UNITED STATES OF AMERICA
Before the
U.S. SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. LATHEN, JR.,
EDEN ARC CAPITAL MANAGEMENT, LLC,
EDEN ARC CAPITAL ADVISERS, LLC.

THE EDEN ARC RESPONDENTS' RESPONSES AND OBJECTIONS TO THE DIVISION OF ENFORCEMENT'S STATEMENT OF FACTS

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The Eden Arc Respondents' Responses and Objections to
the Division of Enforcement's Proposed Findings of Fact

DPFOF	The Eden Arc Respondents' Responses and Objections
1-5	No objection.
6	Misleading and not relevant. The entity was formed by Lathen's partner who was a lawyer. It was a small venture. (Tr. at 3150:6-20)
7-19	No objection.
20	Mr. Dean left Key Energy seven years before Mr. Lathen left Lehman Brothers to join Citigroup. Mr. Dean stated he was not sure whether or not Key Energy did business with Citigroup after Mr. Lathen joined. He further stated that Mr. Lathen would have been additive to Citigroup's existing relationship with Key Energy. (Tr. at 2827:18-25, 2828:1-8,)
21-24	No objection.
25	Mr. Lathen continued to call on Penn Virginia when he went to Citigroup but Penn Virginia was not a consumer of M&A services at the time. (Tr. at 2830: 5-11.) Mr. Lathen had an excellent reputation at Penn Virginia. (Tr. at 2803:25, 2804:1-3.)
26	No objection.
27	Mr. Dean observed Mr. Lathen from very early in his investment banking career through nearly the end of his investment banking career, the specific time period for which the Court sought character testimony. (Tr. at 1297:11-17.)
28-30	No objection.
31	Mr. Dean's testimony was related solely to Mr. Lathen's character and his performance and reputation as observed by him in Mr. Lathen's prior investment banking career.
32	The Division quotes shorthand from the Eden Arc Capital Partners, LP's Private Placement Memorandum. In fact, as evidenced by the contractual regime and further clarified in Mr. Lathen's testimony, Eden Arc Capital Partners, LP was providing financing for the joint accounts wherein Mr. Lathen and the Participant purchased the bonds and CDs.
33	Misleading. See response to DPFOF 32.
34	Misleading in that it does not also state that no restrictions exist on who can purchase survivor's option bonds and CDs. (See, e.g., Tr. at 729:3-5, 968.)
35	Not relevant. See Response to DPFOF 34.
36	No objection.
37	No objection.
38	Incorrect. It was the joint accounts, not the Fund, that were invested in survivor's option CDs. (Tr. at 159:13-14.). See also Response to DPFOF 32.
39-43	No objection.
44	Irrelevant. Has no bearing on the ability of Participants to enter into contractual relationship with Mr. Lathen.
45	No objection.
46	No objection.

DPFOF	The Eden Arc Respondents' Responses and Objections
47	Not relevant.
48	No objection.
49-52	No objection.
53	No objection.
54	Misleading and contradicted by other evidence. Mr. Robinson testified at trial that he did assist with forms filed with the SEC. (Tr. at 1672:22-24, 1673:1-8.)
55	Should be redacted in that it is based on testimony that was sealed.
56-57 •	No objection.
57	No objection.
58 •	Misleading. The Division has not asserted a violation of the antifraud provisions of the federal securities laws with respect to survivor's option CDs, which generated the vast majority of the profits earned as a result of Mr. Lathen's investment strategy. Indeed, the redemption profits from bonds totaled approximately $1.7 million and the redemption profits for issuers who testified at trial totaled approximately $77,000. Interest on the bonds is excluded because interest is earned regardless of whether the bond is redeemed and should not be included in a disgorgement calculation. (Lathen Ex. 1966.)
59	Misleading. Total bond face amount redeemed was approximately $21 million and only $3 million for issuers who testified at trial. (See Response to DPFOF 58; Lathen Ex. 1966.)
60-62 •	No objection.
63	Irrelevant as to who the Eden Arc Respondents called and did not call to testify at trial. Misleading in that does not reference final witness list, which listed no issuers or trustees. Also, not a fact for which a finding is appropriate. And, in any event, the Eden Arc Respondents' case introduced ample evidence of dozens of issuers' awareness of Mr. Lathen's strategy and their favorable redemption decisions with respect thereto. Significant evidence also introduced in the Eden Arc Respondents' case related to trustees and issuers posture toward Staples and Caramadre redemptions.
64-71 •	No objection.
72 •	Misleading and irrelevant. Governing documents contain neither a prohibition on who can own the instrument nor whether or not a natural person owning the interest may separately contract with other persons (natural or otherwise) with respect to such interest. Testimony by issuers regarding their expectations and/or intent is irrelevant given that all bonds are governed by written contracts drafted by the issuers and their sophisticated outside counsel.
73-78	See Response to DPFOF 72.
79	Misleading. Does not take into account lower coupon paid on retail paper and issuer call option.
80	Misleading. Survivor's options are added to appeal to retail investors because they could die and their survivors or estates might want to exercise the feature.
81-83	No objection.
84	Misleading as to plural "issuers." No evidence presented that any issuer other than

DPFOF	The Eden Arc Respondents' Responses and Objections
	Prospect Capital interjected itself into the validity determination decisions residing in the sole discretion of the bond trustee. Also misleading and incomplete as relates to the propriety of Prospect Capital's actions and whether or not it acted in good faith. Mr. Ferraro conceded that Prospect willfully contravened its own contract. (Tr. at 1481:21.) See also RPFOF.
85	Misleading and incomplete. Mr. Ferraro testified that it essentially was acceptable to willfully breach his contract based on a supposed belief of fraud. (Tr. at 1543:12-19.) Such supposed belief of fraud is questionable based on Prospect's own actions and its non-efforts to reach out to Mr. Lathen to shed further light on the situation. Prospect's actions show a lack of good faith which should undermine Mr. Ferraro's credibility as a witness.
86	Testimony is misleading and inaccurate and is contradicted by the governing document itself, which contains specific information requirements and an ability to ask for more. (See, e.g., Div. Ex. 521 at 22-23 (Duke Energy) and Div. Ex. 598 at 24-25 (Prospect Capital).) The governing document does not say "whatever information is required to present a complete picture of beneficial ownership."
87-96	No objection.
97	Cited testimony is inconsistent with a fair reading of the Participant Agreement. The Participant Agreement in question stated only that the Fund was providing financing for the joint account. It does not support a conclusion that the Fund was a joint tenant. Finnegan also confirmed she had reviewed a letter sent to her by US Bank which erroneously stated that Eden Arc (rather than Mr. Lathen as an individual) was seeking to redeem the bond. (Tr. at 1849:17-1851:5.)
98-102	No objection.
103-105	Incomplete and irrelevant. The Division has not established that Bank of America would not have redeemed if it had been provided with the omitted information. The validity determination agent for Bank of America is Bank of New York. Neither Bank of America nor Bank of New York ever contested Mr. Lathen's redemption requests. And Mr. Lathen redeemed paper with Bank of America after making voluntary disclosures regarding his side agreements after receipt of the Division's Wells Notice.
106	No objection as to DPFOF 106, 106(a), and 106(c)-(h). Testimony in 106(b) is contradicted by the language cited above in the governing documents and also contradicted elsewhere in the governing document. The language cited relates to a specific situation where the decedent is not a title holder on the account (such as being the beneficiary of a trust). It plainly does not apply to a joint tenancy account because it refers to person singular and the estate of a deceased joint tenant would not have a right to exercise the feature (because their interest passes outside of their estate by operation of law). Reading the balance of the paragraph in the governing document not cited by the Division and reading other parts of the governing document, including the paragraph the Division cites in 107(b) should conclusively demonstrate that the Division's cited language is not "NRU's definition of beneficial ownership." Mr. Wade likely made an innocent mistake in answering the Division's question.

