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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**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,**

Respondents.

**THE PARTIES' FACTUAL
STIPULATIONS**

STIPULATION OF FACTS

Pursuant to the Court's February 24, 2017 Post-Hearing Order, the Division of Enforcement and Respondents Donald F. ("Jay") Lathen, Jr., Eden Arc Capital Management, LLC, and Eden Arc Capital Advisors, LLC submit the below factual stipulations. For the purposes of these proceedings, the parties hereby stipulate as follows:

1. At the time of the Administrative Proceeding, Donald F. ("Jay") Lathen, Jr., ("Lathen") was 49 years old.
2. Lathen graduated college in 1989 and got his MBA with distinction in 1993. At one point he held a Series 7 license and Series 24 and 63 licenses. A Series 24 license is for a supervisor.
3. Lathen was a managing director in the investment banking department at Citigroup from July 2007 until September 2008, and received a two-year guaranteed contract at \$2.5 million a year, which Citigroup honored. While at Citigroup, he was co-

head of Citigroup's energy mergers and acquisition business in the U.S. Prior to joining Citigroup, Lathen was a managing director at Lehman Brothers where he spent 11 years with its industry-leading global natural resources investment banking group. Over the course of his 15-year investment banking career, Lathen advised on over \$100 billion worth of completed transactions.

4. Lathen is the Chief Executive Officer, Chief Compliance Officer, Chief Financial Officer, Chief Investment Officer, managing member, and founder of Eden Arc Capital Management, LLC ("EACM").
5. EACM is an investment adviser, registered with the Commission between October 2012 and February 2016, which was founded and controlled by Lathen. EACM acted as the investment manager to Eden Arc Capital Partners, LP ("EACP" or the "Fund").
6. EACP is a hedge fund established by Lathen in approximately May 2011.
7. Eden Arc Capital Advisors, LLC ("EACA"), is the general partner of EACP.
8. Lathen is the managing member of EACA.
9. SO investments are typically marketed to retail investors.
10. The SO bonds were medium- and long-term bonds, with a life of anywhere from two to three years up to thirty years.
11. EndCare was a marketing vehicle Lathen used to solicit Participants.
12. UCC liens in favor of the Fund were placed on each JTWROS account created after January 2013.

13. Sometime in 2014, Lathen changed the language of the redemption letters from referring to Participants as “joint owners” of the accounts to “joint and beneficial owners.”
14. The SEC notified Lathen of an SEC exam of EACM in the fall of 2014.
15. Lathen was personally subpoenaed by the SEC related to the SEC’s investigation in February of 2015.
16. Lathen had authority to access to all of the JTWROS accounts.
17. [REDACTED]
18. [REDACTED]
19. On February 13, 2015, Lathen responded to a January 15, 2015 letter from examination staff of the Securities and Exchange Commission (“Exam Staff Letter”).
20. Citigroup Global Markets Holdings Inc. (“CGMHI”) offered Retail Medium Term Notes containing a survivor’s option.
21. CGMHI’s survivor’s option “is an option to elect repayment of the note prior to its stated maturity in the event of the death of the beneficial owner of the note.”
22. Barbara Mullaney is Managing Director and Global Head of Citi Private Client Solutions Group.
23. Lathen redeemed Notes issued by CGMHI, bearing the CUSIP 17307XFV8.
24. Those Retail Medium-Term Notes were issued pursuant to a Pricing Supplement dated September 28, 2004, a Prospectus Supplement dated September 22, 2003 and Prospectus dated June 30, 2003.

25. The Paying Agent for the Retail Medium-Term Notes issued at CUSIP 17307XFV8 was Citibank, N.A.
26. Until April 2016, Roger Begelman was Co-Chief Compliance Officer for Goldman Sachs Bank USA, a subsidiary of Goldman Sachs Group, Inc.
27. Ian Bell is Operations Manager in the payment and transfer division services of the Corporate Trust area at US Bank; he has served in that capacity since late 2012.
28. Bell supervises the group that processes redemptions of US Bank clients' survivor's option notes.
29. US Bank processes redemptions as Trustee for clients issuing various debt securities under those issuances' indentures.
30. In the typical redemption process for Survivor's Option notes, Bell's area receives presentments and packages from brokers who coordinate the paperwork for holders who are electing to put or sell back their bond position under the terms of the survivor option contingency in the indenture.
31. Bell's area receives, reviews and tracks the presentments.
32. Freaney has been a Vice President and relationship manager in the administration department of the corporate trust department at US Bank for over 14 years.
33. On January 29, 2014, Freaney received a letter from Lathen by email.
34. Lathen's January 29, 2014 letter was attached to his January 29, 2014 email to Freaney.
35. Tom Tabor is Vice President in the corporate trust department of US Bank, where he has been managing the corporate trust area for four years.

