

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 4628 / February 24, 2017

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

POST-HEARING ORDER

The hearing in this proceeding was held from January 30, 2017, to February 17, 2017, with a final telephonic or video conference for closing arguments to be held on March 1, 2017, at 1 p.m. Eastern.<sup>1</sup> I ORDER the following post-hearing schedule:

1. By March 10, 2017, the parties shall file paper copies of their exhibits, both admitted and those offered but not admitted, with the Commission’s Office of the Secretary. *See* 17 C.F.R. §§ 201.350, .351. To the extent, if any, that they have not already done so, the parties should also provide my office with electronic copies of the exhibits.
2. Also by March 10, 2017, the parties shall file a joint list of admitted exhibits and exhibits offered but not admitted. The joint exhibit list should specify the exhibit number; description of the exhibit; Bates-stamp numbers, if any; and page(s) in the hearing transcript on which the exhibit was offered and admitted, if applicable. A courtesy copy of the exhibit list should be submitted to [alj@sec.gov](mailto:alj@sec.gov) in MS Excel or Word format.
3. Also by March 10, 2017, the parties shall file proposed transcript corrections, if any, whether by motion or stipulation. *See* 17 C.F.R. § 201.302(c). Any objections to proposed transcript corrections are due by March 17, 2017.
4. By March 17, 2017, the parties shall exchange, but not file, proposed stipulations of fact with each other.
5. By March 24, 2017, the parties shall exchange, but not file, responses to each other’s proposed stipulations of fact, striving to agree to all facts where there is no genuine dispute.

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<sup>1</sup> The Division of Enforcement is responsible for arranging the court reporter and the telephonic or video conference.

6. By March 29, 2017, the parties shall file joint stipulations of fact.
7. By April 7, 2017, the Division shall file its opening post-hearing brief and proposed findings of fact. The Division's post-hearing brief shall not exceed 10,000 words.
8. By April 21, 2017, Respondents shall file their opening post-hearing brief, proposed findings of fact, and response to the Division's proposed findings of fact. Respondents' post-hearing brief shall not exceed 10,000 words.
9. By April 28, 2017, the Division shall file its response to Respondents' proposed findings of fact, and may file its responsive post-hearing brief, if any. The Division's responsive post-hearing brief shall not exceed 5,000 words. Provided, however, that if Respondents pursue affirmative defenses in their opening brief and proposed findings of fact that were not addressed in the Division's opening brief, the Division may enlarge the length of its responsive post-hearing brief to a maximum of 7,500 words, and may file additional proposed findings of fact limited exclusively to affirmative defenses not addressed earlier.
10. By May 5, 2017, Respondents may file a responsive post-hearing brief, if any, limited exclusively to their affirmative defenses. Respondents' responsive post-hearing brief shall not exceed 5,000 words. If the Division files additional proposed findings of fact on the affirmative defenses, Respondents may also file a response to those proposed findings.
11. By May 10, 2017, Respondents may file an optional letter memorializing any constitutional objections to the proceeding.
12. By May 12, 2017, the Division may file a letter responding to Respondents' constitutional objections.
13. The parties proposed findings of facts and responses thereto should follow these guidelines:
  - a. Proposed findings of fact shall be numbered and must be supported by citations to specific portions of the record. Each citation shall be accompanied by quotation(s) of the key language that best supports the proposed finding. If the language is drawn from witness testimony or an expert report, the witness or expert should be identified. If the language is drawn from an exhibit, an abbreviated exhibit description should be included. Each party is requested, but not required, to attach to its proposed findings of fact a timeline that identifies significant events.
  - b. The response to a party's proposed findings of fact shall be numbered, and must reflect those paragraphs as to which there is no dispute. A party's response to findings of fact is not subject to a page limit, but shall be limited to a counterstatement of the factual finding, specifically identifying the language that is disputed, and then supporting that counterstatement by citations and quotation(s) as described above.

- c. Proposed findings of fact are not subject to a page limit. However, as a best practice, the parties should strive to concisely and clearly set forth the most relevant facts supporting each proposition. Moreover, the purpose of the parties' proposed findings of fact is to adduce, but not argue, the facts that the undersigned should rely on to decide this proceeding. Any proposed finding of fact that contains argument will be stricken. By contrast, the post-hearing briefs should contain all arguments regarding the application of law to fact and arguments regarding all disputed issues.
14. Courtesy copies of post-hearing briefs, proposed findings of fact, and responses should be submitted to [alj@sec.gov](mailto:alj@sec.gov) in both PDF text-searchable format **and** MS Word format.

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Jason S. Patil  
Administrative Law Judge