DPFOF	The Eden Arc Respondents' Responses and Objections
107	Opening sentence mischaracterizes the various citations from the governing documents. The triggering event is owning a beneficial ownership interest in a note as a joint tenant. Such a result is deemed the death of a beneficial owner, which, in turn, triggers the right to repayment. Beneficial ownership is also defined elsewhere in the governing documents. Specifically, it is defined as the ownership recorded in the books and records of the brokerage firm.
108	No objection.
109	The written language of the governing documents themselves trump interpretations by issuer personnel. To the extent there is ambiguous or contradictory language in the governing documents, such ambiguity must be interpreted against the drafter of the contract because it is an adhesion contract.
110	Incomplete and misleading. Mr. Lathen pointed out that the term "true beneficial interest" does not appear in the governing documents. He later stated that he believed that Participants had a true beneficial interest but that the prospectus is less stringent and only requires that the Participant be a title owner on the account with the brokerage firm consistent with the definition of beneficial owner in the governing documents. (Tr. 235:9-25, 236:1-18.)
111	The governing documents state that beneficial ownership is proven by the account title at the brokerage firm. This is further reinforced by the redemption packets' documentation which contains an election form whereby the brokerage firm attests to the beneficial ownership on the account. Bank of New York also confirmed this in a letter to the Division in connection with the Staples matter. Issuer testimony which conflicts with the governing documents should be discounted.
112	The lead-in sentence and testimony are contradicted by the language in the governing documents. See Response to DPFOF 111.
113	The lead-in statement is not supported by the language in the governing documents. The definition of beneficial owner in the governing documents trumps all other definitions of beneficial ownership. That definition in the governing documents also trumps issuer's potentially biased conflicting interpretations of the meaning of beneficial interest and beneficial owner. 113(g) and 113(h) are objected to on same grounds as the objection to DPFOF 106(b).
114	Duke Energy's governing documents make clear that the beneficial owner is the person in whose name the account is titled at the brokerage firm. After being informed of this on cross examination, Mr. De May's only defense during re-direct was his assertion of the company's intent which he acknowledged may not be important. (Tr. 1657:17-25, 1658:1-3.)
115	Misleading and Incomplete. Mr. Lathen responded to the investor's concern and they were satisfied with the response. Ultimately this investor held a conference call with Lathen's attorneys at Hinckley Allen and was interested in investing in the Fund after sane. See Div. Ex. 107.
116	The Division's Citigroup witness acknowledged she had no experience in processing survivor's option redemption requests, making validity determinations or evaluating side agreements in connection with a validity determination. (Tr. at 722:13:-723:10.) Moreover, she never reviewed the actual participant agreement

DPFOF	The Eden Arc Respondents' Responses and Objections
	and she did not state, and would not have been able to state, whether Citigroup would have redeemed if they had been provided the side agreements. (Id.)
117	Lead-in sentence mischaracterizes testimony. He said should be considered not should be submitted and considered. Also conflicts with governing documents which define beneficial ownership based on the titling of the brokerage account.
118-125	Cited testimony is contradicted by other testimony given and by the definition of beneficial ownership in the governing documents.
126	Cited Begelman testimony contradicted by other testimony he gave and by the governing documents. Request letter to Lathen and later testimony showed Begelman's lack of understanding regarding joint tenancy law, which calls into question his assertions, reasoning and judgments. See RPFOF and Brief.
127	No objection.
128	No objection.
129	No objection.
130	Misleading. Lathen did not represent that the deceased was the "true beneficial owner." Begelman concluded that Lathen was the "true owner." (Tr. 788:4-6.) Begelman was unable to defend the logic behind his conclusions under cross-examination and gave conflicting answers to earlier testimony. Begelman's testimony also conflicted with Goldman's own governing documents' definition of beneficial ownership based on the account title at the brokerage firm.
131	No objection as to lead-in statement. Testimony contradicted under cross-examination. Testimony also undermined by governing documents.
132	No objection as to lead-in statement. Testimony contradicted under cross-examination. Testimony also undermined by governing documents.
133	Lead-in statement not supported by testimony or other evidence. Exhibit referenced is the Jackson participant agreement but on cross examination, Begelman struggled to pinpoint the precise reasons why the participant agreement supported his earlier assertions and conclusions.
134	Begelman's conclusions not supported by a fair reading of the Participant Agreement or Goldman's governing documents.
135 Á	No objection.
136	No objection.
137	No objection.
138	Begelman's testimony is directly contradicted by the governing documents, which contain no prohibition on a joint tenant contractually encumbering his/her interest in an account.
139	Objection to lead-in sentence. The Division compares this disclosure statement to a plain vanilla disclosure statement. The prior version of Goldman's structured CD disclosure statement contained beneficial owner language. The only change to the prior version was the familial relationship/reside in same household requirement.
140	No objection.
141	No objection.