36. Tabor supervises Freeney in her role as relationship manager, a role that requires her to act as the client-facing person for the bank for the life of any bond issue for which the bank acts as trustee.
37. Fred Robustelli is an associate general counsel for all funding transactions at General Electric Co. ("GE"). In that function, he and his team handle all of the debt securities issuances for GE and GE Capital ("GECC"), the financial services operation of GE.
38. GECC notified investors if a particular CUSIP offered a survivors option in the Pricing Supplement for each CUSIP. All of the GECC CUSIPs Lathen redeemed or sought to redeem during the relevant period offered a survivors option.
39. InCapital is a broker-dealer based out of Chicago that focuses primarily on fixed income distribution.
40. Brian Walker is a managing director in the Debt Capital Markets group at InCapital.
41. InCapital has had over 50 corporate clients and has helped those clients issue approximately over 10,000 individual bonds with a total notional amount of approximately \$200 billion.
42. All but two InCapital clients have offered survivor's option products.
43. InCapital's client base today makes up approximately 100 per cent of the overall market for survivor's option bonds.
44. National Rural Utilities Cooperative Finance Corporation ("CFC") is a cooperative of rural electric companies. Its primary function is to make loans to those

companies. It raises money in the public and private markets and then lends capital to its owners.

45. Matthew Wade is a securities supervisor at CFC.
46. CFC issued InterNotes containing a survivor's option.
47. Lathen attempted to redeem InterNotes issued by CFC.
48. CFC issued a Form of Fixed Rate InterNotes in connection with its November 17, 2011 Prospectus Supplement.
49. Joseph Ferrero is General Counsel of Prospect Capital Corporation ("Prospect Capital").
50. Prospect Capital issues InterNotes that contain a survivor's option.
51. Lathen redeemed certain Prospect InterNotes bearing the CUSIPs 74348YBD2, 74348YBH3, 74348YBR1, 74348YBN0, and 74348YBP5.
52. Lathen attempted to but was unable to redeem certain other Prospect InterNotes.
53. US Bank is Prospect Capital's trustee for its InterNotes program.
54. Duke Energy ("Duke") is a utility holding company that has electric power utilities in six states.
55. Stephen De May is a Senior Vice President, Tax and the Treasurer of Duke.
56. Lathen redeemed Duke InterNotes bearing the CUSIP 26442KAA4.
57. The Duke InterNotes bearing CUSIP 26442KAA4 were issued pursuant to a Pricing Supplement dated November 21, 2012, a Prospectus Supplement dated November 13, 2012, and a Prospectus dated September 29, 2010.
58. Lathen signed the account opening documents for the JTWROS accounts.
59. Lathen was the principal author of the redemption letters and signed those letters.

60. Finnegan is a Managing Director and the General Counsel for Federal Farm Credit Banks Funding Corporation (“Funding Corp.”), a government sponsored enterprise that raises money for the Farm Credit system banks, who on-lend it to their affiliated associations to make loans that support agriculture in rural America.
61. Finnegan’s core responsibilities are to support two functions of the Funding Corp in a legal capacity: to prepare financial disclosure and to issue Farm Credit discount notes and bonds.
62. The terms under which a Funding Corp. note could be redeemed under the Survivors Option provision were identical for each of the CUSIPs Lathen sought to redeem during the relevant period (the “Funding Corp. Survivor’s Option Terms”), and were provided in the Offering Circular supplement, dated October 18, 2010.
63. Funding Corp. notified investors if a particular CUSIP offered a survivors option in the Term Sheets for each CUSIP, and each Funding Corp. note that Lathen sought to redeem contained a survivor’s option.
64. The Processing Agent for Funding Corp’s Survivor’s Option notes was US Bank.
65. Denisse Alamo’s mother, Doris Cubilette, was enrolled in EndCare from late 2009 until her death in June 2010, during which time Alamo was Cubilette’s attorney in fact.
66. Grundstein met Lathen in college and has known him for 32 years.
67. When Lathen engaged Katten Muchin in 2009, it was prior to his formation of a fund.

