance.
  - b. On September 5, 2008, \$232,000 of investor funds was transferred from Respondent Triton Insurance to Respondent Triton's account. Prior to this transfer, the balance in Respondent Triton's account was under \$55,000. On September 5, 2008, \$216,000 was transferred from Respondent Triton's account to Respondent Capvest. On September 5, 2008, this \$216,000 was then wired to an investor who had purchased previously a promissory note issued by Respondent Capvest.

18. The Triton Insurance Respondents intentionally failed to disclose the following material facts to investors in Triton Insurance LP Interests:
  - a. Investment proceeds would be transferred to Respondent Triton's affiliates, to Respondent Barton, or to previous investors in other Triton-sponsored investments; and
  - b. Funds from previous investors had been transferred to Respondent Triton's affiliates, to Respondent Barton, or to previous investors in other Triton-sponsored investments.
19. The Triton Insurance Respondents' intentional failures to disclose material facts in the sale of the Triton Insurance LP Interests constitute fraudulent practices in the sale of securities and fraudulent business practices.

**C. Purchase of Axis Capital**

20. In or about February 2009, Triton Holdings acquired Axis. Despite having raised over \$6 million through the sale of Triton Insurance LP Interests, Respondent Triton Insurance had only \$6,505 in its bank account as of January 27, 2009.
21. In order to fund the Axis acquisition, the Triton Insurance Respondents raised additional funds from investors, primarily through the issuance of promissory notes. Between January 29, 2009 and February 4, 2009, the Triton Insurance Respondents raised approximately \$2 million through the sale of promissory notes to investors.

**D. Sales of Triton Insurance after Axis Acquisition**

22. After the Axis acquisition, the Triton Insurance Respondents continued to sell Triton Insurance LP Interests. From February 10, 2009 through October 9, 2009, over \$2.4 million was raised through the sale of these limited partnership interests.
23. However, even after the Axis acquisition, the Triton Insurance Respondents continued to provide the CIM that represented Triton Holdings' first acquisition would be NSIC. These representations were misrepresentations of a relevant fact, and constitute fraudulent practices in the sale of securities and fraudulent business practices.
24. The Triton Insurance Respondent intentionally failed to amend the CIM to disclose material facts such as: the Axis purchase; the equipment leasing business; and risks associated with an investment in an equipment leasing company.
25. Furthermore, after the Axis acquisition, the Triton Insurance Respondents continued to divert investor funds to Respondent Barton, Respondent Triton's affiliates, and previous investors in other investments sold by Respondent Triton and Respondent Barton.

26. After the Axis acquisition, the Triton Insurance Respondents intentionally failed to disclose the following material facts to investors in the Triton Insurance LP Interests:
  - a. Respondent Triton Insurance had issued over \$2 million in promissory notes, which were outstanding;
  - b. Funds from previous investors had been transferred to Respondent Triton's affiliates, to Respondent Barton, or to previous investors in other Triton-sponsored investments; and
  - c. Investment proceeds would be transferred to Respondent Triton's affiliates, to Respondent Barton, or to previous investors in other Triton-sponsored investments.
27. The Triton Insurance Respondents' intentional failures to disclose material facts in the sale of the Triton Insurance LP Interests constitute fraudulent practices in the sale of securities and fraudulent business practices.

#### **IV. Fraudulent Representations Related to Promissory Notes**

##### ***A. Misrepresentation of E\*Trade Account Value***

28. On or about January 29, 2009, Respondent Triton Insurance issued a \$400,000 promissory note to an investor in Texas ("Investor A"). The funds invested pursuant to this promissory note were used to fund Triton Holdings' acquisition of Axis.
29. The promissory note sold to Investor A is a "security" as defined by Section 4.A of the Texas Securities Act.
30. In connection with this promissory note, Investor A sought a personal guarantee from Respondent Barton. To that end, an interest in Respondent Barton's brokerage account at E\*Trade Securities, LLC was pledged as collateral.
31. In connection with Investor A's promissory note, Respondent Barton represented that his E\*Trade account value was \$3,161,170.00 as of January 29, 2009. However, Respondent Barton's E\*Trade account did not have a value of \$3,161,170 on January 29, 2009, or at any point before or after January 29, 2009. In fact, the account value was not close to the \$400,000 that was owed to Investor A.
32. Respondent Barton's misrepresentation of his E\*Trade account value is a misrepresentation of a relevant fact, and constitutes a fraudulent practice in the sale of a security and a fraudulent business practice.