DPFOF	The Eden Arc Respondents' Responses and Objections
142	No objection as to lead-in statement. Citations reflect opinions and assertions unsupported by a fair reading of the underlying participant agreements and Goldman's governing documents.
143	No objection.
144	No objection (except that it should be "Department of Financial Services"). ~
145	No objection.
146	No objection.
147	No objection.
148-153	No objection.
154	Mischaracterization of Farrell's certitude and Lathen's state of mind.
155	No objection.
156	Mischaracterization of Farrell's certitude and Lathen's state of mind.
157	No objection.
158	No objection.
159	No objection.
160	The beneficial ownership of the notes was determined by the brokerage account titling, which is deemed definitive under GECC's governing documents. The Participant Agreement did not change the beneficial ownership on the account. ~ Robustelli's assertions are unsupported by a fair reading of the underlying contracts.
161	Robustelli never saw the Investment Management Agreement and so his testimony on its possible import is irrelevant speculation based on incorrect information. The Participant was not a party to the Investment Management Agreement and Robustelli's speculation that the Fund might have been the sole owner of the account is contradicted by the Investment Management Agreement.
162	No objection with respect to lead-in paragraph. But testimony inconsistent with fair reading of the Participant Agreement and inconsistent with definition of beneficial ownership definition in governing documents.
163-165	Chivers correspondence makes conclusions unsupported by a fair reading of the written contracts. Chivers demonstrates a careless review of the written contracts and a poor understanding of joint tenancy law.
166	No objection.
167	Chivers correspondence makes conclusions unsupported by a fair reading of the contracts.
168	No objection.
169	Misleading. Robustelli only requested Participant Agreements. (Tr. at 1250:20-1251:6, 1259:23-160:3.)
170	Mischaracterization of Farrell's certitude and Lathen's state of mind.
171	Opening passage misstates the written agreements. Participant was not a party to the Profit Sharing Agreement. Robustelli never saw the Investment Management Agreement or the Profit Sharing Agreement. His testimony about the import of those agreements is speculation.
172	No objection.

DPFOF	The Eden Arc Respondents' Responses and Objections
173	No objection.
174	No objection.
175	No objection.
176	No objection.
177	No objection.
178-181	No objection as to opening statement. Disagree with conclusions in testimony based on a fair reading of the written contracts and other testimony by witness.
182	Opening statement misstates Finnegan's testimony. Finnegan stated that her reading of the Participant Agreement suggested that an entity was a joint tenant when the only reference to the Fund was that it was a financing party. With respect to the Investment Management Agreement, she stated that she could not make any conclusions because she had not seen the agreement. (Tr. at 1864:6-7.)
183	No objection.
184	Mischaracterization of Farrell's certitude and Lathen's state of mind.
185	Mischaracterization of Farrell's certitude and Lathen's state of mind.
186	No objection.
187	Mischaracterization of Farrell's certitude and Lathen's state of mind.
188	No objection.
189	No objection.
190	No objection.
191	No objection.
192	No objection.
193-196	No objection.
197	Misleading. Lathen objected to the request because it did not come from US Bank, the proper party who was the validity determination agent. (Div. Ex. 592 p. 10-12.)
198	No objection.
199	No objection.
200	No objection.
201	No objection.
202	No objection.
203	No objection.
204	No objection.
205	No objection.
206	No objection.
207	No objection.
208	No objection.
209	No objection.
210-212	No objection.
213	Testimony conflicts with plain language of governing document whereby US Bank is the validity determination agent. Indicates US Bank was not faithfully following or complying with its obligations under the prospectus.
214-217	No objection.

DPFOF	The Eden Arc Respondents' Responses and Objections
218	Misleading and incomplete lead-in. Full context of letter reveals Lathen objecting to request inappropriately coming from Prospect rather than US Bank, the validity determination agent who had already made a final and binding decision that the claim was valid. Lathen explicitly offered to send information to US Bank if properly requested by them.
219-223	No objection.
224	Incorrect. Freeney forwarded the letter to Bell. Bell had earlier testified that he was asked prior to that to escalate the matter to Freeney. Bell had advised Lathen to send the letter to Freeney and then Freeney punted it back to Bell, who is not her manager. Demonstrates that US Bank was not taking its responsibilities under the indenture seriously.
225	No objection.
226	Misleading. Lathen offered to provide information to US Bank and they stated that they did not require any further information, that the claim was valid but that they could not force Prospect Capital to pay. Ferraro later testifies that they made a conscious decision to not pay even though they were required to under their prospectus following US Bank's validation of the claim.
227	No objection.
228	Under the Caterpillar prospectus, US Bank is the sole validity determination agent. Yet in the last citation, US Bank abrogates that duty by offering Caterpillar an opportunity to overturn its decision (just as it allowed Prospect Capital to overturn its earlier favorable validity determination in January 2014).
229-233	No objection.
234	Taber was advised by Lathen that Prospect was in default under its indenture. Though he had no authority to declare an event of default, his employer US Bank plainly does under the indenture. Tabor failed to escalate the matter to a more senior officer who was authorized to declare an event of default.
235	See Response to DPFOR 234.
236-246	No objection.
247	Creates unfair inference that these documents were requested. They were not. Also misstates Farrell's certitude.
248-263	No objection.
264	Statement not supported by transcript reference. Admit that most, but not all, – participants were required to sign Limited Power of Attorney. All signed Participant Agreements.
265-270	No objection.
271 –	Misleading. First Southwest, like all of Lathen's brokers, was aware of Lathen's strategy and his contractual regime and the fact that it conflicted with its boilerplate non-negotiable account documentation is of no importance.
272	Misleading and omits material information concerning the relationship between the Fund, Lathen and Participants.
273	The written Participant Agreement and account agreements speak to what Participant received in the transactions and Robinson's short-hand explanations are

DPFOF	The Eden Arc Respondents' Responses and Objections
	irrelevant.
274-323	No objection.
324	Notably, Davis' joint account had been liquidated at the time of the letter and so the statement was true
325-326	No objection.
327	Misleading. As Lathen testified, the total profits in the account to the point of liquidation did not reach a threshold where Ms. Davis would be entitled to additional compensation.
328	No objection.
329	Misleading. The Bankuti account is still active and has assets in it. When the assets were transferred, it reduced the debt balance with respect to the Bankuti account.
330	Misleading. Participants promised not to exercise rights. With respect to the account agreements, their rights were unrestricted.
331-340	No objection.
341	Mischaracterization. As the Participant Agreement evolved, Participants' economic interests increased and fewer promises were made by the Participants not to exercise their rights. The Participant Agreement was carefully constructed so as to preserve a contractual right to repayment under the governing documents
342-345	No objection.
346 Õ	Misleading and shows lack of understanding by the Division of a core feature of joint tenancies. Participant's survivors would not have a claim to the account because the Participant's interest in the account transfers upon death to Lathen by operation of law. This is a core feature of any joint tenancy.
347-382 Õ	No objection.
383	Only true in event Lathen outlives the Participant. Would be different if Lathen pre-deceases the Participant.
384-387 Õ	No objection.
388	Incorrect. Under the governing documents they were required to certify (and did certify) to the trustee/issuer that the decedent was a beneficial owner of the bond at the time of death. This makes sense because the governing documents define beneficial ownership as the title holders on the account at the brokerage firm and brokers are the only parties who can make that certification under the plain language of the governing documents.
389	See Response to DPFOF 388.
390-393	No objection.
394	Cellitti would not know with certainty that JPMorgan even read, much relied upon, a single sentence in the back of Lathen's investor presentation. Prior to processing Lathen's redemption requests, JPMorgan requested and received Lathen's full contractual regime, including the Participant Agreement, the Investment Management Agreement and the Fund's Private Placement Memorandum. After a lengthy review by their legal department, they agreed to process Lathen's redemption requests, including certifying to the trustee/issuers that the Participants

