

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4646 / March 2, 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

ORDER ON HEARING EXHIBITS

The hearing in this proceeding was held from January 30 to February 17, 2017. A final session for closing arguments was held on March 1, 2017. At that final session and in a letter submitted the same day, the Division of Enforcement requested that it be permitted to file eleven hearing exhibits (Division Exhibits 124 to 129, 178, 634, 634-A, 635, and 636) in electronic format because they would be voluminous if filed in paper format. Electronic format is the native format in which the exhibits were presented at the hearing.

The Rules of Practice do not expressly contemplate electronic exhibits as part of the record, but they do not prohibit them either. 17 C.F.R. §§ 201.350, .351. Given the liberal standard for admissibility of evidence in Commission administrative proceedings, *see* 17 C.F.R. § 201.320(a); *City of Anaheim*, Exchange Act Release No. 42140, 1999 SEC LEXIS 2421, at *4 & n.7 (Nov. 16, 1999), it bears to reason that non-paper exhibits may be received into evidence in some circumstances. The practical problem, however, is that certain electronic formats can become corrupted, which may impact an appellate tribunal’s ability to consider the record. On the other hand, requiring a party to print thousands pages of data for a paper filing would be contrary to the requirement that I construe the Rules of Practice to secure the “inexpensive determination of every proceeding.” 17 C.F.R. § 201.103(a).

I therefore grant the Division’s request; however, I direct the parties to jointly maintain and preserve genuine copies of any electronic exhibits in the event they are requested to resubmit them in any appeal from the undersigned’s initial decision.

Jason S. Patil
Administrative Law Judge