68. Grundstein is now the chief compliance officer of both Sabby Management LLC and Sabby Capital LLC; Sabby Management is the SEC-registered adviser to two hedge funds.
69. Jim Dean was in the same residential college as Lathen while at Rice University, and has been friends with him since 1986.
70. Dean was vice president of strategic planning and analysis at Key Energy, and worked there from 1996-2000.
71. Key Energy used Lehman Brothers for its investment banking until Lehman collapsed in 2008.
72. Lathen worked on Lehman Brothers' Key Energy team until he left Lehman in 2007 for Citigroup.
73. Dean was the primary point person besides the CFO, CEO and COO on all financial and M&A-related activities while at Key Energy.
74. Penn Virginia used Lehman Brothers for its investment banking until Lehman collapsed in 2008.
75. Lathen worked on Lehman Brothers' Penn Virginia team until he left Lehman in 2007 for Citigroup.
76. In Dean's view, Lathen was a thorough person who asked a lot of questions.
77. In Dean's view, Lathen was not afraid to ask questions about things he did not know himself.
78. Daren Domina is a partner with Haynes & Boone in the Investment Funds and Private Equity Practice Group.

79. In 2009, Domina was a partner at Katten Muchin Rosenman, specializing in broker-dealer and investment advisor regulatory matters.
80. Domina has practiced law since 1992.
81. Jack Governale was a partner in Katten's financial services group, and was the partner on Katten's representation of Lathen.
82. In May 2010, Lathen sought tax advice from Bruce Hood, a partner at Wiggin & Dana.
83. In April 2009 Mr. Lathen retained Katten Muchin Rosenman LLP to provide him with legal advice concerning and relating to the structure of, and structuring of, his investment strategy.
84. Mr. Lathen received legal advice from Katten Muchin Rosenman LLP concerning and relating to the structure of, and structuring of, his investment strategy as it existed at that time.
85. Katten Muchin Rosenman LLP reviewed and provided comments on a 2009 version of a Participant Agreement.
86. Mr. Lathen retained Gersten Savage LLP in August 2010 to provide him with legal advice concerning and relating to the structure of, and structuring of, his investment strategy.
87. Mr. Lathen received legal advice from Gersten Savage LLP concerning and relating to the structure of, and structuring of, his investment strategy.
88. Mr. Lathen received legal advice from Hinckley, Allen & Snyder LLP concerning and relating to the structure of, and structuring of, his investment strategy.

89. Bruce Hood, Esq., formerly of Wiggin and Dana LLP, provided Mr. Lathen with tax advice related to and concerning his investment strategy.
90. On October 31, 2012 Eden Arc Capital Management, LLC's registration as an investment advisor with the U.S. Securities and Exchange Commission became effective.
91. Mr. Lathen made all of his requests (all of which were in writing) for the redemption of survivor's option bonds and CDs in his own name.
92. Mr. Lathen's redemption request letters included the following representations:
 - (A) the Participant was a joint owner, or joint and beneficial owner, of the brokerage account at issue;
 - (B) the Participant had died; and
 - (C) Mr. Lathen was the surviving joint owner of the brokerage account at issue.
93. The Expert Report of Martin E. Lybecker, dated November 7, 2016, did not opine upon the allegation in the OIP that Mr. Lathen aided, abetted or caused Eden Arc Capital Management, LLC's alleged violation of Section 206(4) of the Investment Advisors Act of 1940 and/or Rule 206(4)-2 promulgated thereunder.
94. The Division's expert witness, Martin E. Lybecker, offered no conclusion concerning the allegations in the OIP that Mr. Lathen aided, abetted or caused Eden Arc Capital Management, LLC's alleged violation of Section 206(4) of the Investment Advisors Act of 1940 and/or Rule 206(4)-2 promulgated thereunder.
95. Mr. Lathen filed a complaint against Goldman Sachs Bank USA with the New York State Department of Financial Services.
96. Mr. Lathen filed a complaint against Goldman Sachs Bank USA with the Consumer Financial Protection Bureau.