DPFOF	The Eden Arc Respondents' Responses and Objections
	were beneficial owners of the bonds.
395-414	No objection.
415	Incorrect. The letter also revealed that the Participant and Lathen had a separate written agreement governing the account. Begelman himself testified that he would like to see those agreements before making a decision. None of the other issuers who received the enhanced disclosure asked to see additional information. Over thirty issuers agreed to redeem and none declined to redeem after seeing that additional information.
416-417	No objection.
418	Statement mischaracterizes and is misleading. See Full text of email for proper context
419	Incomplete and misleading. See Full paragraph of citation for proper context.
420	No objection.
421	Reflects Lathen's understanding at the time of the Goldman dispute. Based on a plain reading of the governing documents' definition of beneficial ownership, the Participant Agreement is arguably superfluous.
422	Misleading characterization of cited passage. See Full passage for context.
423	No objection.
424	Misleading. Implies Lathen had or thought he had an obligation to do so. Lathen consistently stated that he did not have an obligation to provide Issuers any more information than they requested. Mr. Lathen's attorney, the Honorable Robert Flanders, gave him that same advice.
425	No objection.
426	Incomplete and misleading. See Full passage for context.
427	Misleading and incomplete. See Full paragraph in cited emails and Response to DPFOF 424.
428	No objection.
429	Incorrect and misleading. Lathen is counter-suing Prospect Capital for breach of contract and tortious interference. Furthermore, not suing someone is not evidence of fraud or deception.
430	Mischaracterization of Lathen mindset and Farrell's certitude
431	Mischaracterization of Lathen mindset and Farrell's certitude
432	Misleading and incomplete. Mr. Lathen voluntarily registered with the SEC as an investment adviser, which actually brought on greater scrutiny. Such actions are fundamentally inconsistent with fraudulent intent.
433	Incomplete and misleading. See Full paragraph for context.
434	No objection.
435	Misleading. Later provided full disclosure to New York State Department of Financial Services, which is inconsistent with fraudulent intent.
436-439	No objection.
440	Misleading. Lathen did what he thought would be most effective. He went to regulators who have jurisdiction over Goldman Sachs Bank because he believed Goldman Sachs Bank was not treating him fairly.

DPFOF	The Eden Arc Respondents' Responses and Objections
441-445	No objection.
446	Misleading, incomplete and prejudicial. FINRA neither advised Lathen that they thought his investment strategy was fraudulent nor did they give Mr. Lathen any feedback whatsoever concerning his investment strategy, notwithstanding his good faith attempts to engage them. Approaching FINRA is inconsistent with fraudulent intent.
447-453	No objection.
454	Incorrect as to Citigroup, notwithstanding the transcript. It was actually Citibank (the CD issuer), not Citigroup (the bond issuer). Otherwise no objection.
455	No objection.
456-459	No objection.
460	Misleading, incomplete and prejudicial. Redemptions after the Wells Notice contained enhanced voluntary disclosures by Lathen. Though he was not required to, Lathen made these additional disclosures in good faith out of respect for the Division's position, though he vigorously disagreed with them. In March 2016, after the Division threatened to seek injunctive relief to prevent Lathen from making further redemptions, he voluntarily agreed to suspend redemptions.
461-464	No objection.
465-468	Opinion of biased witness who was engaged and paid by the Division.
469-472	No objection.
473	Opinion of biased witness who was engaged and paid by the Division.
474	No objection.
475	Opinion of biased witness who was engaged and paid by the Division.
476	No objection.
477	Opinion of biased witness who was engaged and paid by the Division.
478-484	No objection.
485	Contradicted by the terms of the promissory note which states that Eden Arc, not the "holder," can demand payment. It is not a bearer instrument by its plain terms. Lathen corrected his testimony during cross-examination.
486-544	No objection.
545	Completely misstates the evidence. Mission Critical identified deficiencies in the way the compliance manual described the custody arrangements. Mission Critical did not agree with the Division that a custody violation had occurred. Lathen subsequently updated his compliance manual, adopting Mission Critical's recommendations.
546-548	No objection.
549	Misleading characterization of the testimony. The full passage provides the proper context.
550-551	No objection.
552	Prejudicial mischaracterization. Lathen later testified that the update was a very minor one and was likely handled by Michael Robinson rather than a third party.
553	See Response to DPFOF 552.
554	See Response to DPFOF 552.

DPFOF	The Eden Arc Respondents' Responses and Objections
555	Prejudicial mischaracterization. Lathen later testified that he had been familiar with the system when he had tried unsuccessfully to register on his own at an earlier date. Following that experience, he hired Gersten Savage.
556	Prejudicial mischaracterization.
557	Prejudicial mischaracterization.
558	Misleading and incomplete. See Full answer to question for context.
559	No objection.
560	Misleading statement unsupported by the testimony itself. Testimony indicates they wanted to invest.
561	Inaccurate, misleading and prejudicial. In fact, Mr. Lathen testified that he did not know whether the referenced payment was a management fee or an incentive fee. Also, the Division implies Mr. Lathen was lying yet offers no evidence to support its assertion.
562	REDACTED.
563	Misleading, prejudicial and incomplete summary of the testimony. Testimony speaks for itself. Additional testimony provides further context.
564-72	REDACTED.
573	No objection.
574	No objection, although it bears noting that Lathen testified to the extenuating factors of the Division's investigation in the immediate aftermath of the examination.
575	No objection.
576	Mischaracterizes testimony. Lathen testified that he sought advice from his compliance counsel on how to communicate the issue to the SEC and followed that advice.
577	No objection.
578	Misstates testimony. See Full exchange for context.
579-580	Misleading and prejudicial. Lathen opened accounts with SecureVest and its clearing firm was JPMorgan Clearing Corp. ("JPMCC"), which is a different part JPMorgan than the part of same with which he previously dealt. Moreover, Lathen testified, and his email exchanges corroborated, that he wanted to make JPMCC fully aware of his investment strategy and fully disclose everything before onboarding. During the due diligence phase, Lathen forwarded his investor presentation to Cellitti and asked him to send it to JPMCC. Cellitti advised Lathen that JPMCC was comfortable facilitating his business.
581	Incorrect – It was not a false claim. Rather, it was a true statement based on a fair reading of the account agreement and the Participant Agreement at issue.
582	Misleading and prejudicial. The Division references a website screenshot that was filed in connection with the Prospect Capital litigation and was no longer in use to identify potential Participants. Moreover, there is no evidence that any investors were directed to the website.
583	Incorrect – It was not a false claim. Rather, it was a true statement based on a fair reading of the account agreements and the Participant Agreements.

