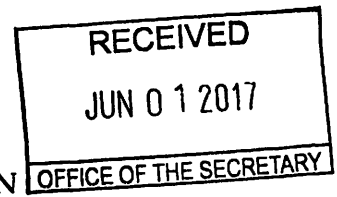




UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
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May 31, 2017

**By Email (alj@sec.gov)**

The Honorable Jason S. Patil  
Administrative Law Judge  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Re: In the Matter of Donald F. ("Jay") Lathen, Jr., Admin. Proc. File No. 3-17387

Dear Judge Patil:

We are writing to object to Respondents' untimely motion to admit Lathen's Financial Disclosure Form into evidence. (See Respondents' May 26 Sur-Reply at 17 ("Respondents now respectfully request that this Court enter that form into evidence").) Respondents had multiple opportunities during the hearing to move this document into evidence but did not. (See Tr. at 3694:12-17 ("I will note there's a large number of exhibits that were on the list that weren't admitted...But I just want to make sure that before we leave – because I will close the record at the end of the hearing – I'll give you your last chance. And that's it. There's no more evidence").)

Furthermore, Respondents failed to address their inability to pay argument in their May 6 Post-Hearing brief, waiving any argument on that point. Arguments first made on reply, as here, are "generally deemed waived." Matter of Timothy S. Dembski, Rel. No. 33-10326, 2017 WL 1103685, at \*8 & n.15 (SEC Mar. 24, 2017). If the Court is nonetheless inclined to consider either the Financial Disclosure Form or the arguments in Respondents' Sur-Reply on their inability to pay defense, the Division should be allowed the opportunity to respond to prevent "sandbagging." Id. (quoting Board of Regents v. EPA, 86 F.3d 1214, 1221 (D.C. Cir. 1996).) See also Division Responses to Respondents' Proposed Findings of Fact in Support of Their Inability to Pay Defense at 1 n.1 ("The Division would be unfairly disadvantaged if it were precluded from replying to arguments raised for the first time on sur-reply.").

Respectfully submitted,

Judith Weinstock

Hon. Jason S. Patil

May 31, 2017  
Page 2

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(via email)