

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4792/May 9, 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

MOTION TO THE COMMISSION
FOR EXTENSION

On August 15, 2016, the Securities and Exchange Commission instituted this proceeding with an order instituting proceedings (OIP) pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940. The due date for the initial decision is June 13, 2017.¹

Former Rule of Practice 360(a)(3), which governs this proceeding, provides that the Chief Administrative Law Judge may submit to the Commission, at least thirty days in advance of the due date, a motion requesting an extension of the time period for filing an initial decision where she determines that it will not be possible to issue the initial decision in the time specified.

I request a sixty-day extension of the initial decision due date for the following reasons. Fifteen days of hearing concluding on March 1, 2017, resulted in 3,800 pages of transcript and more than 750 exhibits. The assigned administrative law judge was out of the office presiding at another proceeding for five weeks and returned to the office on May 1. The Division of Enforcement’s proposed findings of fact, although timely filed, numbered over 1,000. Due in

¹ June 13, 2017, is 300 days following service of the OIP. This proceeding is governed by former Rule 360 of the Rules of Practice because as of September 27, 2016, the initial prehearing conference had been held (on September 12, 2016). *See* Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. 50212, 50229 (July 29, 2016) (stating that amended Rule 360 “appl[ies] to those proceedings where, as of the effective date of these amendments . . . the initial prehearing conference pursuant to Rule 221 has not been held”). Also, although the parties could have elected to apply the amended rules, they chose not to do so. *See id.* at 50228-29 & n.184; *Donald F. (“Jay”) Lathen, Jr.*, Admin. Proc. Rulings Release No. 4149, 2016 SEC LEXIS 3416 (ALJ September 13, 2016).

large part to the length of the Division's submissions, the assigned administrative law judge granted two extension requests and made the Respondents' post-hearing brief and proposed findings due on May 5. The Division's response is due May 19, and the parties have the option of making additional filings concluding on June 2. Additionally, the proceeding is thought to present some novel legal issues.

After consultation with the assigned administrative law judge, I request that the due date for the initial decision be extended sixty days, to August 14, 2017.

Brenda P. Murray
Chief Administrative Law Judge