DPFOF	The Eden Arc Respondents' Responses and Objections
584	Statement mischaracterizes cited testimony. Testimony speaks for itself.
585	No objection.
586	Mischaracterizes testimony. Omits clarifying testimony. Lathen was speaking about his capital account balance, not his cash capital contribution to the Fund.
587	Misleading and unfairly prejudicial. As Lathen later testified, the refinancing did not generate any meaningful proceeds because of closing costs and the lender's requirement that other debt be repaid. He further stated that if there had been meaningful proceeds, he would have invested them in the Fund
588	No objection.
589	Misleading. Lathen testified that he believed this requirement was largely satisfied by his Participant Agreement and the brokerage firms' two signature policies.
590	Misleading summary of testimony. Testimony speaks for itself.
591-593	No objection.
594	Misleading summary and incomplete excerpt. Full reading of citation speaks for itself. The representations were true based on the Security and Account Control Agreement and UCC-1 filings.
595-598	No objection.
599	Misleading. Lathen testified that no one ever asked for the Security and Account Control Agreement but that he would have provided it if someone had.
600	No objection.
601	Misleading. Lathen was truthful with Cooney. Lathen testified to what Hinckley Allen & Snyder told him. Cooney was also aware of the difficulty Lathen was having in getting such a legal opinion. Cooney and his partner were reaching out to other law firms on his behalf and Lathen had regular conversations with Cooney and his partner. Unfair to suggest that Cooney was misinformed or ill-informed by Lathen.
602	Misleading and prejudicial. First Southwest, like all of Lathen's brokerage firms, was aware of his investment strategy and contractual regime. The fact that it may have conflicted with boilerplate language in First Southwest's Advisers Service Agreement is of little import or consequence.
603-609	No objection.
610	Flanders' claim was not false based on a fair reading of the account agreement.
611	Misleading. The Division has not established that the statement is false.
612-614	Misleading and prejudicial. See Lathen's full testimony for context. The letter from the Division accompanying its subpoena stated that no wrongdoing had been asserted and that the Division was conducting a private fact-finding inquiry. Moreover, Lathen testified that he informed his investors of the subpoenas and the full details of the Division's investigation. It is therefore inaccurate to suggest that Fund investors were not adequately informed of the Division's investigation.
615	No objection.
616	No objection.
617	Misleading and prejudicial. The short excerpt creates an impression that Lathen is referring to his conduct during the charged period. In fact, he is referring to his

DPFOF	The Eden Arc Respondents' Responses and Objections
	entire career in the securities industry during which he, notably, has an unblemished record.
618-41	REDACTED
642-648	Objection to the Division's methodology. See the Eden Arc Respondents' Findings of Fact for alternative methodology, which we believe is more straightforward and accurate.
649-650	No objection.
651	Misleading and incorrect. Excerpted testimony relates specifically to advice received from Katten Muchin. Flanders provided advice to Lathen with regard to disclosure to issuers. Flanders stated that he advised Lathen to provide only whatever the brokers or issuers required as a precondition to honoring redemption requests. (Tr. 2037:20-25.)
652	No objection.
653	Misleading and creates an unfair inference. As Lathen testified, most of his conversations with law firms ended after only a very preliminary conversation and inquiry.
654-659	No objection.
660	Misleading, irrelevant and designed to create a false impression of impropriety. Lathen was under no obligation to raise an advice of counsel defense during the investigation.
661-678	Irrelevant. Prejudicial. Improperly suggestive of impropriety by the Eden Arc Respondents and their counsel, which is not supported in the record.
679	Misleading. Creates unfair inference of impropriety
680-682	No objection.
683	Irrelevant and prejudicial. Grundstein did not communicate that view to Lathen and it therefore had no bearing on Lathen's state of mind.
684-693	No objection.
694	Misleading, incomplete and inaccurate. Grundstein was Lathen's point of contact at Katten Muchin. He gathered views from relevant experts at the firm and communicated same to Lathen. His lack of subject matter expertise should not, as the Division seems to suggest, impact upon what he told Lathen. Grundstein testified that the Trusts & Estates Department had done a lot of work on the matter, so much so that Grundstein was required to write-off a significant portion of its time. Grundstein communicated to Lathen after input from Trachtenberg that Mr. Lathen had "perfectly good joint tenancies."
695-696	No objection.
697	No evidence that the internal memorandum fully summarizes all of the facts Trachtenberg had been provided or that that memorandum fully summarized all of advice that she provided.
698	Misleading. Lathen asked Grundstein to review his Participant Agreement. It would have been reasonable for Lathen to assume that Grundstein had it reviewed by someone in the Trusts & Estates Department. Lathen believed that the Participant Agreement was being reviewed by the appropriate attorneys with a goal

