

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4479 / December 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. (“JAY”) LATHEN, JR.,
EDEN ARC CAPITAL MANAGEMENT, LLC, and
EDEN ARC CAPITAL ADVISORS, LLC

ORDER REGARDING THE
DIVISION’S MOTION TO COMPEL

On December 19, 2016, the Division of Enforcement submitted a motion to compel Respondents to comply with various orders or, alternatively, to preclude Respondents from offering testimony or evidence regarding their reliance on the advice of attorney Kevin Galbraith. Respondents previously identified Galbraith as one of the attorneys who provided legal advice concerning the structure or structuring of Respondents’ investment strategy, and he is on their witness list. Given that the hearing is imminent and the issues presented by the Division’s motion warrant prompt resolution, Respondents are directed to file their opposition, if any, by December 29, 2016. No reply from the Division is necessary unless otherwise directed.

Also by December 29, Respondents shall produce for *in camera* review any documents reflecting communications between them and Galbraith. Respondents’ *in camera* submission shall include only the Galbraith documents and a transmittal letter identifying: 1) each document or category of documents by Bates number(s) and the date and subject appearing on the face of the document; and 2) whether the document was (i) part of Respondents’ inadvertent production to the Division over which privilege has been waived pursuant to the November 10, 2016, order, or (ii) never produced to the Division. The Bates numbers must match or include the numbers available to the Division. No *ex parte* explanation of the submission or the documents is permitted.

Jason S. Patil
Administrative Law Judge