**B. Misrepresentations about Use of Funds and Other Relevant Facts**

**(i). Use of Funds – Investor B**

33. On or about February 2, 2009, Respondents Barton and Capvest sold a \$1,000,000 promissory note issued by Respondent Capvest to an investor in Texas (“Investor B”). Respondents Barton and Capvest represented to Investor B that the funds invested in this promissory note would be used by Respondent Capvest to make a business loan to an entity named Heries, LP.
34. The Capvest promissory note sold to Investor B is a “security” as defined by Section 4.A of the Texas Securities Act.
35. In connection with the promissory note investment, Investor B was instructed to provide to Capvest \$400,000 in funds. Respondent Barton represented that the additional \$600,000 investment would come from Investor B’s previous investment in Triton Bridge Fund, LP.
36. Respondents Barton and Capvest did not use the \$400,000, or the \$600,000 previously invested by Investor B, to make a business loan to an entity named Heries, LP<sup>2</sup>.
37. Instead, Respondents Barton and Capvest used most of the \$400,000 to fund Triton Holdings’ acquisition of Axis.
38. On or about February 2, 2009, two checks totaling \$400,000 from Investor B were deposited into an account for Respondent Capvest. Prior to this deposit, the balance in that account was approximately \$12,700. The next day, Respondents Barton and Capvest transferred \$370,000 from Respondent Capvest to Respondent Triton. Prior to this transfer, Respondent Triton’s account balance was approximately \$9,200. After the transfer, but still on February 3, 2009, Respondent Triton transferred the \$370,000 to Respondent Triton Insurance, which then used the funds in connection with the Axis acquisition.
39. The misrepresentations by Respondents Barton and Respondent Capvest about the use of funds invested by Investor B were misrepresentations of a relevant fact, and constitute fraudulent practices in the sale of securities and are fraudulent business practices.

**(ii). Use of Funds – Investor C**

40. On or about March 4, 2009, Respondents Barton and Capvest sold a \$500,000 promissory note issued by Respondent Capvest to a married couple living in California (“Investor C”). As with the note sold to Investor B, Respondents

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<sup>2</sup> Respondent Barton provided to investors documents indicating that Heries, LP is a Texas limited partnership with a principal business address at 1604 Broadway Avenue, Houston, Texas 77010. The Staff has not been able to locate a Texas limited partnership named Heries, LP. Furthermore, the address listed does not appear to be a real address in Houston, Texas.

Barton and Capvest represented that the funds from this promissory note would be used by Respondent Capvest to make a business loan to an entity named Heries, LP.

41. The Capvest promissory note sold to Investor C is a “security” as defined by Section 4.A of the Texas Securities Act.
42. Respondents Barton and Capvest did not use the \$500,000 invested by Investor C to make a business loan to an entity named Heries, LP.
43. Instead, Respondents Barton and Capvest diverted the funds invested by Investor C to Respondent Triton’s affiliates.
44. On March 6, 2009, Investor C’s \$500,000 was deposited in Respondent Capvest’s bank account. Prior to this deposit, Respondent Capvest’s account balance was approximately \$66. Between March 6, 2009 and March 12, 2009, all of the funds invested by Investor C were transferred to Respondent Triton’s account. From there, Respondent Triton transferred the money to various affiliates. For example, on March 6, 2009, Respondent Triton transferred \$300,000 to an account for Triton Athletic Center, LP.
45. The misrepresentations by Respondents Barton and Capvest about the use of funds invested by Investor C were misrepresentations of a relevant fact, and constitute fraudulent practices in the sale of securities and are fraudulent business practices.