DPFOF	The Eden Arc Respondents' Responses and Objections
Û	of preserving the "perfectly good joint tenancy." The fact that Trachtenberg's memorandum does not specifically mention or address the Participant Agreement does not impact upon Lathen's state of mind or what he believed to be true.
699	Whether or not Trachtenberg actually reviewed the Participant Agreement was unknown to Lathen at the time and therefore could not have changed his state of mind and good faith belief that he was receiving well-informed counsel.
700	See Response to DPFOF 699.
701	See Response to DPFOF 699.
702	Irrelevant. Lathen was receiving advice from Grundstein with a good faith understanding that Grundstein was receiving advice from relevant experts and communicating such advice to Lathen.
703	Advice not given for advice not sought does not change Lathen's state of mind. Lathen was asking for advice on his new business model with a stated goal of creating true and legally valid joint tenancies and being contractually entitled to redeem survivor's option bonds and CDs under the governing documents of the issuers of same. Lathen believed he had received the proper advice to achieve his objectives. The fact that his lawyers did not advise him specifically on what the Division now deems important does not change Lathen's state of mind at the time.
704	No objection.
705	Irrelevant. Most of Trachtenberg's advice came through Grundstein.
706	Misleading. Division has not proven when Grundstein's "perfectly good joint tenancy" advice was received. Also, first transaction was done without a Participant Agreement so it would not have been imprudent to proceed even in the absence of such advice.
707	No objection.
708	Speculative. Trachtenberg did not appear as a witness.
709	No objection. Û
710	No objection.
711	Prejudicial as it implies advice was correct. Testimony speaks for itself. Evidence introduced later proved that it was incorrect.
712-714	No objection.
715	Does not change Lathen's state of mind that the joint tenancy was legally valid. Also, it is well established law that a power of attorney does not destroy a joint tenancy. Notably, the Division's post-hearing brief offers no legal analysis whatsoever to support its vague assertions that the presence of Power of Attorney somehow destroys a joint tenancy.
716-718	No objection.
719	See Response to DPFOF 703.
720	See Response to DPFOF 703.
721	Prejudicial, misleading and irrelevant. It would have been reasonable for Lathen to assume that such advice was implicit based on his stated objectives, his full disclosures, Katten Muchin's advice that he had "good joint tenancies," Katten Muchin's review of his participant agreement, and his reasonable expectation that

DPFOF	The Eden Arc Respondents' Responses and Objections
	Grundstein was gathering views from relevant experts at his firm. The fact that Grundstein cannot recall whether Trachtenberg directly advised Lathen on the topics on which the Division is focused eight years later has no bearing on Lathen's state of mind and good faith beliefs at the time he received advice from Katten Muchin.
722	Prejudicial. As later evidence demonstrated, advice was wrong. Notably, the Division offers nothing in its post-hearing brief to support its continued assertion that Lathen has somehow improperly not paid gift tax.
723-728	No objection.
729	Irrelevant and prejudicial. What Grundstein never told Lathen could not possibly have had a bearing on Lathen's state of mind and good faith belief.
730	No objection.
731	See Response to DPFOF 729.
732-736	No objection.
737	Misleading. Lathen provided bond prospectuses to Grundstein. Whether such information was passed onto Domina is irrelevant as to Lathen's state of mind and good faith belief. Lack of advice on submissions also does not change Lathen's state of mind as it would have been reasonable for him to assume that his lawyers would have brought that to his attention if it was important. ,
738	No objection.
739	Irrelevant. Has no bearing on Lathen's state of mind.
740	Irrelevant, misleading and prejudicial. The Division has not asserted that Lathen acted as an unregistered investment adviser or broker-dealer. The Division's focus on advice related to a risk that did not materialize is not relevant. Furthermore, Grundstein expressed the view that he believed Lathen's investment strategy was lawful at all times and that getting bigger would not transform his business into being unlawful.
741-742	No objection.
743	Irrelevant. Whether Domina reviewed it or not does not impact on Lathen's state of mind and good faith belief that he was receiving well-informed counsel.
744	No objection.
745-747	Irrelevant. Does not change Lathen's state of mind.
748	Misleading and mischaracterizes testimony. Testimony speaks for itself.
749	No objection.
750	No objection.
751	Misleading. Lathen asked Roper to give the joint tenancy analysis a "fresh look." Roper, in turn, involved Jason Neroulias, a Trusts & Estates attorney from another firm, to advise on various aspects of the joint tenancies, including risk factors in the Private Placement Memorandum.
752	No objection.
753	Irrelevant. Did not impact on Lathen's state of mind. A question Lathen did not think to ask and an issue his lawyer did not think to raise had no bearing on Lathen's state of mind and good faith belief.

DPFOF	The Eden Arc Respondents' Responses and Objections
754	No objection.
755	No objection.
756	Irrelevant and prejudicial. A question Lathen did not think to ask and an issue his lawyer did not think to raise has no bearing on Lathen's state of mind and good faith belief.
757-768 Z	No objection.
769	Does not impact Lathen's state of mind. Lathen knew that a Trusts & Estates lawyer was involved and he had asked for a "fresh look" at various joint tenancy issues.
770-775	No objection.
776	Hood made clear that he meant "tax owner" when he said "owner."
777	Misleadingly creates the impression that Lathen and the Participant would act as agents of the Fund. Hood was referring to an earlier structure. Under the final structure, only Lathen and Jungbauer were agents of the Fund.
778	See response to 777
779	Irrelevant. Lathen had no reason to believe Mr. Hood would need to review and Mr. Hood never asked to review the IMA. As such, it did not change his state of mind or his good faith belief.
780-781	No objection.
782	Questions not asked and advice not received have no bearing on state of mind.
783-786	No objection.
787	See Response to DPFOF 782.
788	See Response to DPFOF 782. Z
789-795	No objection.
796	Misleading, mischaracterizes testimony, and makes an unsupported legal conclusion. It is possible for the Fund (and its investors) to be beneficial owners for tax purposes while Lathen and the participant were still considered beneficial owners under the definitions in the governing documents, in common law and/or in securities law. These conditions are not mutually exclusive.
797-803	No objection.
804	Advice not sought nor received does not change Lathen's state of mind.
805	Not relevant and misleading. Advice sought for an alternative loan-plus-equity kicker structure that was not implemented does not impact on Mr. Lathen's state of mind or his tax treatment under his existing straight loan-plus-profit-sharing agreement structure
806	See Response to DPFOF 805.
807	See Response to DPFOF 805.
808 Z	See Response to DPFOF 805.
809	See Response to DPFOF 805.
810-811	Misleading, prejudicial and inaccurate. The Division conflates advice received on an alternative structure not implemented with advice not sought or received on an existing structure. The Division then suggests that Lathen ignored Hood's advice because he did not apply Hood's alternative structure advice to his existing

