

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4756 / April 19, 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 GRANTING EXTENSION

On April 18, 2017, Respondents requested a two-week extension to file their opening post-hearing brief, proposed findings of fact, and response to the Division of Enforcement’s proposed findings of fact. The Division submitted a response opposing the two-week extension but not objecting to a one-week extension applied to all parties.

The Commission’s Rules of Practice instruct hearing officers to “adhere to a policy of strongly disfavoring” requests for extensions of time, “except in circumstances where the requesting party makes a strong showing that the denial of the request . . . would substantially prejudice their case.” 17 C.F.R. § 201.161(b)(1). Among other factors, I must consider the “impact of the request on the hearing officer’s ability to complete the proceeding in the time specified by the Commission.” *Id.* § 201.161(b)(1)(iv). At this late stage of the proceeding, a two-week extension would impair my ability to complete this proceeding in a timely manner and cannot be granted. *See* Order Instituting Proceedings at 12; *Donald F. (“Jay”) Lathen, Jr.*, Admin Proc. Rulings Release No. 4149, 2016 SEC LEXIS 3416, at *1 (ALJ Sept. 13, 2016).

Considering the length of the hearing and the Division’s substantial post-hearing filings, it is appropriate to grant a one-week extension for Respondents’ opening brief, proposed findings of fact, and response to the Division of Enforcement’s proposed findings of fact. The deadlines for subsequent filings that are dependent on these filings of Respondents will also be extended accordingly. No further extensions will be granted in this matter.

The Division indicated that it would not object to relieving the parties from their obligation to file responses to the other party’s proposed findings of fact. This suggestion is not adopted. The parties shall file responses. Any proposed finding of fact not responded to may be considered undisputed.

Accordingly, the Respondents' request is GRANTED IN PART and the post-hearing schedule is modified as follows:

- By April 28, 2017, Respondents shall file their opening post-hearing brief, proposed findings of fact, and response to the Division's proposed findings of fact.
- By May 5, 2017, the Division shall file its response to Respondents' proposed findings of fact, and may file its responsive post-hearing brief, if any. 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 file additional proposed findings of fact limited exclusively to affirmative defenses not addressed earlier.
- By May 12, 2017, Respondents may file a responsive post-hearing brief, if any, limited exclusively to their affirmative defenses. If the Division files additional proposed findings of fact on the affirmative defenses, Respondents may also file a response to those proposed findings.

In all other respects, the post-hearing order dated February 24, 2017, remains in effect.

Jason S. Patil
Administrative Law Judge