***(iii). Misrepresentations Regarding Purported Collateral***

46. Respondents Barton and Capvest represented that the promissory notes sold by Respondent Capvest to Investors B and C were collateralized by commercial and residential property and an E\*Trade brokerage account belonging to Heries, LP and/or its supposed general partner.
47. In connection with the sale of the promissory note, Respondents Barton and Capvest provided Investors B and C certain documents, which Respondents Barton and Capvest represented as deeds of trust associated with specific residential and commercial property in Houston. These deeds of trust listed addresses that either do not exist and/or are not properties owned by a Heries, LP or its supposed general partner.
48. Furthermore, Respondent Barton provided Investor C a personal guaranty for the promissory note. For this personal guaranty, Respondent Barton pledged an interest in his E\*Trade account as collateral. In connection with this transaction, Respondent Barton represented that his E\*Trade account was worth millions of dollars.
49. Respondent Barton’s E\*Trade account was not worth millions of dollars at the time that he made that representation to Investor C.

50. The misrepresentations of relevant facts by Respondents Barton and Capvest in connection with the investments by Investors B and C in the promissory notes constitute fraudulent practices in the sale of securities and fraudulent business practices.

#### **V. Unauthorized Transfer of Client Assets and Related Fraud**

51. Investor C entered into an investment advisory relationship with Respondents Triton and Barton. Pursuant to this relationship, Respondents Triton and Barton were given some limited powers to transfer assets held in Investor C's brokerage account. However, Respondents Triton and Barton were required to obtain authorization from Investor C before affecting any fund transfers.
52. On May 27, 2009, Respondents Triton and Barton transferred or caused someone else to transfer \$188,632.06 from Investor C's brokerage account to Respondent Triton Insurance's bank account.
53. Investor C did not authorize this transfer, and was not aware of the transfer until Investor C reviewed the account records on or about May 30, 2009. Respondents Triton and Barton had not received prior authorization from Investor C.
54. When Investor C questioned Respondent Barton about this transfer, Respondent Barton represented that the transferred funds would be part of an investment in several Triton-sponsored investment opportunities, including: Triton Bridge Fund, LP; Triton Opportunity Fund III, LLC; and Triton Athletic Center, LP.
55. Contrary to Respondent Barton's representations to Investor C, the funds were diverted to Respondent Barton and a previous investor in a Triton-sponsored investment opportunity. Specifically:
  - a. Prior to the \$188,632.06 deposit, the balance in Respondent Triton Insurance's account on May 27, 2009 was approximately \$2,800.
  - b. On May 27, 2009, after the deposit of Investor C's funds, \$15,000 was transferred from Respondent Triton Insurance to one of Respondent Barton's personal accounts.
  - c. Furthermore, on May 27, 2009, \$175,000 was transferred to Respondent Triton's account. Prior to this transfer, Respondent Triton's account value was approximately \$68,000.
  - d. On May 27, 2009, Respondent Triton transferred \$105,000 to Respondent Capvest, which then transferred the \$105,000 to a previous investor in a Triton-sponsored investment opportunity.
56. Respondents Triton and Barton never informed Investor C that the money withdrawn from Investor C's brokerage account would be used to pay a previous investor and also diverted to Respondent Barton.

57. The unauthorized transfer of funds from Investor C's account by Respondents Triton and Barton, and Respondent Barton's misrepresentations about the use of the transferred funds constitute fraudulent practices with respect to rendering services as an investment adviser and investment adviser representative.