DPFOF	The Eden Arc Respondents' Responses and Objections
	structure.
812	No objection.
813	Irrelevant. Does not bear on Lathen's knowledge on the subject nor his state of mind.
814	Irrelevant. Advice not sought nor received does not bear on Mr. Lathen's state of mind.
815	No objection.
816	Misleading. Reading the preceding answer leading up to the excerpted question, it is clear that Mr. Lathen is referring to an alternative structure that was not implemented, not his existing structure.
817-819	No objection.
820	Irrelevant. Does not impact on Lathen's state of mind and good faith belief. Whether Lathen sent Flanders these documents or not, Mr. Lathen knew that Flanders was very familiar with his strategy as a result of his representation of Caramadre. It would have been reasonable to assume that Flanders was familiar with bond prospectuses and redemption processes. Flanders had been featured in a Wall Street Journal article featuring Caramadre's survivor's option bond strategy. Flanders also provided Lathen with a letter written by the Rhode Island Attorney General's Office to Bank of New York, a trustee in the market, regarding Bank of New York's failure to timely redeem some of Caramadre's bonds, further reinforcing Lathen's understanding of Flanders' expertise on the matter.
821	See Response to DPFOF to 820.
822	See Response to DPFOF to 820.
823	No objection.
824	Highly misleading and represents an unsubstantiated legal conclusion rather than a fact. The Division asserts that the advice Flanders gave to Lathen related to his disclosures to issuers "did not speak to Lathen's obligations under the securities laws." Instead the Division asserts that such advice was only related to Lathen's contractual obligations under the Prospectus. Flanders' testimony makes Respondents' defense instantly viable even under the Division's own restrictive definition (advice concerning disclosures to issuers). Setting aside whether Flanders advice was related to contract law, securities law or both, such advice unquestionably boosted Lathen's good faith belief that his conduct was lawful and that his disclosures to issuers were adequate.
825-829	No objection.
830	Misleading, prejudicial and irrelevant. Just because something may be less than "bulletproof" does not mean that it is fraud.
831-832	No objection.
833	Creates misleading impression. Lathen told Hinckley Allen that he was seeking the Caramadre Memo to address concerns his potential investors might have in light of Caramadre's legal problems. He wanted to make sure that his potential investors understood the difference between his investment strategy and that of Caramadre. It is therefore fair to say that Hinckley Allen knew the memorandum could and likely would be used to solicit investors. Farrell testified that the main

DPFOF	The Eden Arc Respondents' Responses and Objections
	reason for the boilerplate anti-reliance language in the Caramadre Memo was to ensure third parties would not be able to rely on it if it was distributed.
834	No objection.
5	Misleading. The email chain was between Farrell and Flanders. And it reflected a back and forth discussing structures, some of which were not employed. It is also difficult to tell which structure Farrell was addressing. In any event, Lathen never received it so it could not have altered his state of mind. When the advice was actually communicated to Mr. Lathen, it was with less certitude. (See DPFOF 836.)
836	No objection.
837	No objection.
838	Irrelevant to Lathen's state of mind and good faith belief
839-841	No objection.
842	Irrelevant because had no bearing on Lathen's state of mind
843	Irrelevant because had no bearing on Lathen's state of mind. It would have been reasonable for Lathen to assume that Flanders had a Participant Agreement since Hinckley Allen prepared one for him the previous December. Also, Lathen believed Flanders was familiar with issuer governing documents.
844-846	No objection.
847	Misstates and mischaracterizes testimony. The main point of Lathen's testimony is that the Goldman plain vanilla CD disclosure statement, unlike a typical bond prospectus, did not make any mention of a joint tenancy. Instead the trigger event was the death of "the owner." Lathen thought this might provide a stronger argument for repayment since "owner" is an easier bar to hit than "joint owner" or "joint and beneficial owner." Flanders had a much different take and thought the language was more "wishy washy" and that Goldman could simply refuse to pay, citing discretion. When Goldman submitted responses to Lathen's complaints at the CFPB and NYDFS, they cited their survivor's option language and italicized the *will generally* language and another language citation which stated "written verification *acceptable to the Issuer*" (emphasis Goldman).
848	No objection.
849	No objection.
850	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
851	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
852	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
853	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
854	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
855	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or

DPFOF	The Eden Arc Respondents' Responses and Objections
	his good faith belief.
856	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
857	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
858-861	No objection.
862	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
863	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
864	Not relevant and not proven by the cited passage. When asked if she communicated the limits of Hinckley's representation, Farrell said "I hope we did." All other questions in the citations have to do with non-conversations which could not have impacted on Lathen's state of mind.
865	Not relevant. Non-existent conversations do not bear on Lathen's state of mind or his good faith belief.
866-876	No objection.
877	Misleading and not relevant. Farrell had not made a definitive conclusion that the joint tenancy was invalid. She said it was "questionable" whether the participant has any beneficial ownership in the account. She also conceded that her views were formed by a "very preliminary look" (Tr. at 2659:11-12) and later stated she did not look into it further because it "became a moot point" (Tr. at 2662:3-4) once the decision was made to change the structure. Farrell also later testified that she was not familiar with N.Y. Banking Law § 675 and the associated statutory joint tenancy case law at the time she gave such advice.
878	Misstates testimony. Farrell did not say "lack of beneficial interest." She answered affirmatively to the question of whether she had concerns "about their beneficial interest in the accounts."
879-882	No objection. '
883	Misleading and prejudicial. The language was struck from the paper brochures but inadvertently remained on a website which was never actively used to recruit participants.
884	Prejudicial. The Division has not asserted fraudulent misrepresentation regarding the 15% charitable contribution language.
885	Misleading and prejudicial. At the time, Farrell was also providing structuring advice on the joint tenancies and contractual regime.
886-889	No objection.
890-892 '	Misleading. Farrell later stated that she was not thinking of issuers when she drafted the language at issue in the Caramadre Memo. The Caramadre Memo was explicitly limited to Mr. Lathen's investment strategy's vulnerability to the types of charges levelled against Caramadre. The Caramadre indictment did not allege any misconduct as it relates disclosures to issuers, which would explain the reason that Farrell did not focus on same. Lathen did not believe that language applied to