97. Barclay's Bank initially refused to but ultimately agreed to redeem the survivor's option CDs that Mr. Lathen presented for redemption.
98. In response to what it learned about Mr. Lathen's redemptions, General Electric Credit Corp. added the following language to its offering documents for survivor's option bonds: "For the avoidance of doubt, we also retain the right to reject in our sole discretion any exercise of the survivor's option where the deceased held no or only a minimal beneficial ownership interest in the notes and entered into arrangements with third parties in relation to the notes prior to death for the purpose of permitting or attempting to permit those third parties to directly or indirectly benefit from the exercise of the survivor's option."
99. Citigroup Global Markets Holdings Inc.'s Prospectus Supplement dated September 22, 2003 provided that, all questions as to the eligibility or validity of any exercise of the survivor's option will be determined by Citigroup Global Markets Holdings in its sole discretion and those determinations will be final and binding on all parties.
100. Goldman Sachs Group, Inc.'s Pricing Supplement dated December 3, 2012 provided that all questions regarding the eligibility or validity of any exercise of the Survivor's Option will be determined by Goldman Sachs Group.
101. General Electric Credit Corp.'s Prospectus Supplement dated December 1, 2011 provided that all questions regarding the eligibility or validity of any exercise of the Survivor's Option will be determined by General Electric Credit Corp.

102. Duke Energy Corp.'s InterNotes Prospectus Supplement dated November 13, 2012 provided that all questions regarding the eligibility or validity of any exercise of the Survivor's Option will be determined by Duke Energy Corp.
103. Federal Farm Credit Banks Funding Corporation's Offering Circular dated October 18, 2010 provided that all questions as to eligibility or validity of any exercise of the survivor's option will be determined by Federal Farm Credit Banks Funding Corporation.
104. National Rural Utilities Cooperative Finance Corporation's Prospectus Supplement dated November 17, 2011 provided that all questions regarding the eligibility or validity of any exercise of the Survivor's option will be determined by National Rural Utilities Cooperative Finance Corporation.
105. According to Mr. Lathen's testimony, Robert Milius, a Managing Director at Barclays and an investor in Eden Arc Capital Advisors, LP, never told Mr. Lathen that he believed Mr. Lathen's investment strategy was unlawful or violated any federal securities law or rule.
106. According to Mr. Lathen's testimony, Steven Cohen, a registered investment advisor based on Long Island who also raises money for hedge funds, never told Mr. Lathen that he believed Mr. Lathen's investment strategy was unlawful or violated any federal securities law or rule.

Dated: New York, NY
March 29, 2017

DIVISION OF ENFORCEMENT

By: 

Nancy A. Brown
Judith Weinstock
Janna I. Berke
Lindsay S. Moilanen

Securities and Exchange Commission
New York Regional Office
Brookfield Place, 200 Vesey Street, Ste 400
New York, New York 10281
Tel. (212) 336-1021 (Moilanen)
Email: moilanenl@sec.gov

CLAYMAN & ROSENBERG LLP

By: 

Harlan Protass
Paul Hugel
Christina Corcoran

305 Madison Avenue
New York, NY
10165
T. 212-922-1080
F. 212-949-8255
protass@clavro.com

*Counsel for Respondents Donald F.
Lathen, Jr., Eden Arc Capital
Management, LLC and Eden Arc Capital
Advisors, LLC*

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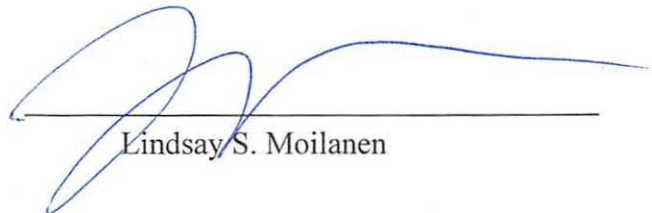
Certificate of Service

I hereby certify that I served the Parties' Factual Stipulations, on March 29, 2017, on the below parties by the means indicated:

Harlan Protass
Clayman & Rosenberg LLP
305 Madison Avenue, Ste 1301
New York, New York 10165
Attorneys to Respondents
(Redacted and Unredacted Versions By E-mail)

The Honorable Jason S. Patil
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
(Redacted and Unredacted Courtesy Copies by E-mail)

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-2557
(Redacted Version by Fax and UPS (original and three copies))



Lindsay S. Moilanen