#### **VI. Triton Opportunity Fund (TOF)**

58. Respondent Opportunity Fund was purportedly formed to acquire real estate properties, which would then be managed by Triton Realty.
59. The TOF Respondents<sup>3</sup> sold interests in Respondent Opportunity Fund to investors through a network of broker-dealers that entered into agreements to sell the interests. Over \$3.5 million was raised through the sale of Triton Opportunity Fund interests.
60. The Triton Opportunity Fund interests are "securities" as defined by Section 4.A of the Texas Securities Act.
61. In connection with the sale of Triton Opportunity Fund interests, the TOF Respondents provided investors a "Confidential Private Placement Memorandum" dated April 23, 2008 and a "First Supplement to the Confidential Private Placement Memorandum" dated July 3, 2008. The TOF Respondents also provided the PPM and First Supplement to other broker-dealers that offered and sold interests in the Triton Opportunity Fund.
62. The TOF Respondents attached a document to the July 3, 2008 Supplement, and represented the documents as an unaudited balance sheet for Respondent Triton. This document stated that, as of May 31, 2008, Respondent Triton had cash or cash equivalents of \$6,317,249.73.
63. Respondent Triton did not have cash or cash equivalents of \$6,317,249.73 as of May 31, 2008. The TOF Respondents knew or should have known that Respondent Triton did not have cash or cash equivalents of that amount.
64. The TOF Respondents' misrepresentation of Respondent Triton's assets is a misrepresentation of a relevant fact, and constitutes a fraudulent practice in the sale of securities and a fraudulent business practices.

#### **VI. Responses to Texas State Securities Board**

65. In connection with the Staff's investigation of Respondents, multiple requests for documents and information were sent to Respondent Triton.

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<sup>3</sup> The "TOF Respondents" include Respondent Opportunity Fund, Respondent Triton, and Respondent Barton.

### **A. Investor/Investment Accounting Documents**

66. During the course of the Staff's investigation, the Staff requested that Respondent Triton provide certain accounting records reflecting investments in Triton-sponsored investments.
67. In response, Respondents Triton and Barton provided the Staff documents reflecting information about investors and their investments in partnerships affiliated with Respondent Triton. Some of these documents were inaccurate. Respondent Triton knew or should have known that these documents were inaccurate.
68. For example, Respondents Triton and Barton provided the Staff with at least one document that indicated a significant "return of capital" to Investor B. However, Investor B never received the stated return of capital.

### **B. Promissory Notes**

69. During the course of the Staff's investigation, the Staff requested all promissory notes issued by Respondent Triton or entities affiliated with Respondent Triton.
70. Respondents Triton and Barton provided the Staff multiple documents purporting to be the promissory notes issued by Respondent Capvest.
71. Prior to the submitting the purported promissory notes to the Staff, Respondent Barton altered the actual promissory notes or otherwise caused the notes to be altered by employees of Respondent Triton. Respondents Triton and Barton did not tell the Staff about the alterations made to the notes.
72. For example, Respondents Triton and Barton provided the Staff with a document that purported to be the \$1,000,000 February 2, 2009 promissory note Respondent Capvest sold to Investor B. However, the document provided to the Staff was not the actual promissory note, as the document had been altered to remove any reference to the purported collateral provided to Investor B.
73. Investor B had never seen the purported promissory note submitted to the Staff. Furthermore, Investor B confirmed that the purported promissory note was materially different than the promissory note Investor B was provided previously by Capvest and Respondent Barton.
74. The submissions of inaccurate and altered documents to the Staff constitute fraudulent business practices.

## **VII. Legal Authority**

75. Section 4.F of the Texas Securities Act states:

The terms "fraud" or "fraudulent practice" shall include any misrepresentations, in any manner, of a relevant fact; any promise

or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; any scheme, device or other artifice to obtain such profit, fee or commission; provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and "fraudulent practice" as applied or accepted in courts of law or equity.

76. Section 14 of the Texas Securities Act states in part:

(A) The Commissioner may ... revoke a registration issued under this Act, ... if the person: ...

(3) has engaged in any inequitable practice in the sale of securities ... or in any fraudulent business practice;

77. Section 23.A of the Texas Securities Act states in part:

If it appears to the Commissioner at any time that the sale or ... method of sale of any securities, whether exempt or not, is a fraudulent practice...the Commissioner may issue a written cease and desist order, ... prohibiting the fraudulent conduct...