DPFOF	The Eden Arc Respondents' Responses and Objections
	Issuers and so his state of mind and good faith belief were not altered by the Caramadre Memo, especially given the earlier advice he received from Flanders. Finally, Farrell later stated on re-direct that, with respect to issuer disclosures, she believed Lathen was legally obligated to provide issuers with what they requested and nothing more.
893	Misleading impression that he was not receiving advice on joint tenancies. Farrell was also providing advice to Lathen on the structuring of his joint tenancies and the modification of his contractual regime.
894-904	No objection.
905-909 Œ	Misleading, conflicting and overstates certitude. Farrell's testimony at trial differs somewhat from her written communication to Lathen in late September 2013. (Div. Ex. 671.) Given the passage of time and potential for memory to fade, Farrell's written communications in 2013 should be given more weight. With respect to concerns about the profit sharing agreement she expressed back in 2013, Farrell stated that any "suggestion that Jay is acting for EACP *potentially* supports a claim that EACP is the co-owner of the account, not Jay, and would destroy the JTWROS status of the account" (emphasis added). This is a far lower level of certitude than the Division suggests. At approximately the same time Lathen was receiving additional advice and research from Flanders in connection with his dispute with Goldman. Specifically, Flanders commissioned research into NY Banking Law § 675 and the associated case law. That statute and case law governed so-called "statutory" joint tenancies (i.e., brokerage accounts and bank accounts), which is a separate and distinct body of case law from the more traditional "common law" joint tenancy (e.g., real property) case law that had guided Farrell's analysis and advice. Farrell later confirmed on re-direct that she was not aware of the NY Banking Law § 675 when she wrote her September 25, 2013 email to Lathen and Robinson. (Tr. at 2772:5-13.) As a result of Flanders' research, Lathen concluded that his existing joint tenancies were much stronger than he had previously thought, notwithstanding the conflicting advice Farrell provided based on different case law. As he testified, Lathen continued to work with Farrell over a period of months to pursue a new loan-plus-equity-kicker structure a/k/a the "new and improved" joint tenancy. Ultimately, Lathen concluded that the new structure would provide only minimal benefits relative to the existing structure in terms of enhanced validity, while imposing higher costs and greater complexity. He therefore never implemented the new structure.
910	Contradicted by Lathen's testimony. While Farrell could not recall or remember whether Lathen advised her of the status of Investment Management Agreement-governed accounts, Lathen testified that he "likely told her" about it. (Tr. at 3568:14-20.)
911	No objection.
912	Misleading and not supported by the testimony or Div. Ex. 671. On the bottom of Page 1 of Div. Ex. 671, to which the captioned testimony refers, Farrell recommends that the Profit Sharing Agreement be changed and turned into an "equity kicker" to provide more distinction between Lathen and the Fund, which in

DPFOF	The Eden Arc Respondents' Responses and Objections
	her judgment would enhance the validity of the joint tenancy. As a result of Farrell's proposed change, the tax treatment would also change from pass-through treatment to interest income. It is clear when she says "would be viewed as additional interest income," Farrell is talking about a change in the structure, not proposing to change the tax treatment of Lathen's existing structure. The Division's statement wrongly asserts that Farrell sought to change the tax treatment of the existing structure.
913	No objection.
914	No objection. But see Response to DPFOF 905-909 (reasons Farrell's advice was not taken).
915	Irrelevant. The Division's hypothetical non-conversation has no bearing on Mr. Lathen's state of mind and good faith belief.
916	Incorrect and prejudicial. The Division's summary statement creates the misleading impression that Farrell presumed that Lathen provided his Participant Agreements in the ordinary course for each redemption. At Tr. 2717:7-12 Farrell indicates she did not know what information may or may not have been provided by Lathen to Issuers in ordinary course. The Division's statement therefore is plainly incorrect. Farrell later stated on re-direct that, with respect to issuer disclosures, she believed Lathen was legally obligated to provide issuers with what they requested and nothing more.
917-923	No objection.
924	Irrelevant to Lathen's state of mind
925	No objection.
926	Irrelevant to Lathen's state of mind
927	Misleading and prejudicial as it suggests Lathen simply ignored Hinckley's advice. Lathen testified that he attempted to establish account control agreements at the brokerage firms but that the firms were resistant to accommodating his requests.
928	Not relevant to Lathen's state of mind
929	Highly misleading, out of context and false. What is being discussed in the email and testimony is an alternative structure involving a grantor trust. The structure was ultimately deemed unworkable for the reasons cited by Farrell (among others reasons). The Division's statement is therefore false and should be rejected
930	Highly misleading, out of context and false. What is being discussed in the email and testimony is an alternative structure involving a grantor trust. The structure was ultimately deemed unworkable for the reasons cited by Farrell (among others reasons). The Division's statement is therefore false and should be rejected.
931	Irrelevant. Structure never adopted and not applicable to any structure utilized by the Eden Arc Respondents.
932	Statement not supported by citation. Citation question called for speculation and was answered "Yes. I guess." Not supported elsewhere in the record.
933	Statement not supported by citation.
934	Misleading. Lathen later testified that transfers from an account were treated as a pay-down of the Fund loan based on the value transferred, which Farrell says fixes

DPFOF	The Eden Arc Respondents' Responses and Objections
	the problem.
935	See Response to DPFOF 934.
936	Misleading and prejudicial. See Response to DPFOF 934.
937	False statement. Transfers were accounted for properly by reducing the loan balance for the value transferred out.
938	No objection.
939-943	No objection.
944	Misleading. Galbraith also advised on changes to the contractual regime to prevent litigation in the future.
945-958	No objection.
959-962	Not relevant to Lathen's state of mind
963	No objection.
964	Misleading. No issuer ever asked for it and Investment Management Agreement-governed accounts were largely wound down. Galbraith testified that he would have provided it if it had been requested.
965	Not relevant. No issuer ever asked for it.
966	Not relevant. No issuer ever asked for it.
967	Not relevant. No issuer ever asked for it.
968	Not relevant. No issuer ever asked for it.
969	Not relevant to Lathen's state of mind. Would have provided any document requested by any Issuer.
970	Not relevant to Lathen's state of mind. Would have provided any document requested by any Issuer.
971	Not relevant. No issuer ever asked for it.
972	Not relevant. No issuer ever asked for it.
973	Not relevant. Since no issuer ever asked for it, Lathen may never have sent it to Galbraith and Galbraith may never have had it to send it to the Division.
974	Not relevant. No one ever asked for it, and neither Galbraith nor Lathen were obligated to volunteer it
975	No objection.
976	Not relevant. US Bank never asked for it. All versions of the Participant Agreement since January 2013 make reference to an Investment Loan or to a Line of Credit.
977-979	No objection.
980	Not relevant. US Bank never asked for it. All versions of the Participant Agreement since January 2013 make reference to an Investment Loan or to a Line of Credit.
981	Not relevant. The Eden Arc Respondents vigorously disagree with US Bank's legal analysis.
982	No objection.
983	Not relevant.
984-993	No objection.
994	Misleading. Robust disclosure refers to dealings with Participants.

DPFOF	The Eden Arc Respondents' Responses and Objections
995-1013	No objection.
1014	Mark-up and Testimony in conflict. Not relevant. Based on Div. Ex. 649, it is not clear from the mark-up whether Lathen or Galbraith originally proposed the 50% language.

Dated: New York, NY
May 5, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on May 5, 2017 I caused a true and correct copy of the foregoing THE EDEN ARC RESPONDENTS' RESPONSES AND OBJECTIONS TO THE DIVISION OF ENFORCEMENT'S STATEMENT OF FACTS, dated May 5, 2017, to be served upon the parties listed below via e-mail and/or UPS Overnight Mail:

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

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
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/s/

Harlan Protass