78. Section 23.B of the Texas Securities Act states in part that the Securities Commissioner may issue a Cease and Desist Order:

If it appears to the Commissioner at any time that an investment adviser or investment adviser representative is engaging or is likely to engage in fraud or a fraudulent practice with respect to rendering services as an investment adviser or investment adviser representative.

79. Pursuant to Section 14.A(3) of the Texas Securities Act, the fraudulent business practices described above are bases for revoking the registrations of Respondents Triton and Barton with the Securities Commissioner.

80. Furthermore, pursuant to Section 23.A of the Texas Securities Act, Respondents' fraudulent practices in the sale of securities are bases for the issuance of an Order requiring Respondents to cease and desist from engaging in fraudulent conduct in the sale of securities.

81. Finally, pursuant to Section 23.B of the Texas Securities Act, the fraudulent practices with respect to rendering services as an investment adviser and investment adviser representative are bases for the issuance of an Order requiring Respondents Triton and Barton to cease and desist from engaging in fraudulent conduct.

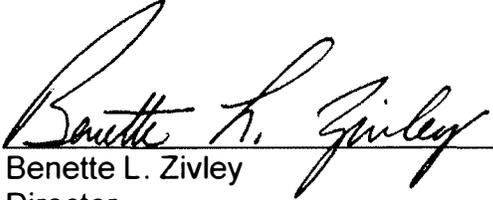
**VIII. Relief Requested**

Based on the foregoing allegations, the Staff requests that the Securities Commissioner issue an Order REVOKING the registrations of Respondent Triton and Respondent Barton with the Securities Commissioner and ordering that Respondents CEASE AND DESIST from engaging in the fraudulent conduct described in this Notice of Hearing.

Pursuant to § 105.14 of the Board Rules, the Staff respectfully requests that the State Office of Administrative Hearings order that all costs charged to the Texas State Securities Board by any court reporting service involved in this matter be assessed against Respondents.

You are invited to appear personally, with, without, or through counsel, and to present any and all evidence relating to the matters set forth in this Notice.

Signed this 22<sup>nd</sup> day of December, 2009.

  
Benette L. Zivley  
Director  
Inspections & Compliance Division

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been sent via certified mail to the parties listed below, and to the Securities Commissioner's Representative by hand-delivery, done on this, the 22nd day of December, 2009.

Triton Financial, LLC  
c/o Kurt Barton, CEO  
12117 Bee Caves Road, Suite 100  
Austin, TX 78738

VIA CERTIFIED MAIL #7007 0710 0004 9552 3505

Kurt Barton  
12117 Bee Caves Road, Suite 100  
Austin, TX 78738

VIA CERTIFIED MAIL # 7007 0710 0004 9552 3475

Triton Acquisition, LP d/b/a  
Triton Insurance, LP  
c/o Kurt Barton  
12117 Bee Caves Road, Suite 100  
Austin, TX 78738

VIA CERTIFIED MAIL # 7007 0710 0004 9552 3536

Capvest, LLC  
c/o Kurt Barton, Managing Member  
12117 Bee Caves Road, Suite 100  
Austin, TX 78738

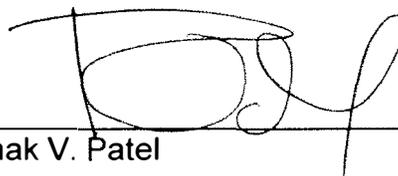
VIA CERTIFIED MAIL # 7007 0710 0004 9552 3512

Triton Opportunity Fund, LLC  
c/o Kurt Barton, Managing Member  
12117 Bee Caves Road, Suite 100  
Austin, TX 78738

VIA CERTIFIED MAIL # 7007 0710 0004 9552 3529

Sonia Ferguson  
Securities Commissioner's Representative  
Texas State Securities Board  
208 E. 10th Street, 5th Floor  
Austin, Texas 78701  
Telephone: (512) 305-8300  
Facsimile: (512) 305-8336

VIA HAND DELIVERY



Ronak V. Patel  
Attorney  
Inspections & Compliance Division